MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor,
Cuffe Parade, Mumbai – 400 005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.merc.gov.in

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (MULTI YEAR TARIFF) REGULATIONS, 2019

STATEMENT OF REASONS

Dated: 1 August, 2019

Introduction

The Commission notified the MERC (Multi Year Tariff) Regulations, 2015 [MERC MYT Regulations, 2015] on December 8, 2015, which superseded the MERC (Multi Year Tariff) Regulations, 2011. The Commission notified the first amendment to the MERC MYT Regulations, 2015 on November 29, 2017 related to determination of normative Operation and Maintenance (O&M) Expenses.

As the current MYT Control Period is coming to end on March 31, 2020, the MERC formulated the draft Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 (hereinafter referred as "draft MERC MYT Regulations, 2019) covering the Generation Business (Conventional), Transmission Business, Distribution Wires Business, Retail Supply Business, and SLDC for the next MYT Control Period.

While formulating the draft MERC MYT Regulations, 2019, the Commission has been guided by the CERC MYT Regulations, 2019. The Commission has also been guided by the National Electricity Policy, Tariff Policy, relevant Regulations of this Commission and other SERC's, FOR Recommendations on MYT Framework, APTEL Judgments, etc., for the formulation of draft MERC MYT Regulations, 2019.

The Commission proposed modifications to certain clauses vis-à-vis the clauses specified in the MERC MYT Regulations, 2015 (as amended from time to time) based on the experiences in implementation of the MYT Regulations in the previous Control Period, and in order to simplify/clarify/amend certain provisions as considered reasonable. The rationale for the

changes proposed in the MERC MYT Regulations were elaborated in the Explanatory Memorandum. Generally, only the clauses where any addition/modification is proposed in the MERC MYT Regulations, 2019 were discussed in the Explanatory Memorandum.

Accordingly, draft MERC (Multi Year Tariff) Regulations, 2019 along with Explanatory Memorandum was published on the Commission's websites www.mercindia.org.in / www.merc.gov.in in downloadable format on 28 May, 2019. A Public Notice was also published in daily newspapers Marathi (Maharashtra Times and Loksatta) and English (Indian Express and Times of India), inviting comments, objections and suggestions from all stakeholders by 18 June, 2019, which was subsequently extended till 03 July, 2019 as per request of some of the stakeholders. A total of 26 stakeholders responded to the Notice on Draft MERC MYT Regulations, 2019. 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, two clauses have been combined in order to minimise repetition.

Some comments and suggestions were not directly related to the draft MERC MYT Regulations, 2019, 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 between clauses. Also, it may be noted that the Regulation numbers given in this Statement of Reasons are those mentioned in the draft MERC MYT Regulations, 2019.

The SOR is organised in the following Chapters, along the same lines as the MERC MYT Regulations, 2019, 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: Definitions

Chapter 2: General Principles and Multi Year Tariff Framework

Chapter 3: Power Procurement

Chapter 4: Financial Principles

Chapter 5: Norms and Principles for determination of Revenue Requirement and Tariff for Generation Companies

Chapter 6: Norms and Principles for determination of Revenue Requirement and Tariff for Transmission Business

Chapter 7: Norms and Principles for determination of Revenue Requirement and Wheeling Charges for Distribution Wire Business and Retail Supply Business

Chapter 8: Norms and Principles for determination of Fees and Charges for the Maharashtra State Load Despatch Centre (MSLDC).

Chapter 9: Additional Points

1 Definitions

1.1 Regulation 2.1(1): Definition of Accounting Statement

1.1.1 Proposed in Draft MYT Regulations, 2019

"2.1(1).....

Provided that separate Accounting Statements shall be prepared and submitted to the Commission for each licensed Business in accordance with the Licence conditions, and for each regulated Business:

Provided further that, in case separate Accounting Statements are not submitted for each licensed Business in accordance with the Licence conditions and for each regulated Business for the Financial Year (FY) 2020-21 onwards, the Petitions filed by the Generating Company or Licensee or MSLDC, may be rejected by the Commission after giving the Petitioner a reasonable opportunity of being heard:

Provided also that the Generating Company or Licensee or MSLDC shall submit the Statutory Auditor's comments, observations and notes to Accounts, along with the Accounting Statements, and a summary of the key issues highlighted by the Statutory Auditor and the steps taken to address them:..."

1.1.2 Comments Received

VIPL requested to amend first and second proviso of this Regulation and drop the requirement of separate Accounting Statements, and instead allow submission of Allocation Statement as certified by the Chartered Accountant. The said allocation statement adequately covers the elements of the ARR required for determination of ARR and Tariff. Further, third proviso of the definition should be amended in such a manner that instead of submitting separate Auditor's comments and other documents for the transmission business, extract of the same information from the published books of accounts of the combined VIPL entity be allowed to be submitted along with the Petition.

1.1.3 Analysis and Commission's Decision

These provisos are present in the existing MYT Regulations, 2015 also and have evolved over time. In the absence of separate accounting statements, it is difficult to analyze the accounts of entities doing multiple business under the same Balance Sheet. Hence, no modification is required in the said provisos.

1.2 Regulation 2.1(7): Definition of Auxiliary Energy Consumption

1.2.1 Proposed in Draft MYT Regulations, 2019

*"“**Auxiliary Energy Consumption**” in relation to a period, in case of a generating Station or Unit, means the quantum of energy consumed by its auxiliary equipment, such as equipment used for operating plant and machinery, including switchyard of the generating Station and the transformer losses within the generating Station, and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the Units of the Generating Station:*

Provided that it shall not include energy consumed for supply of power by the generating Station to its housing colony and other facilities, and for construction works at the generating Station;"

1.2.2 Comments Received

Dhariwal Infrastructure Limited requested to modify the definition of Auxiliary Energy Consumption to cover the Emission Control System (including FGD system) that are installed as a part of compliance of law or direction from the MoEFCC/Central/State Government. Alternately, a separate norm of Auxiliary Energy Consumption for Emission Control System may please be introduced. Further, it is submitted that a separate norm of Auxiliary Energy Consumption should be introduced for the external assets required for Coal Handling Plant (jetty and associated infrastructure) in case of coal based generating plant/ station.

1.2.3 Analysis and Commission's Decision

The Commission is of the view that the energy consumption of external assets located outside the boundaries of the generating station cannot be included under Auxiliary Energy Consumption of the generating station. The separate auxiliary consumption for FGD has been specified for existing and new generating stations. The Commission has also taken cognizance of the submissions of the stakeholder regarding auxiliary energy consumption on account of installation of any additional equipment mandated by Statutory Authorities, and **has introduced a proviso under the normative Auxiliary Energy Consumption, allowing additional Auxiliary Energy Consumption on case to case basis, after prudence check, as under**:

"46.15 ...

Provided also that for thermal Generating Stations with any additional equipment that has been mandated by Statutory Authorities, additional Auxiliary Energy Consumption shall be allowed on case to case basis after prudence check."

1.3 Regulation 2.1(11): Definition of Base Rate

1.3.1 Proposed in Draft MYT Regulations, 2019

*"(11) "**Base Rate**" shall mean the one-year Marginal Cost of Funds-based Lending Rate ('MCLR') as declared by the State Bank of India from time to time; "*

1.3.2 Comments Received

Shri Mahaveer Kumar Jain suggested the following modification in the definition:

*"Base Rate" shall mean the one-year Marginal Cost of Funds-based Lending Rate ('MCLR') **or any other rate based on systems applicable** as may be declared from time to time by the State Bank of India;"*

Shri Jain submitted that the change is needed to factor in the possibility of the base interest system being changed in future. In the past, SBI replaced the SBI PLR with the Base Rate around 2008-2010. However, the SBI PLR was allowed to be used for computing the Carrying Cost till FY 2015-16, which has given extra interest to the Utility though SBI PLR was no longer used in industry and the Utility's interest cost on long and short-term loan was around 10%.

1.3.3 Analysis and Commission's Decision

The Commission agrees that there have been frequent changes in the effective rates and basis. SBI has changed the basis from PLR to SBAR to SBBR and now to MCLR. However, rewording the definition as proposed may lead to ambiguity and therefore, the definition has been retained as proposed in the draft MYT Regulations, 2019.

1.4 Regulation 2.1(8) (a): Definition of Availability

1.4.1 Proposed in Draft MYT Regulations, 2019

*"(8) (a) "**Availability**" in relation to a thermal Generating Station/Unit for any period means the average of the daily average declared capacities as certified by MSLDC for all the days during that period, expressed as a percentage of the installed capacity of the Generating Station/Unit minus the normative auxiliary consumption in Megawatts (MW), as specified in these Regulations, and shall be computed in accordance with the following formula:*

$$\text{Availability} = 100 \times \sum_{i=1}^{N} DC_i \;/\; \{ N \times IC \times (1 - AUX_n) \} \%$$

where - N = number of time blocks in the given period

DC = Average Declared Capacity in MW for the ith time block in such period

IC = Installed Capacity of the Generating Station/Unit in MW

AUX = Normative Auxiliary Consumption in MW, expressed as a percentage of gross generation:…"

1.4.2 Comments Received

Dhariwal Infrastructure Limited requested that the definition of Plant Availability Factor should be modified such that the average of daily declared capacities for all the days during the period is expressed as a percentage of the contracted capacity (at generation ex-bus) in MW less the normative auxiliary energy consumption and the additional auxiliary energy consumption for Emission Control System. Further, it is requested to consider additional normative Auxiliary Energy Consumption due to installation of Emission Control System once the same is approved by the Commission in the proposed formula.

Dhariwal Infrastructure Limited added that since the entire installed capacity of Generating station/Unit may not be tied up on a long-term basis with the beneficiaries and/or residual capacity may be sold in the merchant market, it is quite possible that in the event of partial outages, the generating station meets its long-term tie ups fully by corresponding reduction in merchant supply. Availability should therefore, be computed based on long-term contracted capacity with the DISCOMs. The same has also been recognised by CERC in its Order dated 20 March, 2018 in Petition No. 192/MP/2016.

1.4.3 Analysis and Commission's Decision

As stated earlier, the Commission has added a proviso allowing additional Auxiliary Energy Consumption for additional equipment that has been mandated by Statutory Authorities. The normative Auxiliary Energy Consumption in the formula for computation of Availability will thus, include the Auxiliary Energy Consumption for such equipment, and further elaboration is not required in the formula.

As regards the submission that in the event of partial outages, the generating station may meet its long-term tie ups fully by corresponding reduction in merchant supply, and hence, Availability should be computed based on long-term contracted capacity with the DISCOMs, the APTEL has issued a Judgment dated 26 August, 2011in Appeal No. 87 of 2010 in the matter of TPC Trading Company Limited vs. MERC, wherein it has ruled as under:

"9. The first issue is regarding the impugned direction to TPC-G to supply of power from Trombay Unit No. 8 to Mumbai distribution licensees corresponding to their contracted capacity before it supplies power to other entities.

…

9.31. Section 10(2) of the Act gives freedom to a generating company to supply electricity to a licensee and to any consumer. Tata Trading is a trading licensee which has signed a PPA for firm capacity of 92 MW (ex-bus) from Trombay Unit No. 8. The impugned directions would directly affect the interest of Tata Trading in terms of the PPA signed by it with TPC….In our opinion, the State Commission by the impugned direction has indirectly exercised control over supply from the balance capacity of TPC not contracted with the distribution licensees. ...

9.33. ..There is no provision in the Act which gives lower priority in supply by a generating company to a trading licensee compared to a distribution licensee…

9.35. Further, the impugned directions are also contrary to the findings of the Hon'ble Supreme Court in Tata Power Company Ltd. Vs. MERC & Ors. reported as 2009 ELR (SC) 246…

9.39. In view of above reasonings, the first issue is decided in favour of the Appellants. The impugned direction of the State Commission is accordingly set aside."

Thus, the above APTEL Judgment rules in favour of proportionate consideration of installed capacity.

Hence, no modification is required in the said definition.

1.5 Regulation 2.1(15): Definition of Change in Law

1.5.1 Proposed in Draft MYT Regulations, 2019

*"(15) **"Change in Law"** means occurrence of any of the following events:*

a. enactment, bringing into effect or promulgation of any new Indian law; or

b. adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or

c. 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

d. 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

e. 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

MEGPTCL and Dhariwal Infrastructures Limited suggested to modify clause 2(15)(d) as follows:

"(d) Any direction/communication by Indian Government Instrumentality/any Competent authority which is enforceable on the generating company /licensee and results in financial impact"

TPC suggested to add provision 2(15)(f) in the definition as follows:

"coming into force or change in any bilateral or multilateral agreement or treaty between the Government of India and any other Sovereign Government having implications for the generating Station or the transmission system regulated under these Regulations;"

The stakeholders submitted that the scope of this definition in the current Regulations is restricted to Indian Law only. It is suggested that the scope of definition should be widened to include change in law in any country that will impact the cost or revenue of the Generating Company or Licensee, in line with CERC Tariff Regulations, 2019.

AEML suggested that the variation in statutory levies may be included in the definition of Change in Law. Statutory levies like RI charges, access charges, taxes, etc., paid to Govt. departments are included in O&M expenses. While changes in taxes and duties are considered as Change in Law, change in Statutory levies like RI charges and access charges are not specifically mentioned as part of Change in Law or Uncontrollable Factors. Further, the Judgment of the Hon'ble Supreme Court in the Civil Appeal Nos. 5399-5400 of 2016 dated 11.04.2017 (the Energy Watchdog Case) held that even a letter issued by the Government Instrumentality has force of Law and can be considered as a Change in Law.

1.5.3 Analysis and Commission's Decision

As regards the suggestion to include variation in statutory levies like RI charges, access charges, and directions by Indian Government Instrumentality enforceable on the Utilities under Change in Law, the Commission is of the view that the present definition is adequate and includes these instances of Change in Law, hence, there is no requirement to modify the definition to this extent. Further, each instance of Change in Law has to be substantiated through documentary evidence by the Utility.

As regards the suggestion with respect to inclusion of bilateral or multilateral agreement between the Government of India and any other sovereign Government is appropriate, the Commission is of the view that it would not be proper to make a provision for the same in the State level regulations when the agreements are reached between Union Government and the foreign country. Effect of such agreements would be appropriately conveyed by consequent order of the Union Government.

1.6 Regulation 2.1(22): Definition of Control Period

1.6.1 Proposed in Draft MYT Regulations, 2019

*""**Control Period**" means the period comprising five Years from April 1, 2020 to March 31, 2025, and as may be extended by the Commission; "*

1.6.2 Comments Received

MSETCL proposed that the Commission should undertake Mid Term Review after every 2 years (2 mid-term reviews), and last one year should be reviewed with next control period MYT.

1.6.3 Analysis and Commission's Decision

The Commission has consciously and with justification considered the Control Period of five years with Mid-Term Review to be taken up mid-way during the Control Period. There is no benefit in undertaking Mid-Term Review after every 2 years, as proposed by the stakeholder. Hence, no modification is required in the said definition.

1.7 Regulation 2.1(23): Definition of Cut-off date

1.7.1 Proposed in Draft MYT Regulations, 2019

""Cut-off Date" *means the last day of the calendar month after thirty-six months from the date of commercial operation of the project; "*

1.7.2 Comments Received

MEGPTCL suggested to add the following provision for extension of the Cut-Off Date, considering the fact that the project developer may not be able to make certain capitalization within the cut-off date for reasons beyond its control:

"Provided that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalization could not be made within the cut-off date for reasons beyond the control of the project developer".

Prayas Energy Group submitted that if the intention is to remove ambiguity, as stated in the Explanatory Memorandum, the definition of Cut-off date could be modified as follows:

"Cut-off Date" means the last day of the calendar month after twenty-four months from the date of commercial operation of the project;"

Prayas submitted that cut-off date is an important parameter especially in case of Generation Companies, as the project costs incurred till this date are considered by the Commission for recovery through Fixed Charges. There have been excessive delays (on an average two years at least) in the commissioning of all the Section 62 projects in the past two Control Periods. Considering the track record of the Generating Companies in terms of project completion activities, relaxation in the cut-off date might encourage further laxness in performance.

1.7.3 Analysis and Commission's Decision

The Commission has revised the timeline for cut-off date and increased it to three years from the date of commercial date of operation, based on the CERC Tariff Regulations, 2019. As regards the suggestion to provide for further relaxation of the Cut-off date, the Commission is of the view that the cut-off period of 3 years is more than sufficient to complete all project completion related activities. Hence, no modification is required in the said definition.

1.8 Regulation 2.1(25): Definition of Date of Commercial Operation

1.8.1 Proposed in Draft MYT Regulations, 2019

"(25) "Date of Commercial Operation" or "COD" means –

....

c. in case of a transmission system, the date declared by the Transmission Licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal:

Provided that, in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the Transmission Licensee or its suppliers or contractors but on account of the delay in commissioning of the concerned generating Station or the upstream or downstream transmission system or distribution system, the Transmission Licensee may seek approval of the Commission of the date of commercial operation of such transmission system or an element thereof:

Provided further that, in case of an existing Transmission Licensee, such request may be included as part of its Multi Year Tariff (MYT) Petition or Mid-Term Review Petition or True-up Petition to be filed under these Regulations;".

1.8.2 Comments Received

TPC suggested to insert suitable provisions to define the liability of the Utilities due to mismatch in date of commercial operation, as per CERC Tariff Regulations, 2019. TPC submitted that a Transmission Licensee typically constructs the bays on distribution licensee's request post STU approval. However, these bays fail the "put to use" criteria, if the Distribution

Licensee is unable to utilize the bays constructed to meet its demand, hence, the Transmission Licensee is denied the capitalisation of such bays in the ARR. In CERC Tariff Regulations, 2019, the liability of defaulting parties has been defined in Regulation 6 (Chapter 2). UERC has also made similar provisions under Regulation 21(7) in UERC MYT Regulations, 2018.

1.8.3 Analysis and Commission's Decision

The above Regulation has been retained from the MERC MYT Regulations, 2015, and already provides for the Transmission Licensee seeking the Commission's approval for the date of commercial operation of such transmission system, in case it is unable to achieve COD because of delay in commissioning of the upstream or downstream Generating Station or Transmission Licensee or Distribution Licensee.

The incidence of default has to be proved based on documentary evidence and liability of the defaulting party needs to be ascertained in case the party is not ready with the connecting asset, on a case-to-case basis. One also needs to consider the Transmission Pricing mechanism in the State, wherein the ARR of the Transmission Licensees is pooled together and shared by the Transmission System Users (TSUs) in the ratio of their Coincident Peak Demand and Non-Coincident Peak Demand, hence, it would be difficult to pass on the liability to the defaulting entity. The Commission is of the view that it would not be appropriate to specify the further treatment in such case in the Regulations, which would have to be addressed in the Order to be issued by the Commission on the Petition to be filed by the Transmission Licensee in such cases. Hence, no modification is required in the said definition.

1.9 Regulation 2.1(34): Definition of Extra High tension

1.9.1 Proposed in Draft MYT Regulations, 2019

*"***(34) "Extra High Tension" (or "EHT") means all voltages above 33 kiloVolt;** *"*

1.9.2 Comments Received

Prayas Energy Group sought clarification on account of the change of definition of EHT from "66 kV and above" to "above 33 kV". Prayas submitted that such a shift could have implications on the estimation of losses, applicability of tariffs, estimation of cross subsidy surcharge and applicability of wheeling charges, on account of the following aspects:

(a) The EHT losses should not be treated the same as the inter-State transmission losses in the Energy Balance, especially if energy input and drawn above 33 kV but below 66 kV is also being considered.

(b) It should be clarified in the Regulations that appropriate Wheeling Charges to ensure cost recovery for the DISCOMs will be applicable on the EHT consumers connected above 33 kV.

1.9.3 Analysis and Commission's Decision

The definition of Extra High Tension has been added in the MYT Regulations, 2019, for greater clarity. It is clarified that 33 kV voltage is not included under EHT in this definition, as EHT is defined as all voltages above 33 kV. Further, the second proviso of Regulation 73.2 clearly specifies that Wheeling Charges shall be determined separately for LT voltage, HT voltage, and EHT voltage, as applicable, based on the ARR of the Wires Business. Thus, the Wheeling Charges shall be applicable for EHT consumers, only if the assets of the Distribution Licensee are used for supplying electricity to the EHT consumers. Hence, the concern of the stakeholder regarding implications on Energy Balance and applicability of Wheeling Charges, etc., are not justified. Hence, no modification is required in the said definition.

1.10 Regulation 2.1(40): Definition of Force Majeure Event

1.10.1 Proposed in Draft MYT Regulations, 2019

*"(40) "**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:*

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

…."

1.10.2 Comments Received

MEGPTCL proposed to add subclause (f) as under:

"(f) Delay in obtaining statutory approval from any Indian Government Instrumentality for the purpose of supply of power to the Beneficiaries for the project except where the delay is attributable to project developer".

MEGPTCL submitted that Statutory Clearances like Forest Clearance, Railway Crossing, Aviation clearance, power line/telecom line crossing, Right of Way, etc., ought to be considered as Force Majeure Events, in case of denial or delay even after the Generator/Licensee has followed all necessary procedures in a timely manner. Several land owners/farmers have raised objections with regard to Right of Way while laying transmission lines. The Commission has also considered this as an uncontrollable factor during tariff proceedings. In Appeal No. 139 & 140 of 2013, APTEL has passed a Judgment stating that delay in obtaining Statutory Approvals is Force Majeure. Therefore, delay in grant of clearances by Statutory Authorities may be included in the list of Force Majeure events.

TPC proposed to modify subclause (a) and add sub clause (f) as follows:

"a. acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood, torrential rains, drought, and natural disaster, ***fire, explosion, volcanic eruption, landslide, cyclone, typhoon and tornado****;*

…

"(f) "Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;""

TPC submitted that few acts of God have not been defined in the draft Regulations, and may be included as proposed. TPC added that delay in obtaining statutory approval is covered under Force Majeure event in Regulation 2(25)(d) of CERC Tariff Regulations, 2019, and may be included.

MSPGCL submitted that the event of 'failure of project contractor / vendor on account of bankruptcy or insolvency' needs to be considered as "Force Majeure" event for the Utility. MSPGCL added that during bidding, the contractors are qualified as per qualification criteria prescribed by the Central Vigilance Commission (CVC) for thermal power projects, and contracts are awarded to the successful bidders. However, over the period of execution of the project, the financial condition of some of these contractors may deteriorate to the extent of insolvency/bankruptcy, resulting in delay in timely completion of the project. Considering the scope and quantum of balance work, it is not possible to engage another agency at that stage, delaying the project completion. Hence, as far as the generating company (i.e. project developer) is concerned, such financial failure of a contractor is an uncontrollable event.

Dhariwal Infrastructure Limited suggested to add the following provision in the definition:

"Any failure or delay by the Contractor of the project developer due to some Force Majeure events which does not result in any offsetting compensation being payable to the project developer by or on behalf of such Contractor."

Any direct or indirect cyberattack affecting the operation of the project developer"

Dhariwal Infrastructure Limited submitted that the definition should cover eventualities, which are beyond the developer's control, based on past experiences of the sector and trend of events being observed in the current scenario.

1.10.3 Analysis and Commission's Decision

As regards the suggestion to include delay in grant of clearances by Statutory Authorities in the list of Force Majeure events, the Commission is of the view that delays in obtaining clearances cannot be specified to be under Force Majeure in the Regulations, as it is the responsibility of

the Developer to obtain necessary approvals for the project. The Developer has to demonstrate that it has taken all possible efforts for securing such clearances. Hence, the Commission may decide on this aspect on case to case basis.

As regards the suggestion to define additional events of acts of God, the definition clearly specifies "not limited to" and lists typical events of acts of God included under Force Majeure. It is not necessary to list each and every event of act of God. It is for the Utility to seek the necessary relief under Change in Law, citing the acts of God, with documentary evidence.

As regards the suggestion that 'failure of project contractor / vendor on account of bankruptcy or insolvency' needs to be considered as "Force Majeure" event for the Utility, the Commission is of the view that the Utility needs to ensure appropriate technical and financial criteria while selecting and appointing the contractors, and needs to regularly monitor their status. It is not appropriate to include such situations under Force Majeure.

As regards the specific instances cited by Dhariwal, the Petitioner may approach the Commission for consideration of Force Majeure events, and the Commission may take appropriate view on case to case basis based on the submissions and documentary evidence submitted.

Hence, no modification is required in the said definition.

1.11 Regulation 2.1(46): Definition of High Tension

1.11.1 Proposed in Draft MYT Regulations, 2019

*"(46) "**High Tension**" (or "HT") means all voltages above and including 11 kiloVolt and up to and including 33 kiloVolt;"*

1.11.2 Comments Received

TPC requested to modify the definition of High Tension as follows:

"*(46)"High Tension" (or "HT") means all voltages above and including 3.3 kilo- volt and up to and including 33 kilo-Volt;*"

TPC submitted that it has historically many customers such as BMC pumping stations, etc., which operate at 6.6 kV voltage level, and are currently classified under HT tariff category, hence, the definition needs to be modified as proposed. Further, MERC Standards of Performance Regulations classify Low voltage (< 250 V), Medium Voltage (250 V to 650 V), High Voltage (650 V to 33,000 V) and Extra High Voltage (>33,000 V). CEA Technical Standards for construction of Electric Plants and Electric Lines define HT switch gear as SF6 or vacuum type of circuit breakers of 11/6.6/3.3 kV and LT switch gear of circuit breaker of 415 V.

1.11.3 Analysis and Commission's Decision

The Commission has modified the definition of High Tension, in line with the definition specified in the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014, as under:

"(46) ***"High Tension" (or "HT")*** *means all voltages above and including 650 Volt and up to and including 33 kiloVolt;".*

1.12 Regulation 2(47): Indian Government Instrumentality

1.12.1 Proposed in Draft MYT Regulations, 2019

*"(47) "**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;"*

1.12.2 Comments Received

Dhariwal Infrastructure Limited requested to amend the definition so as to include the statutory agencies/bodies and agencies under direct/indirect control of the State or Central Government.

1.12.3 Analysis and Commission's Decision

The Commission is of the view that the present definition of Indian Government Instrumentality is appropriate and includes all the agencies that should be covered, and there is no need to include agencies under indirect control of the State or Central Government. Hence, no modification is required in the said definition.

1.13 Regulation 2.1(52): Definition of Low Tension

1.13.1 Proposed in Draft MYT Regulations, 2019

"(52) "Low Tension" (or "LT") means all voltages below 11 kiloVolt;"

1.13.2 Comments Received

TPC requested to modify the definition of Low Tension as follows:

"(52) "Low Tension" (or "LT") means all voltages below 3.3 kilo-Volt;"

Tata Power has historically many customers such as BMC pumping stations, etc., which operate at 6.6 kV voltage level, and are currently classified under HT tariff category, hence, the definition needs to be modified as proposed.

Further, MERC Standards of Performance Regulations classify Low voltage (<250 V), Medium Voltage (250 V to 650 V), High Voltage (650 V to 33,000 V) and Extra High Voltage (>33,000 V). CEA Technical Standards for construction of Electric Plants and Electric Lines, define HT switch gear as SF6 or vacuum type of circuit breakers of 11/6.6/3.3 kV and LT switch gear of circuit breaker of 415 V.

1.13.3 Analysis and Commission's Decision

The Commission has modified the definition of Low Tension, in line with the definition of High Tension specified above, as under:

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

1.14 Regulation 2.1(58): Definition of Non-DPR Scheme

1.14.1 Proposed in Draft MYT Regulations, 2019

*"(58) "**Non-DPR Scheme**" means a capital expenditure Scheme with projected capital cost within the limits specified in these Regulations, for which the Generating Company or Licensee or MSLDC is not required to obtain prior in-principle approval of the Commission;"*

1.14.2 Comments Received

MSEDCL suggested to add the following provision:

"*Provided that the Capital Expenditure Schemes completely funded through Consumer Contribution, Grants, Subsidy or Deposit Works shall be excluded for the purpose of this clause."*

MSEDCL submitted that schemes completely funded through Consumer Contribution, Grants, Subsidy, Deposit Works should be excluded from the limits of Non-DPR schemes specified in the Regulations as these schemes are welfare schemes and do not have any impact on Depreciation, RoE and Interest on Long Term Loans.

1.14.3 Analysis and Commission's Decision

The Commission is of the view that any kind of capex, even though it is funded through Consumer Contribution, Grants, Subsidy, Deposit Works, affects the overall network of the Licensee and helps the Commission to take holistic view while giving a techno-commercial approval to other schemes that are funded through debt-equity route and affects the tariff. Therefore, it is necessary to consider all scheme either under DPR Schemes or Non-DPR Schemes. Hence, no modification is required in the said definition.

1.15 Regulations 2.1(59) and 2.1(66): Definition of Pithead and Non-Pithead Generating Station

1.15.1 Proposed in Draft MYT Regulations, 2019

No definition was proposed for Non-Pithead Generating Station and Pithead Generating Station in the draft MYT Regulations, 2019.

1.15.2 Comments Received

MSEDCL submitted that a clear definition specifying the criteria for pit-head and non-pit head station needs to be included, while considering the transit losses.

1.15.3 Analysis and Commission's Decision

The Commission is of the view that it is necessary to define Pithead Generating Stations and Non-Pithead Generating Stations in the MYT Regulations, as separate norms are specified for these Stations, and there should be no ambiguity regarding the same.

The Commission has hence, defined Non-Pithead and Pithead Generating Station, as under in accordance with their definition under the Environment (Protection) Amendment Rules, 2014 notified by the Ministry of Environment and Forests:

*"(59) "**Non-Pithead Generating Station**" means a generating station, which is not covered under Pithead Generating Station;".*

*"(66) "**Pithead generating station**" means a generating station having captive transportation system for its exclusive use for transportation of coal from the loading point at the mining end up to the unloading point at the generating station without using the normal public transportation system;"*

1.16 Regulation 2.1(66): Definition of Plant Load Factor

1.16.1 Proposed in Draft MYT Regulations, 2019

"Plant Load Factor" (or "PLF"), in relation to a thermal Generating Station or Unit for a given period, means the total sent-out energy corresponding to scheduled generation during such period, expressed as a percentage of sent-out energy corresponding to installed capacity in that period, and shall be computed in accordance with the following formula:

$$\text{Plant Load Factor (\%)} = 100 \text{ x } \sum_{i=1}^{N} SG_i \;/\; \{ N \text{ x } IC \text{ x } (1 - AUX_n) \} \%$$

where - N = number of time blocks in the given period

SG = Scheduled Generation in MW for the i_{th} time block in such period

IC = Installed Capacity of the Generating Station in MW

AUX_n = Normative Auxiliary Consumption in MW, expressed as a percentage of gross generation;"

1.16.2 Comments Received

Dhariwal Infrastructure Limited suggested to modify the definition and formula such that PLF is calculated only based on contracted capacity for which tariff is determined by the Commission under Section 62 of the Act. Further, the computation of PLF should be based on contracted capacity (at generation ex-bus) in MW less the normative auxiliary energy consumption and the additional auxiliary energy consumption for Emission Control System instead of installed capacity.

Dhariwal submitted that since, PLF depends on energy scheduled by beneficiaries, it should be computed beneficiary-wise based on the respective capacity contracted with the long-term beneficiaries. Further, there are projects where part capacity is tied up in long term PPA under Section 62 of the Act and part capacity is not tied up or partly tied up under Section 63 of the Act. Hence, in such a case, the computation of PLF incentive is not clear.

1.16.3 Analysis and Commission's Decision

As stated earlier, the Commission has added a proviso allowing additional Auxiliary Energy Consumption for additional equipment that has been mandated by Statutory Authorities. The normative Auxiliary Energy Consumption in the formula for computation of PLF will thus, include the Auxiliary Energy Consumption for such equipment, and further elaboration is not required in the formula.

As regards the issue of computation of PLF in case of part capacity tied up under Section 62 and balance capacity either not tied up or tied up under Section 63 of the Act, the Commission is of the view that if complete Units are tied up under Section 62 of Section 63 of the Act, there is no issue, as the PLF will be computed corresponding to the Unit capacity tied up under Section 62 of the Act. However, segregation of part Installed Capacity of a Unit for the purpose of PLF computation is not possible.

The relevant APTEL Judgment dated 26 August, 2011in Appeal No. 87 of 2010 in the matter of TPC Trading Company Limited vs. MERC has already been discussed above, which rules in favour of proportionate consideration of installed capacity.

Hence, no modification is required in the said definition.

1.17 Regulation 2.1(87): Definition of Useful Life

1.17.1 Proposed in Draft MYT Regulations, 2019

*"(87) **"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:-*

….

iv. AC and DC sub-Station: 35 years;

v. Gas Insulated sub-Station: 35 years;

….

Provided that the useful life for AC and DC sub-Stations and Gas Insulated sub-Station for which Notice Inviting Tender was floated before 01.04.2016 shall be considered as 25 years:

…."

1.17.2 Comments Received

NUPLLP has requested to restate the useful life of substations in iv) AC-DC substation and v) Gas Insulated Substation as 25 years rather than 35 years. NUPLLP submitted that the environmental conditions vary immensely across Maharashtra owing to large geographic area, though an electrical manufacturer provides the same IP Protection ratings to all electrical equipment irrespective of stretch of geographic area. However, due to humid atmospheric conditions or different atmospheric conditions prevailing across the State, performance of electrical equipment varies thereby the wear and tear and hence, the life of equipment is affected. Moreover, the sub-stations house IT equipment and monitoring gadgets, viz., Supervisory Control and Data Acquisition System (SCADA), Remote Terminal Units (RTU's), Computer Hardware and Software, etc., which has lesser useful life and needs upgradation as per the time requirement.

MSETCL suggested that the definition of useful life be continued as per the MERC MYT Regulations, 2015. Further, the date for considering the useful life in the proviso should be from 01.04.2020, i.e., the date the new Regulations are effective from. MSETCL submitted that the increase in useful life will hamper the cash flow of the project as the loan is repaid back within 10 to 15 years' time frame from COD, whereas the recovery of depreciation will defer in case the life is extended. The gap created would definitely impact the interest on working capital adversely.

1.17.3 Analysis and Commission's Decision

The Useful Life was defined as under in the MYT Regulations, 2015:

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

...

iv. AC and DC sub-Station: 25 years;

v. Gas Insulated sub-Station: 25 years;

...

Provided that the useful life for AC and DC sub-Stations and Gas Insulated sub-Station for which Notice Inviting Tender is floated on or after 01.04.2016 shall be considered as 35 years:"

The MYT Regulations, 2015 were effective from April 1, 2016, and hence, the life of AC and DC sub-Stations and Gas Insulated sub-Stations procured after the effective date was specified as 35 years in the MYT Regulations, 2015 itself, in order to reflect the change in technologies. The life of these assets was 25 years only for the assets procured before April 1, 2016.

The same meaning has been ensured in the MYT Regulations, 2019, as the definition specifies the life of AC and DC sub-Stations and Gas Insulated sub-Stations as 35 years, but the proviso ensures that the life of assets procured before April 1, 2016 shall be considered as 25 years only. Hence, the concerns of the stakeholders are misplaced, and no modification is required in the said definition.

2 General Principles and Multi Year Tariff Framework

2.1 Regulation 4.2: Applicability of MYT Framework to STU

2.1.1 Proposed in Draft MYT Regulations, 2019

"4.2 The Multi-Year Tariff framework shall be based on the following elements, for ... *Fees and Charges of MSLDC"*

2.1.2 Comments Received

TPC submitted that the words "and STU" should be added at the end of Regulation 4.2 as, the intra-State transmission charges shall be recovered by the STU as per Regulation 67.1 of the MYT Regulations.

2.1.3 Analysis and Commission's Decision

The Commission has already specified in Regulation 67.1 that the STU shall file Petition for determination of InSTS Tariff, on behalf of all Transmission Licensees, by 30th November. However, the Petition filed by STU shall consider the combined ARR of Transmission Licensees and not that of STU itself, and hence, no modification is required in this Regulation.

2.2 Regulation 5.1a, 5.1b, 5.1c: Date of Tariff Filing

2.2.1 Proposed in Draft MYT Regulations, 2019

"a) Multi-Year Tariff Petition shall be filed by November 1, 2019 by Generating Companies and Transmission Licensees and SLDC, and by November 30, 2019, by Distribution Licensees, comprising:…

b) Mid-Term Review Petition shall be filed by November 1, 2022 by Generating Companies and Transmission Licensees, and by November 30, 2022, by Distribution Licensees and SLDC, comprising…

c) True-up Petition for the third and fourth year of the Control Period shall be filed by November 1, 2024 by Generating Companies and Transmission Licensees, and by November 30, 2024, by Distribution Licensees and SLDC, comprising….

….Provided also that if the Petition is not filed within the specified timelines and/or data sought by the Commission for processing the Petition is not submitted within the stipulated time, then the corresponding revenue loss and associated carrying cost due to consequential delay in issue of the Order, shall not be allowed to the Generating Company or Transmission Licensee or Distribution Licensees or SLDC, as the case may be:…"

2.2.2 Comments Received

MEGPTCL, MSETCL, MSLDC, and MSPGCL requested to revise the date of filing of Petition to 30th November, as the finalization of audited accounts along with consolidation of accounting data is possible only after end of October. The statutory compliances like TDS, GST and other reconciliations are available after half a year and expenditure is to be considered till September, hence, leaving very short time for filing Petition. Generally, the Accounts for the previous Financial Year are finalized and adopted by 30th September. True-up Petitions can be submitted only after data collection and analysis and with due appraisal and approvals from the Company Management. For fuel cost projection, actual data for preceding three months is required, and the actual fuel cost of September is available in the first week of November.

MSETCL, MSEDCL, MEGPTCL, AEML and Sterlite requested the third proviso of Regulation 5.1 to be relaxed to a liberal clause without penalties, as due to complexity of nature of data, uncertainties and contingencies cannot be ruled out. Sometimes, data of other entities like SLDC is sought from Utility rather than being sought from SLDC directly. Further, the data gaps sought are voluminous and very less time is allowed for submitting the response. Hence, disallowance of carrying cost will be unfair to the Utilities. Further, the consequences under a scenario where the response provided by the Utilities does not satisfy the Commission or is misunderstood or it does not meet the intent, are not clear. In many States, the Utilities fail to file Petition for more than 2-3 years. All Licensees should not be penalized due to non-achievement of few Licensees as regards timely filing of Petitions. Sometimes, the delay is due to unavoidable circumstances.

AEML submitted that the provision is too harsh for the Utilities, and quoted the APTEL Judgment in Appeal No. 70 of 2007, which rules that in case the Utility is unable to file the Petition on time, the Commission may disallow the carrying cost on account of delay but not the revenue loss.

MSEDCL submitted that the proviso for revenue loss due to delay in filing and submission of data gaps may be applicable only to data available with the Utility and not external information.

2.2.3 Analysis and Commission's Decision

The Commission has specified earlier timelines for submission of Petitions by Generation and Transmission, since they form the input cost for the Distribution Licensees. For timely issuance of Distribution Licensee's Tariff Order, the Orders for Generation, Transmission, and MSLDC have to be finalized first, since the same are an input to the ARR finalisation of the Distribution Licensee. The audited accounts are available latest by 30th September of the year, which gives one month to finalise the true-up Petitions. Obviously, the work of preparing the Petitions would have to be started well in advance, based on the actual but unaudited numbers, which can be fine-tuned once the audited accounts are available. As regards submission of actual

expenses and revenue for six months of the current year, the Generation Business and Transmission Licensees are allowed normative O&M expenses, which will not change based on half-year actuals of the current year. Distribution Licensees have one additional month, till end of November, to file their Petitions. The data regarding actual fuel cost for last three months may be submitted as available, and can be revised based on latest available data, during the regulatory process.

Utilities have to adhere to the specified timelines, so that all the Orders can be issued in time. Utilities are responsible for timely submission of the replies to the data gaps, even if the data sought belongs to external sources, still it is part of the submitted Petition. The Commission hence, feels that there is no need to change the due date for filing of Petition for Generation and Transmission, and has also extended the previously stipulated date of filing to MSLDC.

The Commission has however, relaxed the consequential penalty clause by deleting the words "corresponding revenue loss and associated", so that the principal revenue loss due to delay in filing in Petition is not deducted, and only the carrying cost due consequential delay in issue of the Order, is disallowed for the Utility that has defaulted in filing the Petition as per the specified schedule.

Further, the Commission has added the words "which is complete in all aspects as per these Regulations" before the relevant clauses, for greater clarity.

The revised clauses are as under:

"a) Multi-Year Tariff Petition, which is complete in all aspects as per these Regulations, shall be filed by November 1, 2019 by Generating Companies and Transmission Licensees and SLDC, and by November 30, 2019, by Distribution Licensees, comprising:…

b) Mid-Term Review Petition, which is complete in all aspects as per these Regulations, shall be filed by November 1, 2022 by Generating Companies, and Transmission Licensees and SLDC, and by November 30, 2022, by Distribution Licensees, comprising:…

c) True-up Petition, which is complete in all aspects as per these Regulations, for the third and fourth year of the Control Period shall be filed by November 1, 2024 by Generating Companies, and Transmission Licensees and SLDC, and by November 30, 2024, by Distribution Licensees, comprising:…

Provided also that if the Petition is not filed within the specified timelines and/or data sought by the Commission for processing the Petition is not submitted within the stipulated time, then the carrying cost due to consequential delay in issue of the Order, shall not be allowed to the Generating Company or Transmission Licensee or Distribution Licensees or SLDC, as the case may be:…"

2.3 Regulation 7: Specific Trajectory for certain variables

2.3.1 Proposed in Draft MYT Regulations, 2019

"7. The Commission, while approving the Multi-Year Tariff Petition, may stipulate a trajectory for certain variables, including but not limited to transmission losses, distribution losses, collection efficiency, and payment efficiency".

2.3.2 Comments Received

Prayas Energy Group suggested to add the following variables to the list of variables:

1. Actual working capital borrowing of the Utilities, which are much higher than the normative working capital requirement estimated for pass through to consumers, and hence, need to be reduced as per specified trajectory
2. Payment efficiency of State Government subsidies, to track and report the actual payment of subsidies as compared to the commitment of the State Government.

2.3.3 Analysis and Commission's Decision

The submission that the actual working capital borrowings of Utilities are much higher than the normative working capital requirement, is not supported by facts. Only three entities, viz., MSEDCL, MSPGCL and BEST have taken actual working capital loan and the actual IoWC is lower than the normative IoWC, except in case of BEST. The Commission is of the view that the Utilities are required to address the operational constraints as a management function and hence, there is no need to specify any trajectory for actual working capital loans, as the difference between the normative and actual IoWC is allowed through sharing of efficiency gains and losses. Further, monitoring of subsidy payments is not within the scope of MYT Regulations. Hence, no modification has been made in the said clause.

2.4 Regulations 5, 6 & 8: Mention of STU for filing of MYT/MTR

2.4.1 Proposed in Draft MYT Regulations, 2019

"5 The Petitions to be filed in the Control Period under these Regulation are as under:

a) Multi-Year Tariff Petition, which is complete in all aspects as per these Regulations, shall be filed by November 1, 2019 by Generating Companies and Transmission Licensees and SLDC, and by November 30, 2019, by Distribution Licensees, comprising:…"

"6.5 The forecast of expected revenue from Tariff and charges shall be based on the following:

(a) In the case of a Generating Company, …;

(b) In the case of a Transmission Licensee, ...;

(c) In the case of a Distribution Licensee, ...:

...

6.6 Based on the forecast of Aggregate Revenue Requirement and expected revenue from Tariff and charges, the Generating Company or Distribution Licensee or MSLDC shall submit the proposed Tariff or Fees and Charges, category-wise if applicable, for each year of the Control Period, that would meet the gap, if any, in the Aggregate Revenue Requirement, including unrecovered revenue gaps of previous years to the extent proposed to be recovered....”

“8.1 A Petition for Mid-term Review and Truing-up of the Aggregate Revenue Requirement and Revenue for the Years 2020-21 and 2021-22, and provisional Truing-up for the Year 2022-23, shall be filed by November 1, 2022 by Generating Companies, Transmission Licensees, and SLDC, and by November 30, 2022, by Distribution Licensees...

2.4.2 Comments Received

Prayas Energy Group mentioned that in the above Regulations, STU is not explicitly mentioned, and it is not clear whether tariff determination of STU will take place through a public process. As Regulation 63.5 specifies that STU shall file an MYT Petition and MTR Petition, similar clarity is required.

2.4.3 Analysis and Commission’s Decision

Regulation 63.5 specifies the requirements of the Petition to be filed by the STU for determination of InSTS tariff, which is based on the combined ARR of all the Transmission Licensees, as submitted in their individual Petitions. The necessary public process shall be undertaken by the Commission before finalising the InSTS Order. Hence, no modification is required in this Regulation.

2.5 Regulation 8.1: True-up of InSTS Order

2.5.1 Proposed in Draft MYT Regulations, 2019

“*8.1 A Petition for Mid-term Review and Truing-up of the Aggregate Revenue Requirement and Revenue for the Years 2020-21 and 2021-22, and provisional Truing-up for the Year 2022-23, shall be filed by November 1, 2022 by Generating Companies, Transmission Licensees, and SLDC, and by November 30, 2022, by Distribution Licensees...”*

2.5.2 Comments Received

TPC requested for modification of this Regulation by including True-Up for InSTS Tariff Orders also, in order to address the issues due to mismatch of peak demand and Transmission Charges paid by the Distribution Licensees, and addition of new Transmission Licensee.

2.5.3 Analysis and Commission's Decision

The Commission has considered the submission and incorporated the appropriate proviso in Regulation 63.5, to enable true-up of the InSTS Order at the time of Mid-Term Review, as under:

"*Provided that the State Transmission Utility shall file the Petition for true-up of share of intra-State transmission tariff for FY 2020-21 and FY 2021-22 along with the Petition for Mid-term Review, on the basis of the actual CPD and NCPD of Transmission System Users in the respective years, or the quantum of Short-term/Medium-Term Open Access applied for by the Deemed Distribution Licensee for the available period, as applicable*:…"

2.6 Regulation 8.2: Operational Performance Norms in MTR

2.6.1 Proposed in Draft MYT Regulations, 2019

"8.2. The scope of the Mid-term Review shall be a comparison of the actual operational and …

Provided that as part of the Mid-term Review, the Commission may inter-alia modify the category-wise *sales, power purchase expenses, operational performance norms or trajectory, O&M expenses, capital expenditure related expenses, principles/basis of tariff categorisation, applicability of charges, Generation Tariff, Transmission Tariff, Wheeling Charges, and category-wise Tariff, as considered appropriate based on the data made available for the first three years of the Control Period:..."*

2.6.2 Comments Received

AEML suggested that the words "operational performance norms or trajectory" should be deleted, as the performance norms and trajectories fixed in the MYT Order should not be changed at the time of MTR. At the end of *the* Control *P*eriod, the actual distribution loss of the last year of the Control Period (Base Year) is considered and the trajectory for the next Control Period is accordingly revised. Thus, the performance reward earned in the Control Period is retained for the duration of one single Control Period only. *AEML submitted that the APTEL has ruled in its Judgment in Appeal No. 140 of 2011 that the regulated entity acts on the basis of trajectory specified at the beginning of the Control Period, which cannot be changed based on actual performance during the Control Period.*

TPC suggested to modify the proviso to Regulation 8.2 by deleting the terms, *"operational performance norms or trajectory, O&M expenses, principles/basis of tariff categorisation, applicability of charges",* in order to maintain the sanctity of the MYT Order.

MSEDCL suggested that the terms "*Tariff philosophy, and Applicability and Charges for Open Access*" should be added in the first proviso to Regulation 8.2.

2.6.3 Analysis and Commission's Decision

The Commission has considered the submissions and hence deleted the term "operational performance norms or trajectory" from the scope of MTR Petition, in order to ensure the sanctity of the operational norms and trajectory approved in the MYT Order.

However, the O&M expenses, principles/basis of tariff categorisation, and applicability of charges are subject to revision in the MTR Order, in accordance with the Regulations and based on the proposals and submissions of the stakeholders.

2.7 Regulation 9.1: Uncontrollable factors

2.7.1 Proposed in Draft MYT Regulations, 2019

"9.1 The "uncontrollable factors" shall comprise the following factors, which were beyond the control of, and could not be mitigated by the Petitioner, as determined by the Commission:

(a) Force Majeure events;

(b) Change in law;

(c) Variation in fuel cost on account of variation in price of primary and/or secondary fuel prices;

(d) Variation in sales;

(e) Variation in the cost of power purchase due to variation in the rate of power purchase, subject to clauses in the power purchase agreement or arrangement approved by the Commission;

(f) Variation in inter-State Transmission Charges;

(g) Variation in market interest rates for long-term loan; and

(h) Variation in freight rates."

2.7.2 Comments Received

Dhariwal Infrastructure Limited suggested to introduce a provision such that the statutory charges imposed by the Central/State Governments such as Electricity Duty, expenses on regulatory fee, payment to Pollution Control Board are recoverable in addition to the already allowed impact of pay revision and water cess, subject to prudence check, as the same are beyond the control of generator. Further, the charges on account of additional capital spares at actuals may also be considered subject to prudence check.

MSEDCL, MEGPTCL, and TPC requested for addition of the following aspects in the list of uncontrollable factors, as all these points are subject to change on the basis of external forces:

1. Inter-State losses
2. Foreign Exchange Rate Variation
3. Variation in O&M expenses due to change in statutory levies
4. Standby power arrangement, Transmission Charges, and SLDC charges approved by the Commission
5. Expenditure incurred by licensees / generating companies on behalf of local authorities
6. Variation in SHR and auxiliary consumption, shutdown or start-up of generating unit due to load variations beyond the control of generation, e.g. transmission constraints, Distribution Licensees/MSLDC not allowing dispatch of power, reduction in demand of Distribution Licensees on account of Open Access/competition
7. Taxes, duties, cess, etc.
8. Any requirements imposed by statutory authorities

2.7.3 Analysis and Commission's Decision

The Commission is of the view that the list of uncontrollable factors cannot be an all-encompassing list covering all the aspects. Change in Law and Force Majeure are already included in the list of uncontrollable factors, and cover the aspects such as statutory levies, taxes, duties, cess, etc., requirements imposed by statutory authorities, and expenditure incurred on behalf of local authorities. It is for the Utility to prove its case and seek relief under the uncontrollable factors already listed.

The issue of inter-State losses in case of MSEDCL is on account of metering issues at the T<>D interface points, which would get sorted out once the metering is in place. Though this is an important issue, the same is not within the scope of these Regulations. Foreign Exchange Rate Variation during construction period and operation period is already addressed through specific Regulations, and cannot be added to the list of uncontrollable factors. Charges approved by the Commission are considered as pass through, and need not be listed under uncontrollable factors. The issues related to variation in operational performance of Generating Stations due to

dispatch instructions have to be proved to be beyond the control of the Generating Stations on case to case basis, and there cannot be a general dispensation on this aspect.

Hence, no modification is required in this Regulation.

2.8 Regulation 9.2: Controllable factors

2.8.1 Proposed in Draft MYT Regulations, 2019

"9.2. "Variations or expected variations in the performance of the Petitioner, which may be attributed by the Commission to controllable factors include but are not limited to the following …."

2.8.2 Comments Received

Shri Mahaveer Jain submitted that variation due to non-compliance of law or failure to carry out the activities in compliance with the applicable accounting standards should be listed under controllable factors and the impact of the same must be borne by the Company.

TPC submitted that the variation in amount of IoWC should be deleted from the list of controllable factors, as the interest rate is not a controllable factor for a Utility. The Utility may fund the working capital through its own internal accruals where documentary evidence is not available for ascertaining the actual rate of interest for funding of working capital. Further, working capital itself is a factor of two months' receivables, which in turn is a function of sales, over which the Distribution Licensee has no control.

Dhariwal Infrastructure Limited submitted that coal transit losses may not be considered as a controllable factor, as the same is beyond the control of the Generating Company. The transit loss in coal depends not only on location of the generating stations and mode of transportation of coal, but also on the surface moisture content of coal. Further, coal sourced from washeries contain high surface moisture, which gets evaporated in transit resulting in loss in weight.

2.8.3 Analysis and Commission's Decision

The Commission is of the view that the issue of variation due to non-compliance of law or applicable accounting standards is addressed under the prudence check carried out by the Commission before allowing or disallowing any expenditure or revenue head, and is not to be required to be added to the list of controllable factors.

The interest rate has not been considered as controllable, as contended by the stakeholder, rather the IoWC, which is a function of the working capital requirement and the interest rate, has been considered as controllable, in continuation of the Commission's philosophy in this regard from

the MYT Regulations, 2015. The IoWC is one of the components of the ARR, rather than the working capital requirement, and has hence, been considered as controllable. The treatment of IoWC and the sharing of efficiency gains and losses on account of IoWC are already addressed in the Chapter of Financial Principles.

As regards variation in coal transit losses, the same has been considered as a controllable factor by the Commission since the beginning, and operational norms have been specified. CERC has also always considered variation in coal transit losses as controllable. The Generating Company has to ensure that the transit losses are within the normative levels, and all such inefficiencies of the Generating Company cannot be passed on to the beneficiaries.

2.9 Regulation 10.1: Recovery of Intra-State Transmission Charges

2.9.1 Proposed in Draft MYT Regulations, 2019

"10.1 The aggregate gain or loss to a Generating Company on account of variation in cost of…."

2.9.2 Comments Received

MEGPTCL requested to modify the Regulations to facilitate quarterly adjustment in Transmission Charges through a similar mechanism, in line with the approach followed by GERC, APERC, and DERC. This will help in reducing the carrying cost due to delay in recovery.

2.9.3 Analysis and Commission's Decision

The recovery of variation in Intra-State Transmission Charges cannot be allowed through the FAC mechanism, because the Intra-State Transmission Tariff is based on pooling of the ARR of the Transmission Licensees and is shared by TSUs on the basis of share of CPD and NCPD. The change in InSTS tariff is approved through the Commission's Order and cannot be considered as an uncontrollable factor to be recovered through the FAC mechanism. Further, the approved ARR is fully recovered through the Intra-State Transmission Tariff in equal monthly instalments, and any variation in the revenue can only be due to delayed implementation of the revised Intra-State Transmission Tariff, which is addressed at the time of true-up, along with associated Carrying Cost. Hence, no modification has been done in this Regulation.

2.10 Regulation 10.4: FAC to be charged on estimated basis

2.10.1 Proposed in Draft MYT Regulations, 2019

"10.4 The ZFAC component shall be computed and charged on the basis of actual variation in cost of fuel and power purchase, and inter-State Transmission Charges relating to power procured during any month subsequent to such costs being incurred, in accordance with these Regulations, and shall not be computed on the basis of estimated or expected variations in fuel and/or power purchase costs.

2.10.2 Comments Received

TPC requested that the FAC should be allowed on the basis of estimated or expected variations in fuel and/or power purchase costs, to avoid spikes in FAC when multiple bills need to be settled.

2.10.3 Analysis and Commission's Decision

The FAC cannot be charged on the basis of estimated or expected billing and has to be based on actual cost vis-à-vis approved costs, which principle has been in force for quite some time now.

2.11 Regulation 10.7: Computation of FAC to be charged

2.11.1 Proposed in Draft MYT Regulations, 2019

"10.7 The calculation for FAC to be charged for the month "n" is as follows ……"

2.11.2 Comments Received

MSEDCL submitted that the calculation of FAC should be modified such that FAC is levied to consumers for their consumption of respective month, i.e., 'n-2'th month, though it may be billed in 'n'th month. Levying FAC on consumers who have consumed lower electricity in n-2th month (seasonal consumers/banking consumers) or penalizing the existing consumers of Distribution Licensee for the power consumed by the Open Access Consumers who were the consumers of Distribution Licensee in 'n-2'th month defeats the principle of equality.

2.11.3 Analysis and Commission's Decision

The Commission in its Order in Case No. 65 of 2019 has clearly stated that being an ongoing business, the impact of past gaps has always been recovered from existing consumers, irrespective of whether the consumer was in the system or not, at the time of creation of such gap. The relevant extract of the above-said Order is reproduced below:

"...electricity supply being an ongoing business, consumers are regularly both added and exit from the system. Under the principles of ongoing business in the electricity sector, the impact of truing-up and associated carrying costs as well as FAC is recovered only from consumers who are receiving supply at the time of such recovery and is not recovered on a one-to-one basis from the same consumers as were receiving supply at the time the costs were incurred. Therefore, such change in the methodology for billing FAC is not tenable."

Hence, there is no need to change the existing system where Z_{FAC} of 'n-2'th month is recovered from the consumption of 'n'th month.

2.12 Regulation 10.8: Allowance of Actual Distribution Loss under FAC

2.12.1 Proposed in Draft MYT Regulations, 2019

"10.8 The total Z_{FAC} recoverable as per the formula specified above shall be recovered from …

Provided further that, where the actual cumulative distribution losses of the Distribution Licensee exceed the level approved by the Commission, the amount of ZFAC corresponding to the excess distribution losses (in kWh terms) shall be deducted from the total ZFAC recoverable".

2.12.2 Comments Received

MSEDCL requested to delete the second proviso of Regulation 10.8 and proposed that the impact of distribution loss should be considered only in sharing of gains/loss during True-up and not in monthly FAC computation. MSEDCL added that there is a double impact due to variation in Distribution Losses, first during computation of FAC and again during True-up exercise in Tariff Order through the mechanism of sharing of gains/losses.

2.12.3 Analysis and Commission's Decision

Accepting the stakeholder's contention would amount to allowing Z_{FAC} based on the actual distribution losses, even if the actual distribution loss is higher than the approved distribution loss, and then disallow the same at the time of true-up.

The draft MYT Regulations specified that the actual cumulative losses will be compared with the approved losses and not the losses of one particular month, so that the impact of seasonality of distribution losses is minimised.

However, considering that the impact of seasonality of agricultural consumption in case of Distribution Licensees like MSEDCL is high, the Commission has modified the Regulation by replacing the term '*actual cumulative distribution losses*' with '*actual annual sliding*

distribution loss', for computation of FAC. With this modification, irrespective of the month for which Z_{FAC} is being computed, the entire year's distribution losses will be considered, thereby fully eliminating the impact of seasonality of agricultural consumption. At the time of true-up, the variation between the approved and actual distribution losses in the particular year, shall be computed and the efficiency gains/losses shared as specified in the MYT Regulations, 2019.

2.13 Regulations 11.1 and 11.2: Sharing of gains and losses on account of controllable factors

2.13.1 Proposed in Draft MYT Regulations, 2019

"11.1 The approved aggregate gain to the Generating Company or Licensee or MSLDC on account of controllable factors shall be dealt with in the following manner:

(a) Two-third of the amount of such gain shall be passed on as a rebate in Tariff over such period as may be stipulated in the Order of the Commission under Regulation 8.4;

(b) The balance amount of such gain shall be retained by the Generating Company or Licensee or MSLDC.

11.2 The approved aggregate loss to the Generating Company or Licensee or MSLDC on account of controllable factors shall be dealt with in the following manner:

(a) One-third of the amount of such loss may be passed on as an additional charge in Tariff over such period as may be stipulated in the Order of the Commission under Regulation 8.4;

(b) The balance amount of such loss shall be absorbed by the Generating Company or Licensee or MSLDC."

2.13.2 Comments Received

BEST has proposed that this Regulation should be retained same as that specified in the MYT Regulations, 2011, i.e., 2/3rd of the gains should be retained by the Utility rather than 1/3rd of the gain, with the balance being shared with the consumers.

MSPGCL, AEML, and Dhariwal Infrastructure Limited submitted that the sharing of gains between generating companies and beneficiaries on account of controllable factors should be in the ratio of 50:50 in line with the CERC Tariff Regulations, 2019. Further, the loss may also be shared between the Generating Company and beneficiaries in the same ratio as it is the collective responsibility of both Generators and Beneficiaries to strive to achieve such gains on account of improved parameters.

The stakeholders submitted that since the efficiency gains are shared, both Generating Companies and Beneficiaries should strive for achieving such gains. If the Generating Companies are accountable for operating at optimum efficiencies, the beneficiaries should also strive to provide a higher load demand, which is required to achieve higher efficiency. Therefore, the gains on account of operational parameters like Station Heat Rate, Secondary Fuel Oil and Auxiliary Energy Consumption should be shared with beneficiaries in the ratio of 50:50 subject to conditions that NAPLF is equal to or higher than 85% in order to claim their share of such gains achieved by the generating station on better operational performance. Further, the loss on account of the same is also proposed to be shared in the ratio of 50:50, which otherwise would burden the Generating Company with higher absorption of losses, even in instances where the worsened operational parameters is attributable to lower offtake by the beneficiaries. Further, the gain on account of variation in amount of IoWC and operation and maintenance expenses may also be shared in the ratio of 50:50 to encourage the generators to deploy measures to reduce such expenses.

MBPPL requested that there should be parity between sharing of efficiency gains and losses. In case of small Distribution Licensee like SEZs, the controllable factors are already miniscule and there is very little scope which affects these factors. To be fair to Utilities and consumers, sharing of gains and losses shall be made symmetrical, so that the risk and returns are equally shared.

MEGPTCL and TPC suggested that Regulations 11.1 and 11.2 should be modified such that either calculation is done on normative basis in line with CERC Regulations or 2/3rd of the gains should be retained by the Utility and 1/3rd of the gain shall be passed on as a rebate. The gains earned by the Utility are due to its sole efforts and efficient practices. CERC, GERC, RERC, UPERC, etc., are allowing the Licensee/Generating Company to retain higher gains to the extent of 60-80%.

2.13.3 Analysis and Commission's Decision

The issue of asymmetric/symmetric sharing of gains and losses was also discussed at length while finalising the MYT Regulations, 2015, and the Commission has decided to continue with the same dispensation in the MYT Regulations, 2019, where 2/3rd of the gains and 1/3rd of the loss shall be passed on to the beneficiaries, while the Utility will retain 1/3rd of the gains and 2/3rd of the losses.

Further, the reference to the 50:50 sharing of gains as per the CERC Tariff Regulations, 2019 ignores the fact that in case of CERC, losses are not shared with the beneficiaries and have to be borne entirely by the Utility.

Hence, no change is required in this Regulation.

2.14 Regulation 14.3: Conducting TVS before admittance of Petition

2.14.1 Proposed in Draft MYT Regulations, 2019

"….Provided also that the Commission may conduct a Technical Validation Session prior to admission of the Petition…"

2.14.2 Comments Received

Prayas Energy Group suggested that the proviso be modified to specify that TVS shall be conducted, before admission of the Tariff Petitions, as important information and insights can be derived from clarifications and additional data provided by the Utilities.

2.14.3 Analysis and Commission's Decision

This proviso has been retained as specified in the MYT Regulations, 2015. The TVS is being conducted by the officers of the Commission before admitting the Tariff Petitions. The Commission does not find it necessary to modify the Regulations on this account.

2.15 Regulations 14.6 and 15.2: Publication of Public Notice and Approved Tariff

2.15.1 Proposed in Draft MYT Regulations, 2019

"14.6 The Petitioner shall, within three days of an intimation given to it in accordance with Regulation 14.4, publish a Public Notice in at least two English and two Marathi……."

"15.2 The Petitioner shall publish the Tariff approved by the Commission in at least two English and two Marathi language daily newspapers having wide circulation in……"

2.15.2 Comments Received

MBPPL requested for deviation in the above Regulations for small SEZ Licensees. As there is no newspaper published pertaining to SEZ area, the Notice may be delivered to each and every consumer via email/hard copy, which will reduce the A&G expenses of the Licensee, and in turn reduce the burden on the consumers.

2.15.3 Analysis and Commission's Decision

The Commission is of the view that when the Distribution Licensee follows the publication process, it helps to inform the general public including prospective consumers. The Commission cannot therefore, exempt any Licensee from the publication process. Hence, no modification has been made to these Regulations.

2.16 Regulation 16.1: Tariff Revision

2.16.1 Proposed in Draft MYT Regulations, 2019

"16.1 No Tariff or part of any Tariff may ordinarily be amended more frequently than once in a year, except in respect of any changes expressly permitted under Z-factor Charge as specified in Regulation 10."

2.16.2 Comments Received

MEGPTCL suggested that a proviso may be added after Regulation 16.1 to allow for revision of tariff, where tariff may be amended more than once in extraordinary circumstances for variation on account of factors other than that related to fuel surcharge. The revision in tariff may be either positive or negative and would be in the interest of justice.

2.16.3 Analysis and Commission's Decision

Regulation 16.1 is exactly as per Section 62(4) of the EA 2003. Hence, no modification is required in the said Regulation.

Further, the last proviso to Regulation 5.1 already specifies as under:

"a Petition may be filed at any time during the Control Period in case of variation in uncontrollable factors that may result in sudden, steep, and sustained increase in tariff."

2.17 Regulation 16.2: Refund of excess recovery from Tariff

2.17.1 Proposed in Draft MYT Regulations, 2019

2.17.2 "16.2 If any Generating Company or Licensee recovers a price or charge exceeding the ….equivalent to the Bank Rate declared by the Reserve Bank of India ……"

2.17.3 Comments Received

Prayas Energy Group suggested that the term "Bank Rate" be substituted with "Base Rate". Bank Rate is the policy rate of the RBI and is the rate at which RBI lends to other banks, and is typically 2 to 3 percentage points lower than the MCLR, which is the minimum interest rate below which a bank cannot lend. This is not the market rate for lending and thus, is not a true measure of the opportunity cost of the revenue over-recovered by the Utilities.

2.17.4 Analysis and Commission's Decision

The Commission has considered Bank Rate for refund of excess recovery charged by the Generating Company/Licensee, in line with the provisions of the Act. The relevant clause of Section 62 of the Act is as follows:

"(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest ***equivalent to the bank rate*** *without prejudice to any other liability incurred by the licensee"*

2.18 Regulation 17: Deviation from Ceiling Tariff

2.18.1 Proposed in Draft MYT Regulations, 2019

"17.1. The tariff determined in these Regulations shall be a ceiling tariff, and the Generating Company or Transmission Licensee and their Beneficiaries may mutually agree to charge a lower tariff......

....17.3 The deviation from the ceiling tariff determined by the Commission, shall come into shall come into effect from the date agreed to by the Generating Company or Transmission Licensee and the Beneficiaries......

...17.5 The revenue loss on account of charging lower than approved tariff shall be borne entirely by the Generating Company or Transmission Licensee and the impact of such revenue loss shall not be passed on to the Beneficiaries, in any form"

2.18.2 Comments Received

Prayas Energy Group and MSEDCL submitted that clarity is needed on how gain and loss sharing will be applicable at the time of true-up in such cases.

MSETCL submitted that the Regulation may be reviewed such that the ceiling of Tariff for the projected period should not be fixed as these projections for future years may vary on the circumstances / events arising in the future.

MSEDCL submitted that the deviation may be limited to RoE and not operational parameters or O&M expenses.

MSETCL submitted that Regulation 17.5 should be deleted, as the CERC Tariff Regulations 2019 specifies that in case lower tariffs are charged due to under recovery of depreciation after repayment of loans, then such balance depreciation shall be permitted to be recovered after the useful life of the assets.

2.18.3 Analysis and Commission's Decision

The tariffs shall be approved on the basis of the projections submitted by the Utility and due prudence check. This Regulation is an enabling provision for charging lower than approved tariffs based on mutual agreement with the beneficiary. The revenue loss on this account has to be borne by the Utility for all times, and cannot be sought to be recovered at a later stage. This clarity has been incorporated in the MYT Regulations, 2019.

The details of actual performance and cost will be shared at the time of true-up, and if the Generating Company can substantiate that it has already shared the benefits of improved performance vis-a-vis normative parameters with all beneficiaries, then the revised performance parameters would have to be considered for sharing of efficiency gains and losses.

This Regulation was adopted from the CERC Tariff Regulations, 2019. However, in Maharashtra, on account of the InSTS tariff mechanism, wherein the Transmission Tariff is based on the pooled ARR of all the Transmission Licensees, it will not be possible for any Transmission Licensee to mutually agree with any beneficiary and deviate from the ceiling tariff. Hence, this Regulation has been modified by deleting the references to Transmission Licensee and its beneficiaries, as under:

"17.1 The tariff determined in these Regulations shall be a ceiling tariff, and the Generating Company and its Beneficiaries may mutually agree to charge a lower tariff.

17.2 The Generating Company may opt to charge a lower tariff for a period not exceeding the validity of these Regulations on agreeing to deviation from operational parameters, reduction in Operation and Maintenance expenses, reduced Return on Equity and incentive specified in these Regulations.

17.3 The deviation from the ceiling tariff determined by the Commission, shall come into effect from the date agreed to by the Generating Company and the Beneficiaries.

17.4 The Generating Company and the Beneficiaries of a Generating Station shall be required to intimate the Commission for charging lower tariff in accordance with Regulation 17.1 to 17.3 above. The details of the accounts and the tariff actually charged under Regulation 17.1 to 17.3 shall be submitted at the time of true up.

17.5 The revenue loss on account of charging lower than approved tariff shall be borne entirely for all times by the Generating Company and the impact of such revenue loss shall not be passed on to the Beneficiaries, in any form."

2.19 Regulation 105: Power to Relax

2.19.1 Analysis and Commission's Decision

The Commission has added an enabling clause for power to relax, in line with the approach followed by most ERCs, as under:

> ***"105 Power to relax***
>
> *The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of provisions of these Regulations on its own motion or on an application made before it by an interested person."*

3 Power Purchase

3.1 Regulation 19.3: Power Procurement through Competitive Bidding

3.1.1 Proposed in Draft MYT Regulations, 2019

"19.3 All future procurement of short-term or medium-term or long-term power shall be undertaken only through competitive bidding in accordance with Guidelines notified by the Government of India under Section 63 of the Act."

3.1.2 Comments Received

TPC requested to modify Regulation 19.3 in view of Section 17, Section 62, and Section 63 of the Act and Clause 5.2 of the Tariff Policy. AEML and NUPLPP submitted that power procurement should be allowed under both, Section 62 and Section 63 of the Act, as allowing future procurement of power only through Competitive Bidding, is ultra vires to the Act. Though the Tariff Policy stipulates that all future procurement shall be through competitive bidding, the Tariff Policy is not binding on the Commission, whereas provisions of the Act are binding. APTEL has held in its Judgment in Appeal No. 106 and 107 of 2009 that two distinct routes are available for procurement of power –regulated tariff u/s 62 and through tariff discovery u/s 63. Tariff Policy is only a guiding principle and cannot override the Act.

NUPLLP added that the Commission may undertake the prudence check while approving the power procurement under Section 62 considering the market conditions, competitive rates, technical and practical issues, etc.

MSEDCL suggested that procurement of Renewable Energy may also be added in Regulation 19.3 mandating compulsory procurement through Competitive Bidding. MBPPL requested to allow procurement of conventional as well as Renewable Energy through MoU route after sufficient efforts are taken through competitive bidding, and considering the scale of operations.

MSPGCL requested to align the power procurement guidelines under proposed Regulation 19.3 with the Tariff Policy dated 28 January, 2016.

Prayas Energy Group suggested to add provisos specifying that a Distribution Licensee shall need prior approval of the Commission regarding the quantum of power that is sought to be procured and the bidding documents to be used, before initiating any such bidding process, in order to remove any procedural ambiguity.

3.1.3 Analysis and Commission's Decision

As regards the requirement of obtaining the Commission's prior approval for the quantum of power to be procured and the bidding documents to be used, the quantum is approved by the

Commission through the MYT Petitions, and only deviations from the Standard Bidding Documents require the Commission's approval, which is being obtained if necessary. Hence, no modifications are required to the Regulations on this account.

The Commission is of the view that the Act provides for power purchase under MOU route under Section 62 or through competitive bidding under Section 63. The Commission feels that in all likelihood, Competitive Bidding under Section 63 would be beneficial to the consumers and hence would prefer the same over MOU route under Section 62. However, there could be a case wherein the procurement could be beneficial under section 62 instead of procurement under section 63.

The Commission has therefore appropriately modified Regulation 19.3 and added a proviso allowing power procurement under Section 62, in case the power procurement under Section 63 does not yield the desired result. Thus, both the routes of power procurement are still available. The Commission has also included procurement of Renewable Energy under the preferred route of competitive bidding.

The Commission has modified Regulation 19.3 as under:

"*19.3 All future procurement of short-term or medium-term or long-term power, including Renewable Energy, shall invariably be undertaken through competitive bidding in accordance with Guidelines notified by the Government of India under Section 63 of the Act:*

Provided that in case either no competitive bids are received or the bids received are higher than the prevailing market rates or on any other sufficient reason, then the Distribution Licensee may procure medium-term or long-term power under Section 62 of the Act, subject to fulfilling the conditions specified in Regulation 21."

3.2 Regulation 20.1: Sale of Surplus Power

3.2.1 Proposed in Draft MYT Regulations, 2019

"20.1 The Distribution Licensee shall prepare a plan for procurement of power to serve the demand for electricity in its area of supply and submit such plan to the Commission for approval:"

3.2.2 Comments Received

MBPPL submitted that currently, there is no specific Regulation dealing with the revenue from sale of surplus power. The Distribution Licensee estimates the power requirement as per CAGR and other parameters mentioned in the MYT Regulations. It is difficult for the small SEZ Licensees to ascertain the exact power requirement, and slight changes in working conditions

leads to fluctuations in power consumption. The consequent surplus power with MBPPL is sold at Exchange or to Bilateral sources to optimize the fixed cost. This sale of surplus power is purely to reduce the burden of the customer, otherwise, MBBPL meets the obligation under Power Purchase Agreement of off-taking 85% of its contracted capacity. To sell this power, MBPPL has to take extra efforts. Hence, the revenue generated over and above the power purchase cost between consumers and licensee equally as it is the efficiency of the Licensee, which has sold the surplus power efficiently in the market.

3.2.3 Analysis and Commission's Decision

The Commission is of the view that the trading of electricity of surplus power is an integral part of the business of Distribution Licensee. The Distribution Licensee does not require a separate trading licensee and hence, revenue from sale of such surplus power to offset the fixed cost of the PPA has to be entirely passed on to the consumers of the Licensee. The same is also in accordance with the third proviso to Clause 8.3.7(b) of the General Conditions of Distribution License Regulations, 2006.

3.3 Regulation 20.1: Power Procurement Plan

3.3.1 Proposed in Draft MYT Regulations, 2019

"20.1 The Distribution Licensee shall prepare a plan for procurement of power to serve the demand for electricity in its area of supply and submit such plan to the Commission for approval:

Provided that such power procurement plan shall be submitted for the Control Period commencing on April 1, 2020, along with the Petition for determination of Tariff for the Control Period from April 1, 2020 to March 31, 2025, in accordance with ***Part A*** *of these Regulations;*

Provided further that such power procurement plan may include long-term, medium-term and short-term sources of power procurement, in accordance with these Regulations".

3.3.2 Comments Received

Prayas Energy Group and Sajag Nagrik Manch (SNM) have submitted that Regulation 19.9 of the MYT Regulations, 2015, requiring submission of a 10-year Power Procurement Plan at the beginning of the MYT Control Period, should be retained, given the importance of power purchase cost which accounts for 70 to 80% of total cost of supply.

Further, planning is an extremely important aspect of power purchase and such provision gives consumers as well as the Commission an opportunity to understand and evaluate the DISCOM's expectations regarding its demand as well as the options it is considering for meeting the same.

It creates an opportunity to deliberate on the various options that the DISCOM is considering for its long/medium/short term supply mix and also the other options to optimise its power purchase cost.

3.3.3 Analysis and Commission's Decision

The Commission has been approving the Power Purchase Plan with respect to the Control Period in the MYT Order.

As clarified in the Explanatory Memorandum, the requirement of filing a ten-year power procurement plan specified under Regulation 19.9 of the MYT Regulations, 2019 was on account of the anticipated expiry of the PPAs of the Mumbai DISCOMs in early 2018, which fell in the middle of the Control Period, and because the Distribution Licensees would be required to tie-up long-term power beyond that date.

The Control Period has now been increased to five years, and the Commission is of the view that it is not required to file a separate ten-year Power Procurement Plan along with the MYT Petition, as the detailed Power Procurement Plan for the Control Period has to anyway be filed along with the MYT Petition. Hence, there is no modification to this Regulation.

3.4 Regulation 20.3: Estimation of Power Procurement Plan

3.4.1 Proposed in Draft MYT Regulations, 2019

"20.3 The forecast or estimate shall be prepared using forecasting techniques based on past data and reasonable assumptions regarding the future:

Provided that the forecast or estimate shall take into account factors such as overall economic growth, consumption growth of electricity-intensive sectors, advent of competition in the electricity sector, trends in captive power, impact of loss reduction initiatives, improvement in Generating Station Plant Load Factors and other relevant factors."

3.4.2 Comments Received

NUPLLP suggested that the tools and techniques to be used for forecasting the future electricity requirement within its area of supply should be specified. The draft MYT Regulations are silent regarding the course of action to be undertaken by the Distribution Licensee in order to mitigate the over or under-estimation of energy demand till the MTR Petition is filed by Licensee for safeguarding the Licensee and reducing the burden on consumer.

NUPLLP added that in case of a new Distribution Licensee, past trends may not hold good or may not necessarily be 100% accurate for forecasting the month-wise demand for its area of supply, all the more if it is a green field project.

3.4.3 Analysis and Commission's Decision

The Commission is of the view that such detailing with respect to preparation of Power Procurement Plan cannot be specified in the MYT Regulations, and the Licensee has to take the responsibility for proper load and energy projections. The mitigation tools also have to be decided by the Distribution Licensee.

Further, for exceptional case, the last proviso to Regulation 5.1 already specifies as under:

"a Petition may be filed at any time during the Control Period in case of variation in uncontrollable factors that may result in sudden, steep, and sustained increase in tariff."

3.5 Regulation 20.5: Works relating to Transmission Licensee

3.5.1 Proposed in Draft MYT Regulations, 2019

"20.5 The Distribution Licensee shall forward a copy of its power procurement plan to the State Transmission Utility for verification of its consistency with the transmission system plan for the intra-State Transmission System, prepared in accordance with the Regulations of the Commission governing Transmission Open Access:

Provided that the Distribution Licensee shall also consult the State Transmission Utility at the time of preparation of the power procurement plan, to ensure consistency of such plan with the transmission system plan".

3.5.2 Comments Received

MBPPL requested that all the works related to transmission network should be done by the respective Transmission Licensee as is being done in the case of other Distribution Licensees. MBPPL submitted that whenever it approaches the STU for drawing additional power requirement, STU directs the Deemed Distribution Licensee to execute capital works such as ABT metering, additional 22 kV bays, SCADA or any other Capex pertaining to their substation premises. Currently, these works are executed by the Deemed Distribution Licensee and the asset is capitalised and loaded on the customers of the Deemed Distribution Licensee. Consumers within the SEZ are burdened for these assets, which otherwise would have been loaded in the ARR of the Transmission License and pooled for recovery from all Distribution Licensees. The Deemed Distribution Licensee is facing unequal and discriminatory treatment

compared to other Distribution Licensees. It is already sharing the budget of InSTS, which includes similar works for other Distribution Licensees.

3.5.3 Analysis and Commission's Decision

The Commission is of the view that the transmission related cost should be part of the InSTS Order and pooled across all Distribution Licensees, without any discrimination between Deemed Distribution Licensees and other Distribution Licensees. However, this issue cannot be addressed in the MYT Regulations, 2019, and has to be dealt with under the State Grid Code Regulations. The Deemed Distribution Licensee may file the Petition for necessary relief under the State Grid Code Regulations.

3.6 Regulation 21.1: Public consultation process for PPA approval

3.6.1 Proposed in Draft MYT Regulations, 2019

"21.1 Every long-term/medium-term agreement or arrangement for power procurement, including on a Standby basis, by a Distribution Licensee from a Generating Company or Licensee or from another source of supply, and any change to an existing agreement or arrangement shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall not be required for purchase of power from Renewable Energy sources at the generic/preferential tariff determined by the Commission for meeting its Renewable Purchase Obligation (RPO)."

3.6.2 Comments Received

Prayas Energy Group and Sajag Jagran Manch (SNM) submitted that the public process for approval of PPAs as specified in Regulation 20.5 of MYT Regulations, 2015 enables greater transparency and accountability and hence, should be retained, as power purchase cost accounts for 60-80 per cent of the total cost of supply. Further, with increasing demand uncertainty on account of sales migration and changes in demand patterns, and considering the financial, environmental and resource lock-in risks associated with power purchase from conventional sources such as thermal, nuclear or large hydropower projects, it is of utmost importance to ensure highest degree of transparency and accountability while allowing any decisions regarding new PPA.

3.6.3 Analysis and Commission's Decision

The Commission had deleted the relevant Regulations regarding public consultation process for approval of PPA in the Draft MYT Regulations, 2019, since the Commission had mandated procurement of power through competitive bidding only. In case of adoption of tariff for power

procurement under competitive bidding guidelines, there is no requirement for a Public Hearing, as the Commission has to only ensure that the due process stipulated in the Guidelines has been adhered to.

However, as stated above, the Commission has now allowed power procurement under both the routes, i.e., Section 63 and Section 62. The Commission has therefore retained the public consultation process as mentioned in MYT Regulations, 2015 for all power procurement which will be done under Section 62.

The Commission has incorporated the following provisions in the MYT Regulations, 2019:

"21.2 The Petition for approval of Power Purchase Agreement or arrangement shall include the power procurement plan for its duration.:

Provided that public consultation shall not be required for adoption of tariff discovered through competitive bidding under Section 63 of the Act.

Provided further that in case of power procurement under Section 62 of the Act, public consultation as stipulated under Regulation 21.3 to 21.5 shall be followed.

21.3 The Petitioner shall submit a duly completed draft Public Notice for the Commission's approval as per the stipulated template, for publication as and when intimated by the Commission.

21.4 Upon receipt of a complete Petition accompanied by the requisite information, particulars and documents in compliance with the requirements specified in this Regulation, the Petition shall be admitted and the Commission or its Secretary or designated Officer shall intimate to the Petitioner that the Petition is ready for publication.

21.5 The Petitioner shall, within three days of an intimation given to it in accordance with Regulation 21.4, publish a Public Notice, in at least two English and two Marathi language daily newspapers widely circulated in the area to which the Petition pertains, outlining the salient features of the proposed agreement or arrangement for power procurement and the impact on the power procurement cost and Tariff, and such other matters as may be stipulated by the Commission, and inviting suggestions and objections from the public:

Provided that the Petitioner shall make available a hard copy of the complete Petition to any person at such locations and at such rates as may be stipulated by the Commission;

Provided further that the Petitioner shall also provide the Petition filed before the Commission along with all regulatory filings, information, particulars and documents in the manner stipulated by the Commission on its internet website:

Provided also that the web-link to the information mentioned in the second proviso to this Regulation shall be easily accessible, archived for downloading and shall be prominently displayed on the Petitioner's internet website:

Provided also that the Petitioner may be exempted by the Commission from providing any such information, particulars or documents as are confidential in nature."

3.7 Regulation 21.3: Power Procurement Plan

3.7.1 Proposed in Draft MYT Regulations, 2019

"21.3 The Commission shall consider a Petition for approval of power procurement agreement or arrangement having regard to the approved power procurement plan of the Distribution Licensee and the following factors:

(a) Requirement of power procurement under the approved power procurement plan;

(b) Adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government under Section 63 of the Act;

(c) Competitiveness of the Tariff vis-a-vis the Tariff prevalent in the market;

(d) Availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement or arrangement;

(e) Need to promote co-generation and generation of electricity from renewable sources of energy."

3.7.2 Comments Received

MBPPL and NUPLLP requested to incorporate the provisions related to power procurement plan considering PPAs under both Section 62 and Section 63 of the Act. They added that for minimal load in case of new Distribution Licensees, the power suppliers such as generating companies, electricity traders or other Distribution Licensee are reluctant to submit bids for providing the power to the licence area.

3.7.3 Analysis and Commission's Decision

As stated earlier, the Commission has considered the submission and accordingly allowed the power purchase under MOU route as specified under Section 62 of the Act. Hence, the relevant Regulation has been modified accordingly, as under:

"21.6 The Commission shall consider a Petition for approval of power procurement agreement or arrangement having regard to the approved power procurement plan of the Distribution Licensee and the following factors:

(a) Requirement of power procurement under the approved power procurement plan;

(b) Adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government under Section 63 of the Act or Adherence to the terms and conditions for determination of Tariff specified under Part E of these Regulations;

(c) Competitiveness of the Tariff vis-a-vis the Tariff prevalent in the market and/or Tariff discovered through competitive bidding under Section 63 of the Act;…"

3.8 Regulation 22.1: Additional Power Procurement

3.8.1 Proposed in Draft MYT Regulations, 2019

"22.1 The Distribution Licensee may undertake additional power procurement during the year, over and above the power procurement plan for the Control Period approved by the Commission, in accordance with this Regulation."

3.8.2 Comments Received

Rattan India Power Limited and APTCL suggested that purchase of short-term power should be allowed only after full available capacity available under long-term PPAs is exhausted. Rattan India Power Limited added that Distribution Licensees should not give zero schedule and backing down instructions to the Generators under long-term PPAs and purchase power from the short-term market.

3.8.3 Analysis and Commission's Decision

The Commission is of the view that the Merit Order Despatch principles have to be followed for scheduling of power at all times and the off-take of power in the ranking of variable cost is scheduled based on the demand of the Licensee. Hence, the Licensee is at liberty to purchase short-term power at cheaper rates if the power purchase from long-term PPAs are costly at any point of time. The Generators are entitled to receive Fixed Charges based on availability as per the provisions of the approved PPA. Hence, there is no modification to this Regulation.

3.9 Regulation 22.3: Ceiling Rate of Power Procurement

3.9.1 Proposed in Draft MYT Regulations, 2019

"22.3 Any variation, during the first or second block of six months of a Year, in the quantum or cost of power procured, including from a source other than a previously approved source, that is expected to be in excess of five per cent of that approved by the Commission, shall require its prior approval:

Provided that the five per cent limit shall not apply to variation in the cost of power procured on account of changes in the price of fuel for own generation or the fixed or variable cost of power purchase that is allowed to be recovered in accordance with Regulation 10."

3.9.2 Comments Received

MSEDCL requested to waive off the ceiling rate and quantum for procurement of power through DEEP e-bidding portal and through Power Exchanges.

TPC suggested to remove the limit on quantum of power purchase, and increase the limit of deviation from 5% to 10%, and remove the power purchased through Power Exchanges and through DEEP Portal from the scope of this Regulation.

3.9.3 Analysis and Commission's Decision

The stipulation regarding prescribing the ceiling rate beyond which the Commission's approval is required, is mandated in the Competitive Bidding Guidelines for short-term power procurement itself.

Power purchase costs account for almost 70-75% of the ARR of the Distribution Licensee, hence, even a 5% variation in the quantum or rate is likely to have a significant impact on the tariff of the consumers. Hence, the ceiling is required, so that the Licensees seek prior approval for such variations in quantum or cost. Further, the ceiling of 5% has been in place for several years and instances of Distribution Licensees exceeding the 5% ceiling have not been that frequent. Hence, no modification is required in this Regulation.

4. Financial Principles

4.1 Regulation 23.1: Financial Prudence

4.1.1 Proposed in draft MYT Regulations, 2019

“23.1 The Generating Company or Licensee or MSLDC shall manage its finances in an optimum and prudent manner."

4.1.2 Comments received

Shri Mahaveer Kumar Jain submitted that financial prudence should be verified for all costs allowed to the Generating Company or Licensee or MSLDC. He stated that any cost incurred that could have been avoided but has been incurred due to negligence or mismanagement of the Company, should be excluded from the cost eligible for tariff determination.

4.1.3 Analysis and Commission’s Decision

Regulation 23.1 has been retained same as Regulation 22.1 of the MERC MYT Regulations, 2015, and no change was proposed in the draft MERC MYT Regulations, 2019. The Commission conducts detailed financial prudence check as mentioned in Regulation 23, at the time of approving the ARR and Tariff of the Generating Company or Licensee or MSLDC, and disallows any costs, which it does not consider to be prudent. This Regulation gives adequate scope to the Commission to check the prudence of expenses and hence, no modification is required in the said clause.

4.2 Regulation 23.3: Collection Efficiency

4.2.1 Proposed in draft MYT Regulations, 2019

“23.3 The financial prudence with respect to revenue shall be assessed in terms of the following parameters:

…(d) collection efficiency measured as a percentage of the amount collected by the Generating Company or Licensee to the total amount billed; ….”

4.2.2 Comments received

MSEDCL submitted that expenses and revenue are accounted for on accrual basis and collection efficiency does not impact the ARR or Revenue Gap, hence, the provision related to collection efficiency may be removed.

4.2.3 Analysis and Commission's Decision

Regulation 23.3 (d) has been retained same as Regulation 22.3 (c) of the MERC MYT Regulations, 2015, and no change was proposed in the draft MERC MYT Regulations, 2019. The Commission approves the ARR and Revenue for the regulated entities on accrual basis. The Commission also allows normative provision for bad and doubtful debts for the Distribution Licensee, as a percentage of the receivables. The Commission does not factor in the collection efficiency, while approving the revenue and revenue gap. In other words, the revenue is considered equal to the amount billed, irrespective of whether the amount has been collected by the Distribution Licensee or not. However, this approach does not mean that collection efficiency has no relevance.

The collection efficiency, along with distribution losses, is one of the two most important operational performance parameters for any Distribution Licensee. The collection efficiency has a great bearing on the cash flows of the Distribution Licensee, which directly impacts its capacity to spend on necessary activities like Power Purchase, Repairs & Maintenance (R&M) and system improvement. Delay in payment to generators may have an adverse cascading effect. Inadequate R&M expenditure leads to increase in the fault levels and interruptions, thereby adversely affecting the quality of supply. It may be noted that the collection efficiency has not specified as a performance parameter, and no norms are stipulated in the Commission's Orders also. However, it is very important to be aware and if necessary, assess the category-wise collection efficiency of the Distribution Licensee and no modification is required in the said clause.

4.3 Regulation 23.4: Cost Audit Report

4.3.1 Proposed in draft MYT Regulations, 2019

"23.4 The financial prudence with respect to revenue expenditure shall be assessed in terms of the following parameters:

... Provided also that the Generating Company or Licensee shall submit the Cost Audit Report along with the true-up Petition to justify the revenue expenses incurred as well as inventory management policies."

4.3.2 Comments received

BEST suggested that it is a Local Authority and hence, it should be allowed to submit Cost Audit Report audited by internal audit department of the Utility.

MSPGCL, MSEDCL and MEGPTCL requested to delete the fourth proviso of Regulation 23.4, which provides for submission of Cost Audit Report along with the True-up Petition. They

submitted that Cost Audit Report will not serve the purpose of validating the financial prudence of revenue expenditure and inventory management due to following reasons.

(a) Cost audit ascertains only accuracy of cost records in conformity with Cost Accounting Policies;

(b) Cost Audit Reports have significance only in case of manufacturing units/industries;

(c) Commission approves O&M expenses and capex related expenses on normative basis, while power purchase is based on actuals;

(d) Audited Accounts audited by the external Statutory Auditors with Notes are submitted along with the True Up Petition;

(e) Cost Audit Report for Generating Stations will not be unit/station wise as required by the Commission, as they are prepared for the Company as a whole;

(f) Cost records prepared on cost accounting standards will be different from regulatory principles and will not match with the petitioned numbers;

(g) Preparation of Cost Audit Report depends on the completion of statutory audit and hence, cannot be made available by the month of November.

4.3.3 Analysis and Commission's Decision

The said proviso to Regulation 23.4 was introduced in the draft MERC MYT Regulations, 2019, for proper monitoring of inventory and inventory management within prudence of revenue expenditure, and to ensure that the company is following optimum inventory management as proposed.

The contention that Cost Audit Reports have significance only in case of manufacturing units/industries is incorrect. The Cost Audit Report verifies the correctness of cost accounting in the books of accounts. It helps in identification of wrong practices in the existing system of accounting and helps in cost control and cost reduction for the Company. The Commission has introduced this proviso of submitting Cost Audit Report to further strengthen the process of financial prudence check, while approving the ARR and Tariffs of the Utilities. Cost Audit Report along with the Audited Accounts and Auditor's report will provide a holistic view on the prudence of the expenditure incurred by the Utility, while approving the True-up.

The contention that cost records prepared on cost accounting standards will be different from regulatory principles and will not match with the petitioned numbers, is of no relevance, as even the Audited Accounts are different from the regulatory Accounts, due to differences in philosophy and regulatory principles. Further, Audited Accounts have to be ready by end of

September each year and the Cost Audit Report may be made available in the span of 1 month, i.e., before 1st of November, at the time of filing of Petition.

BEST, being a Local Authority, may submit the Cost Audit Report duly audited by the internal auditor.

Hence, no modification is required in the said clause.

4.4 Regulation 23.5: Capital Expenditure

4.4.1 Proposed in draft MYT Regulations, 2019

"23.5 The financial prudence with respect to capital expenditure shall be assessed in terms of the following parameters:

…(a) whether projected capital expenditure and capitalisation is based on realistic estimates, and adequate justification has been provided for any anomalous increase in capital expenditure and capitalisation projected by the Generating Company or Licensee;…"

4.4.2 Comments received

MEGPTCL submitted that Licensee provides adequate justification before incurring any costs towards additional capitalization and hence such clause may not be required.

4.4.3 Analysis and Commission's Decision

The sub-clause (a) to Regulation 23.5 was introduced in the draft MERC MYT Regulations, 2019, as it had been observed that some Generating Companies and Licensees either over-estimate or under-estimate the capital expenditure and capitalisation for the future years, leading to significant tariff impact.

The intention of this sub-clause is to ensure that the Generating Companies and Licensees submit realistic estimates of projected capital expenditure and capitalisation, so that there is no significant impact on the ARR and tariff, after true-up on account of over-estimation or under-estimation of the capital expenditure and capitalisation. This sub-clause is necessary and will help to inculcate discipline amongst the Generating Companies and Licensees as regards estimation of capital expenditure and capitalisation, hence, no modification is required in the said clause.

4.5 Regulation 24: Capital Expenditure Approval

4.5.1 Comments received

Prayas Energy Group submitted that approval of capital expenditure proposals should take place through a public consultation process, considering the significant cost and tariff implications on Generating Company and Licensee.

4.5.2 Analysis and Commission's Decision

The stakeholder's comments are not directly related to any specific clause of the draft MERC MYT Regulations, 2019. The Commission has notified the "Guidelines for In-principle Clearance of Proposed Investment Schemes, 2005, as amended from time to time, which lays down the procedure for obtaining the Commission's approval for the proposed capital expenditure. No public consultation process is envisaged for approval of the proposed capital expenditure, and neither is it feasible to do so, hence, no modification is required in the said clause.

4.6 Regulation 24.1: Capital Cost and Capital Structure

4.6.1 Proposed in draft MYT Regulations, 2019

"24.1 Capital cost for a capital investment Project shall include…….

…(e) any gain or loss on account of foreign exchange rate variation pertaining to the loan amount availed up to the date of commercial operation, as admitted by the Commission after prudence check:

Provided that any gain or loss on account of foreign exchange rate variation pertaining to the loan amount availed up to the date of commercial operation shall be adjusted only against the debt component of the capital cost:

Provided further that the capital cost of the assets forming part of the Project but not put to use or not in use, shall be excluded from the capital cost:

Provided also that the Generating Company or Transmission Licensee or Distribution Licensee shall submit documentary evidence in support of its claim of assets being put to use:

Provided also that the Commission may undertake a sample check to verify the assets put to use as submitted by the Generating Company or Licensee or SLDC, as the case may be, independent of the tariff determination process:

Provided also that any capital expenditure incurred based on the specific requirement of a Generating Company or Licensee shall be substantiated with necessary documentary evidence of such request and undertaking received:

Provided also that the following shall be excluded from the capital cost of the existing and new projects:

(a) *The assets forming part of the project, but not in use, as declared in the tariff petition;*

(b) *(b) De-capitalised Assets after the date of commercial operation on account of replacement or removal on account of obsolescence or shifting from one project to another project:*

Provided that in case replacement of transmission asset is recommended by State Transmission Utility, such asset shall be decapitalised only after its redeployment;

Provided further that unless shifting of an asset from one project to another is of permanent nature, there shall be no de-capitalization of the concerned assets.

(c) *In case of hydro generating stations, any expenditure incurred or committed to be incurred by a project developer for getting the project site allotted by the State Government by following a transparent process;*

(d) *Proportionate cost of land of the existing project which is being used for generating power from generating station based on renewable energy; and*

(e) *Any consumer contribution or grant received from the Central or State Government or any statutory body or authority for the execution of the project, which does not carry any liability of repayment."*

4.6.2 Comments received

A. Foreign Exchange Rate Variation (FERV)

TPC submitted that the sub-clause (e) may be amended by allowing the FERV up to the cut-off date instead of the commercial operation date.

MEGPTCL submitted that a proviso needs to be inserted in Regulation 24.1, to address the possibility of FERV during construction period, as Regulation 31 addresses the aspect of FERV during operational period only.

B. Exclusion of unutilized assets from Capital Cost

TPC submitted that the phrase "put to use" in second and third proviso may be replaced with "ready to use", as the Transmission Licensee should not be penalized for the inability of the

Distribution Licensee to use the assets, since the assets were constructed based on the requirement of the Distribution Licensee and after due approval from the State Transmission Utility (STU).

Rattan India Power Limited, MEGPTCL and APTCL submitted that the sixth proviso should be modified in such a way that if the asset is not put to use on account of delay due to beneficiary events, then the Licensee should be suitably compensated for the delay and shall be entitled for full recovery. They submitted that development of downstream system falls under the purview of other Licensees in terms of load management, which is beyond the control of the Transmission Licensees, therefore, impact of non-readiness of other Utilities should not be passed on to Transmission Licensees. They added that putting the asset to use is not in the control of the Transmission Licensee, and that no distinction can be drawn between a connected bay and a bay waiting to be connected as far as maintenance practice and expenditure is concerned.

TPC submitted that loss or gain due to de-capitalization/retirement/de-commissioning of asset based on the directions of the Commission due to technological obsolescence/geographical changes, wear & tear, change in law, force majeure or request from consumer/statutory authority, which cannot be re-used, should be adjusted in the ARR of the Utility in the relevant year, in line with the provisions considered by DERC and TSERC in their respective MYT Regulations.

C. Land Usage Charges

AEML and SBI Caps submitted that sub clause (d) of sixth proviso may be amended in such a way that additional lease agreement charges, if any, shall be passed through, in case the existing land of the generator is used for alternative purposes. They added that the proposed exclusion of proportionate cost of land has to be applied on case to case basis, as there may be some arrangement between existing project and renewable project with respect to land, which has to be taken into consideration. They further added that in some cases, the land may have been given on lease for the existing project, in which case, the revised arrangement of the lease after the renewable project, needs to be considered before any exclusion.

D. Additional Clause

MSEDCL submitted that a proviso may be added in this Regulation to the effect that in case of inter-unit transfer, the transaction needs to be undertaken at appropriate depreciated cost and the benefit of such inter-unit transfer should be provided to the Beneficiaries.

4.6.3 Analysis and Commission's Decision

The Draft Regulation already proposes to consider FERV up to the date of commercial operation (COD) as specified in sub-clause (e) of Regulation 24.1, and after the COD as

mentioned in Regulation 31.2. Hence, the possibility of FERV during construction period is already addressed. However, as capital cost is being allowed till cut-off date, it is appropriate to allow FERV till cut-off date, rather than limiting it to the COD. The Commission has accordingly modified sub-clause (e) of Regulation 24.1.

As regards the issue of non-consideration of unutilised assets under Capital Cost, the MERC MYT Regulations, 2015 as well as the draft MERC MYT Regulations, 2019 specify in the proviso to Regulation 2.1 (25) c. as under:

> *"Provided that, in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the Transmission Licensee or its suppliers or contractors but on account of the delay in commissioning of the concerned generating Station or the upstream or downstream transmission system or distribution system, the Transmission Licensee may seek approval of the Commission of the date of commercial operation of such transmission system or an element thereof:*
>
> *Provided further that, in case of an existing Transmission Licensee, such request may be included as part of its Multi Year Tariff (MYT) Petition or Mid-Term Review Petition or True-up Petition to be filed under these Regulations;"*

Thus, the draft MERC MYT Regulations, 2019 provides for situations where the Transmission Licensee is unable to put its asset to use on account of delay in commissioning of the concerned generating station or downstream transmission system or distribution system. The Transmission Licensee has to approach the Commission for necessary relief in terms of declaring the COD, despite the assets not being put to use in the conventional sense. However, as each such instance will have to be dealt with case-by-case, the Commission is of the view that the above dispensation is appropriate and sufficient.

As regards the impact of de-capitalization/retirement/de-commissioning of asset, the loss or gain due to such event is already being passed through the ARR, under Non-Tariff Income, and hence, there is no requirement to add any clauses/provisos to this effect.

As regards the issues raised on the proposed reduction of proportionate cost of land of the existing project that is being used for generating power from generating station based on Renewable Energy (RE), the Commission shall address these issues on case to case basis, and the sub-clause has not been modified.

As regards the contention that the benefit of inter-Unit transfer, if any, should be passed on to the beneficiaries as they have paid the capital cost, the Commission is of the view that such benefit shall be recorded in the books of the entity as per the relevant Accounting Standards, and the benefit shall be passed on appropriately.

The Commission is of the view that it is not practical to exclude the assets forming part of the project but not put to use in case of Distribution Licensee, and hence, has clarified that this proviso is applicable for Generation Project and transmission system.

The Commission has accordingly modified sub-clause 24.1 (e) and the second proviso of Regulation 24.1 of the MERC MYT Regulations, 2019 as under:

"*24.1 Capital cost for a capital investment Project shall include:*

…

(e) any gain or loss on account of foreign exchange rate variation pertaining to the loan amount availed up to the <u>cut-off date</u>, as admitted by the Commission after prudence check:

…

Provided further that the capital cost of the assets forming part of the Project but not put to use or not in use, shall be excluded from the capital cost <u>of Generation Project and transmission system:</u>"

4.7 Regulation 24.2: Variation in Capital Cost

4.7.1 Proposed in draft MYT Regulations, 2019

"24.2 The capital cost admitted by the Commission after prudence check shall form the basis for determination of Tariff:

… Provided further that the entire gain to the Generating Company or Licensee or MSLDC on account of variations in capitalisation, in terms of variation in Interest and Finance Charges, Return on Equity, and Depreciation, shall be passed on as a rebate in Tariff over such period as may be stipulated in the Order of the Commission after prudence check:

Provided also that the loss to the Generating Company or Licensee or MSLDC on account of variations in capitalisation, in terms of variation in Interest and Finance Charges, Return on Equity, and Depreciation, shall be shared between the Generating Company or Licensee or MSLDC and the respective Beneficiary or consumer in the manner stipulated by the Commission in its Order after prudence check."

4.7.2 Comments received

MSEDCL submitted that the provision stating that the loss due to capitalization shall be shared with beneficiaries should be deleted, since capitalization depends on various factors including factors beyond the control of the utility.

MSETCL submitted that the rebate or loss due to capitalization should be passed on only after the true-up of respective years and not at the time of provisional true-up and for projected years.

Dhariwal Infrastructure Limited proposed to share the gains/losses on account of variations in capitalisation by sharing the variations in interest and finance charges, return on equity, and depreciation with the beneficiaries in pre-specified ratio.

4.7.3 Analysis and Commission's Decision

In the Tariff Order, the Commission considers certain level of capitalisation based on the submitted/approved DPRs and capitalisation proposed by the Utility, after prudence check. In case there is variation in capitalisation vis-à-vis the capitalisation considered in the Order, then the gain or loss has to be shared with the beneficiaries, as the Utility should neither benefit from under-capitalisation nor lose out on account of over-capitalisation, as long as the capitalisation has been considered prudent by the Commission.

As per present practice, the gain or loss to the Utility on account of variation in capitalisation, is shared at the time of provisional true-up itself, without Carrying Cost, and at the time of final true-up with Carrying Cost. The Commission is of the view that this is appropriate and no change in required in the said Regulations, as the impact of such under/over capitalisation should be passed through at the earliest. Hence, no modification is required in the said clause.

4.8 Regulation 24.4: Treatment of Unutilised Assets

4.8.1 Proposed in draft MYT Regulations, 2019

"24.4 The capital cost of the concerned asset/s shall be considered after deducting the amount of accumulated depreciation computed till the period of asset utilisation for unregulated business or for the period the assets remain unutilised, for the purpose of tariff determination, in the following instances:

a) The asset/s have been used for a period of time for unregulated business or the asset/s have become part of the asset base of the regulated business after lapse of time with respect to the COD of the asset;

b) If the asset has not been put to use for the regulated business after COD."

4.8.2 Comments received

AEML, MSEDCL and MSETCL requested the Commission to delete this clause, which does not consider the capital cost of unutilized assets in tariff determination.

MSETCL submitted that the capital expenditure is undertaken only after due approval from STU and the Commission and if the assets are not utilized for reasons beyond the control of the Licensee, it should not be penalized.

AEML submitted that Transmission and Distribution Infrastructure needs to be planned in advance to show readiness. The Distribution Licensee can time its infrastructure as per consumer demand, but in case of Transmission Licensee, it proceeds based on Connection Application by Distribution Licensee but in case of delay from customer side, the transmission bay so created will remain unutilised. Transmission Infrastructure has long-term horizon and gradual connectivity thereon. Future readiness is integral to best practices. Neither the Distribution Licensee nor the Transmission Licensee can afford a situation where the required infrastructure is not available when the user needs it.

AEML added that Standards of Performance of Distribution Licensees require them to provide consumer connection within the timelines as specified in the Regulations. Regulations neither recognize nor allow for a situation where a Distribution Licensee can time its network development in accordance with the pace at which the user's project / development is proceeding, as it has to follow the timelines specified in the Regulations. Last mile connectivity is not drawn till user finally requests for supply, however upstream infrastructure is already created, so as to meet the SOP timelines. The Regulation should not enable such a state that the Licensee gets penalized in both the situations, in case it readies its network before the time of requirement as well as after the time of requirement. AEML submitted that grant of connection is a pre-requisite for granting Occupation Certificate (OC) to the building Developer. Therefore, the Distribution Licensee grants connectivity, however, OC may still not be obtained due to other non-compliances of the Developer and the building is 'unutilized'. The Distribution Licensee cannot even start the work after receiving OC, since connection needs to be granted before getting the OC.

AEML added that non-consideration of capital cost due to non-utilization will promote inefficiency in infrastructure development, as there may be stranded assets and Utilities will tend to delay the developments, which will adversely affect the end-consumers, and dent the Government of India's initiatives such as Ease of Doing Business.

MSEDCL submitted that it sets up infrastructure based on demand projections, however, due to various external factors, the demand may not materialize and assets may remain unutilized for genuine reasons. Hence, the Distribution Licensee needs to be allowed to recover the cost after prudence check.

4.8.3 Analysis and Commission's Decision

The Commission has been adopting the approach of disallowing the capital cost of un-utilized assets in all its previous MYT/MTR Orders. The Commission through this Regulation has only brought in clarity on the disallowance of capital cost of un-utilized bays for all Utilities.

Further, the definition of COD has been retained from the MERC MYT Regulations, 2015, and already provides for the Transmission Licensee seeking the Commission's approval for the date of commercial operation of such transmission system, in case it is unable to achieve COD because of delay in commissioning of the upstream or downstream Generating Station or Transmission Licensee or Distribution Licensee.

The incidence of default has to be proved based on documentary evidence and liability of the defaulting party needs to be ascertained in case the party is not ready with the connecting asset, on a case-to-case basis. One also needs to consider the Transmission Pricing mechanism in the State, wherein the ARR of the Transmission Licensees is pooled together and shared by the Transmission System Users (TSUs) in the ratio of their Coincident Peak Demand and Non-Coincident Peak Demand, hence, it would be difficult to pass on the liability to the defaulting entity. The Commission is of the view that it would not be appropriate to specify the further treatment in such case in the Regulations, which would have to be addressed in the Order to be issued by the Commission on the Petition to be filed by the Transmission Licensee in such cases. Hence, no modification is required in the said definition.

4.9 Regulation 24.6: Non-DPR Schemes

4.9.1 Comments received

MSEDCL suggested that schemes that are funded completely through Capital Contribution, Deposit Money, Grant or Subsidy should be allowed, and not considered under Non-DPR schemes, since these are generally welfare schemes and have no impact on the tariff. MSEDCL requested for inclusion of a proviso to this effect in the said Regulation.

4.9.2 Analysis and Commission's Decision

The schemes that are funded completely through Capital Contribution, Deposit Money, Grant or Subsidy may not have tariff impact, but it is necessary for the Commission to be aware of such schemes which are implemented by the Licensee. Schemes, irrespective of the funding, are implemented to support the overall infrastructure of the Distribution Licensee. Moreover, even though the capex schemes funded by Grant/subsidy/Consumer Contribution may not have a consequential impact on tariff, they enable the Commission to technically approve other

schemes funded by loan and equity, which are passed on in consumer tariff. Hence, no modification is required in the said clause.

4.10 Regulation 24.7: Limit for Non-DPR Schemes

4.10.1 Proposed in draft MYT Regulations, 2019

"24.7 The amount of capitalisation against non-DPR schemes for any Year shall not exceed 20% or such other limit as may be stipulated by the Commission through an Order, of the amount of capitalisation approved against DPR schemes for that Year:

Provided that the Commission may allow capitalisation against non-DPR schemes for any Year in excess of 20% or such other limit as may have been stipulated by the Commission through Order, on a request made by the Generating Company or Licensee or MSLDC:…."

4.10.2 Comments received

MSEDCL submitted that the capitalization against Non-DPR scheme in excess of 20% may be allowed by the Commission, without necessitating a request from the Utility.

MSLDC submitted that their capex schemes are in the range of few lakhs of rupees and almost all the schemes are Non-DPR schemes, as no major development work is expected to be carried out in the future. Hence, they may be exempted from the limit of 20% for Non-DPR schemes, as such condition may end up in non-approval of the amount of capitalization.

TPC submitted that instead of limiting the non-DPR capitalization at 20% of DPR capitalization for any year, it would be prudent to consider the limit of 20% over a 3- or 5-year rolling period. The Commission may consider cumulative amount of 20% for the Control Period as there may be a scenario wherein there is no DPR capitalization in any year. Further, in case of Nil DPR capitalization, the Commission may allow 5% capitalization of its GFA.

TPC requested the Commission to define the list of activities that can be undertaken under O&M, latest by 31 March, 2020, in order to provide regulatory certainty before the start of the Control Period. TPC added that O&M norms may be revised if additional expenditure gets covered under O&M expenses.

4.10.3 Analysis and Commission's Decision

The Commission is of the view that the present dispensation regarding Non-DPR schemes, which has been retained in the draft MERC MYT Regulations, 2019, are appropriate, and provide adequate opportunity to the Utility to seek necessary exemption, if necessitated. As regards the specific instances of Nil DPR schemes and extremely low DPR capitalisation of

MSLDC, necessary relief may be sought on case-to-case basis, and it is not appropriate to modify the Regulations on this account.

As regards the suggestion that the list of activities that can be undertaken under O&M be identified before the commencement of the next Control Period, the Commission is of the view that the same is not practical, as a detailed study will have to be undertaken in consultation with the Utilities. However, this proviso has been deleted for the time being, and could be taken up separately.

The Commission is of the view that the suggestion of limiting the Non-DPR schemes to 20% of approved DPR schemes on a cumulative basis over the Control Period rather than annual basis, can be considered, as such a situation could arise in a particular year, and the intention is not to block Non-DPR schemes.

Hence, Regulation 24.7 has been modified accordingly, as under:

"24.7 The cumulative amount of capitalisation against non-DPR schemes for any Year shall not exceed 20% or such other limit as may be stipulated by the Commission through an Order, of the cumulative amount of capitalisation approved against DPR schemes for that Year:…".

4.11 Regulation 24.10: Capitalised Initial Spares

4.11.1 Proposed in draft MYT Regulations, 2019

"24.10 The capital cost may include initial spares capitalised as a percentage of the Plant and Machinery cost up to the cut-off date, subject to the following ceiling norms:…"

4.11.2 Comments received

MEGPTCL submitted that the developer is required to maintain capitalized initial spares for smooth operation of the generating station/transmission system. MEGPTCL submitted that the capital cost may include initial spares capitalised as a percentage of the Plant and Machinery cost up to the cut-off date, subject to the specified ceiling norms, and allowed beyond cut-off date on actual basis, subject to documentary evidence provided by the Licensee.

4.11.3 Analysis and Commission's Decision

The Commission is of the view that the capital cost cannot be allowed beyond cut-off date, which has already been extended to three years after COD in the draft MYT Regulations, 2019. The capitalised initial spares have been retained in accordance with the MERC MYT Regulations, 2015, except for addition of ceiling norms for Static Synchronous Compensator, in line with that specified by the CERC in the Tariff Regulations 2019-24. The Commission is

of the view that the capitalised initial spares allowed under the Regulations are appropriate, and hence, no modification is required in the said clause.

4.12 Regulation 24.12: Replacement of Assets

4.12.1 Proposed in draft MYT Regulations, 2019

"24.12 Any expenditure on replacement, renovation and modernisation or extension of life of old fixed assets, as applicable to Generating Companies or Licensees, shall be considered after writing off the net value of such replaced assets from the original capital cost, and shall be computed as follows:...."

4.12.2 Comments received

TPC requested for adding a proviso specifying that in case of decapitalization of assets created out of Consumer Contribution, the net value of the replaced asset should also be funded by the requesting agencies, and it also should not be considered in the ARR.

4.12.3 Analysis and Commission's Decision

The Commission is of the view that the proviso proposed by the stakeholder is not within the scope of the MYT Regulations, 2019, and has to be addressed under the relevant Regulations, if appropriate. In case the asset replacement is funded by Consumer Contribution, the treatment shall be the same as that for the original asset, and in case the asset replacement is funded by the Licensee, the asset and related capital cost shall be treated like the other assets of the Licensee funded by debt or equity, as the case may be. Hence, no modification is required in the said clause.

4.13 Regulations 25.2 and 25.3: Additional Capitalization within original scope of work and after cut-off date, and Additional Capitalization beyond original scope of work

4.13.1 Proposed in draft MYT Regulations, 2019

"25.2 The capital expenditure incurred or projected to be incurred in respect of a new Project on the following counts within the original scope of work after the cut-off date may be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of directions or order of any statutory authority or order or decree of any court of law;

(ii) Change in law or compliance of any existing law; ……

…Provided that in case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, subject to prudence check on the following grounds….

c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and …"

"25.3 The capital expenditure, in respect of existing generating Station or the transmission system including communication system, incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check…

…(v) Deferred works relating to ash pond or ash handling system in addition to the original scope of work, on case to case basis;

(vi) Usage of water from sewage treatment plant in thermal generating station:

Provided that any expenditure, which has been claimed under Renovation and Modernisation or repairs and maintenance under O&M expenses, shall not be claimed under this Regulation."

4.13.2 Comments received

MEGPTCL submitted that the capital expenditure requirements specifically from Regional Power Committee (RPC), RLDC, SLDC, etc., which are beyond the control of the Licensee, should be allowed under this Regulation.

MSETCL submitted that additional capital expenditure on account of deterioration of health of assets and replacement thereof should be allowed under this Regulation.

AEML, MSETCL, MSPGCL and MEGPTCL submitted that all sub-clauses from (v) to (x) of Regulation 24.3 of MERC MYT Regulations, 2015 should be retained in the current Regulations, and all such conditions may be subject to submission of documentary evidence with justification. They requested the Commission to bring clarity regarding approach to be followed for capital expenditure on efficiency improvement schemes, or alternately, additional O&M allowance may be provided to Generating Companies to carry out necessary works of capital nature. They added that capital expenditure, whether within the original scope or beyond, is undertaken only after prior approval of the Commission under DPR approval process. Regulations must provide for all situations where additional capitalization may become necessary, beyond the original scope of works and after cut-off date.

MSEDCL submitted that any works covered outside the scope need not be allowed unless it falls within Change in Law or Force Majeure. MSEDCL added that the deferred work related to ash pond or ash-handling need not be allowed if it has not been started yet.

Dhariwal Infrastructure Limited proposed that the following provisions be added in the Regulations for admitting capital expenditure incurred or projected to be incurred beyond the original scope and after the cut-off date:

- Any liability for works executed prior to the Cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments, etc.;

- Any liabilities for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;

- Any capital expenditure found justified after prudence check, executed prior/beyond the cut-off date, necessitated on account of modifications required or done in fuel receiving system arising due to non-materialisation of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of generating station.

Dhariwal also proposed that the expenditure due to deferring the liabilities should be passed on as benefit in the Fixed Charges to the consumers for the period that the liability has been deferred.

Dhariwal added that it is impractical to disallow the deferred/undischarged liabilities on account of capitalisation of new assets, which are not within the original scope executed prior/beyond the cut-off date, as it is very difficult to actually project the extent of discharge of such liabilities by actual payments. Further, the reason for withholding of such payment and release of the same may also not be foreseen.

4.13.3 Analysis and Commission's Decision

The Commission is of the view that the specific case of additional capital expenditure due to requirement of RPC, RLDC, SLDC, etc., needs to be addressed on case to case basis, and need not be specified in the Regulations.

In the draft MYT Regulations, 2019, the Commission had deleted the provisions allowing additional capital expenditure that has become necessary for efficient operations, in line with the approach followed by the CERC in the Tariff Regulations, 2019-24, wherein the additional capital expenditure had been identified under additional capitalisation within the original scope and up to cut-off date, additional capitalisation within original scope and after cut-off date, and additional capitalisation beyond the original scope.

As regards the submission that any works covered outside the scope need not be allowed unless it falls within Change in Law or Force Majeure, the Commission is of the view that such a dispensation is not appropriate, and there are certain other instances which may require incurrence of additional capital expenditure outside the scope, as specified in Regulation 25.3.

As regards Dhariwal's submission to include certain provisions, these provisions are already included under Regulation 25.2 of the MYT Regulations, 2019. The Commission is of the view that the inclusions sought on account of modifications required or done in fuel receiving system are not appropriate and cannot be included in a blanket manner in the MYT Regulations, 2019. The Commission is also not keen to widen the scope of the Additional Capitalisation and has retained the limitations as proposed in the draft MYT Regulations, 2019.

Based on the submission of the Utilities on the draft MYT Regulations, 2019, the Commission is of the view that it may be necessary to allow such capital expenditure, in order to enable the Utilities to maintain/improve their efficiency levels. At the same time, it is observed that Utilities have incurred significant additional capital expenditure under this head over the past few years, though it is not certain whether the intended benefits have been achieved. Hence, the Commission has decided to link the approval of additional capital expenditure for efficient operation to submission of report on impact assessment done by any reputed third-party technical expert/agency on the benefits realised from previous investments under this head in the last five years.

The Commission has modified Regulation 25.2 of the MERC MYT Regulations, 2019, by adding a new sub-clause (v), as under:

"(v) Any additional capital expenditure which has become necessary for efficient operation:

Provided that the claim shall be substantiated with the technical justification duly supported by documentary evidence like test results carried out by an independent agency in case of deterioration of assets, damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level:

Provided further that the approval of additional capital expenditure for efficient operation shall be subject to submission of report on impact assessment done by any reputed third-party technical expert/agency on the benefits realised from previous investments under this head in the last five years;"

4.14 Regulation 25.4: Additional Capitalization for compliance of Revised Emission Standards

4.14.1 Proposed in draft MYT Regulations, 2019

"25.4 The additional capital expenditure required to be undertaken by the existing generating station for compliance of the Revised Emissions Standards, may be admitted by the Commission, subject to prudence check based on the following details to be submitted by the Generating Company:

(i) details of proposed technology as specified by the Central Electricity Authority;

(ii) scope of work;

(iii) phasing of expenditure; ...

.... Provided that the Commission may grant approval after due consideration of the reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors, as may be considered relevant by the Commission."

4.14.2 Comments received

MSPGCL submitted that the technology for additional capital expenditure to comply with revised emissions standards, should not be limited to that specified by the CEA, and Generating Companies should have the liberty to select better technologies for implementation with time.

MSEDCL submitted that the pollution control systems may be funded by Green Fund already created by Government of India (GOI), by levying clean energy cess and hence, Generators should try to fund these assets from the Green Fund. MSEDCL added that any installation of pollution control equipment should be done with the prior consent of Distribution Licensee.

4.14.3 Analysis and Commission's Decision

The Commission is of the view that statutory requirement for installation of pollution control equipment cannot be linked to prior consent of the Beneficiary, as the same has to be undertaken in order to comply with the statutory requirements.

The Commission had specified the technology for additional capital expenditure to comply with revised emissions standards to that specified by the CEA, based on the CERC Tariff Regulations 2019-24. However, as submitted by the stakeholder, there is no need to restrict the technology in this manner, and hence, **the Commission has modified sub-clause (i) of Regulation 25.4 to allow utilisation of alternative technologies also, based on appropriate justification, as under:**

"25.4 The additional capital expenditure…

(i) details of proposed technology as specified by the Central Electricity Authority or alternative technology based on appropriate justification;…"

4.15 Regulations 27.1 and 27.4: Debt-Equity Ratio

4.15.1 Proposed in draft MYT Regulations, 2019

"27.1 For a capital investment Scheme declared under commercial operation on or after April 1, 2020, debt-equity ratio as on the date of commercial operation shall be 70:30 of the amount of capital cost approved by the Commission under Regulation 24, after prudence check for determination of Tariff:

Provided that the equity investment to be considered in any year shall not exceed the difference between the cumulative return on equity allowed by the Commission in previous years and the cumulative equity investment approved by the Commission in previous years, unless the Generating Company or Licensee or MSLDC submits documentary evidence for the actual deployment of equity and explain the source of funds for the equity:

Provided further that once the individual asset is depreciated to the extent of seventy percent or to the extent of actual debt component used for funding such asset in case the debt funding is higher than seventy percent of the asset cost, the equity capital shall be reduced to the extent of depreciation allowed beyond seventy percent of the asset cost or beyond actual debt component in case the debt funding is higher than seventy percent of the asset cost:…"

"27.4 In case of generating station or a transmission system including communication system or distribution network asset, which has completed its useful life as on or after 1.4.2020, the accumulated depreciation as on the completion of the useful life less cumulative repayment of loan shall be utilized for reduction of the equity"

4.15.2 Comments received

AEML, MEGPTCL, MSPGCL, SBI Caps, NUPLLP, and Dhariwal Infrastructure Limited submitted that Return on Equity (RoE) should be permissible up to 30% even after the depreciated cost of 70% in order to provide incentive to maintain and operate the assets. The provision will lead to reduction in equity base and therefore, erosion in RoE of the Utility over the useful life of the Project. CERC proposed similar proviso for reduction of equity in its draft Regulations, but after public consultation, did not include the same in the final Regulations, as this step would discourage prospective investments and result in substantial loss to existing generators.

The Commission made substantive legitimate expectation when it continued to consider equity as deployed in business, so long as the asset is in use. Such expectation on which investors have employed their capital should not be withdrawn.

Further, there would be no incentive for generators to run their plant after useful life and this will adversely impact the beneficiaries, as they will have to purchase costlier power from other sources. Operational life is more than accounting life and such steps would promote decommissioning of plants immediately after accounting life.

The stakeholders submitted that the Tariff Policy stipulates that the Commission should follow a consistent regulatory approach essential to attract private investment and the benefits of depreciated assets should remain available for the beneficiaries. If the proposal is retained, equity will be withdrawn by the investors from the regulated business and shall be invested in other businesses.

APTEL, in its Judgment, dated 16 May 2006 ruled that any mechanism by which the equity is gradually reduced, proportionately reducing the rate of return below the specified rate of return, is not legal. The Hon'ble Supreme Court upheld the APTEL Judgment vide its Judgment dated 24 February 2016. The decision of the Hon'ble Supreme Court is a settled position of law and hence, the Regulations must be in consonance with the same. Further, if such clause is retained by the Commission, the Commission may allow RoE on the equity deployed during construction stage.

AEML, MEGPTCL and SBI Caps requested the Commission to amend the first proviso of the said Regulations, to also allow receipts from efficiency gains, incentives and income from any investment of utility's returns in addition to the return of equity earned by Utility, as the Utility may invest the revenue corresponding to RoE and earn interest/revenue, which can be used for the purpose of capital expenditure.

MSETCL requested the Commission to review and modify the debt-equity ratio of 70:30. It submitted that sometimes after the completion of the project, the ratio tends to vary due to factors beyond control of Licensee. Restricting equity to 30% when actual equity is more than the normative, will adversely affect the availability of equity in future years for capital expenditure. Also, Licensees who have claimed or will be claiming RoE at lower than normative rate should be exempted from this provision as this may constrain the Licensee's ability to fund its equity requirements for capital expenditure on ongoing and new projects and would also negatively affects its credit rating. In case there is no support of equity from the Government, the proposal of reducing depreciation amount beyond 70% from equity will constrain its ability to fund its equity requirement for capital expenditure in future.

MSEDCL submitted that debt-equity ratio may be considered as 80:20 or actual, whichever is lower for new generating plants, as presently many generators are being funded in this ratio.

The proposed change would bring in the necessary discipline and prudence on behalf of equity investors with respect to irrational capacity additions.

TPC, MEGPTCL, MSPGCL, and SBI Caps requested the Commission to retain the clause of MYT Regulations, 2015 and allow RoE on entire 30% of the asset cost till the project continues to be in service, even beyond useful life. The proposed clause will result in reduction of equity to merely 10% after useful life. This would affect the return of the Licensee and additional capitalization for extension of useful life. It is necessary to incentivize the risk, which is invested in the form of equity. Such a step would discourage equity investment and would also affect the lenders insisting on equity deployment for disbursement of loan. As long as asset is in use, equity cannot be depleted.

They added that equity once invested in Business always remains invested and cannot be taken out. Further, asset remaining in service even after useful life testifies that it has been well maintained by the Developer. The Developer will be forced to shut down plant after completion of useful life and this will have negative impact on investors.

The National Electricity Policy and Tariff Policy mandate regulatory certainty and such a move will de-motivate prospective investors.

Further, more amount of O&M expenses is required for the asset to continue after useful life and the O&M recovery would not compensate to that extent. Reduction of equity may encourage Utilities to discard assets instead of deriving full benefit of the remaining economic value and in a resource scarce economy like India, such an initiative would not be advisable. If appropriate, the Commission may apply the clause on any plant commissioned after 1st April 2020.

MSEDCL submitted that the adjustment in equity balance may be linked to actual recovery through depreciation and not to approved accumulated depreciation, as even though depreciation is allowed in tariffs, it is not totally recovered due to lower collection efficiency.

4.15.3 Analysis and Commission's Decision

The reduction of equity capital to the extent of depreciation allowed beyond seventy percent of the asset cost, proposed under the second proviso to Regulation 27.1 of the draft MYT Regulations, 2019, is intrinsically linked to the reduction of equity to the extent of depreciation, after completion of useful life of the asset, proposed under Regulation 27.4 of the draft MYT Regulations, 2019.

The Commission observes that almost all the Utilities have submitted that operational life is more than accounting life and such steps could promote retirement of the assets immediately after completion of useful life. In a Regulated frame work, this action is neither expected from the Utilities nor will it be blindly allowed by the Commission without necessary due diligence.

Having said this, the Commission is sensitive to the fact that in case this is done, it would deprive the beneficiaries of the benefit of the depreciated assets. Further, newer assets would be costlier, and the additional capital expenditure would increase the ARR and tariff for the consumers. In case of retirement of older Generating Stations, the Distribution Licensees will have to purchase power from alternative sources, possibly at a higher cost. Further, closure of operations of well-maintained and efficient generating stations would mean depriving cheap sources of power to beneficiaries.

The Commission is of the view that the proposed Regulation may possibly discourage prospective investment in the sector and may result in losses in case of assets, which have completed or about to complete their useful life, vis-à-vis the Return on Equity that they would have expected to earn.

As pointed out by the stakeholders, CERC had also proposed in the draft Regulations to reduce equity to the extent of depreciation after completion of useful life of the asset, but did not do so in the final Regulations, based on the comments of the stakeholders.

In view of the above submissions and analysis, **the Commission has decided to delete the proposed second proviso to Regulation 27.1 and proposed Regulation 27.4 of the draft MYT Regulations.**

As regards the sources of equity funds, the Commission finds merit in the submissions regarding inclusion of receipts from efficiency gains, incentives, and income from any investment of utility's returns in addition to the return of equity earned by the Utility, hence, the first proviso of Regulation 27.1 has been modified to that extent, and a new second proviso has been introduced to ensure that the Utility is required to substantiate such investment of return on equity and income thereon through documentary evidence.

As regards the suggestion to modify the normative Debt-Equity ratio of 70:30 to allow actual equity higher than 30% of the capital cost or 80:20, the Commission is of the view that the normative Debt-Equity ratio of 70:30 is an industry standard and has been in place for several years. If the Utility wishes to invest equity to the extent higher than 30% of the capital cost, it is free to do so, however, the equity investment in excess of 30% shall be considered as normative loan and be entitled to normative interest and repayment considerations.

The submission that Licensees who have claimed or will be claiming RoE at lower than normative rate should be exempted from the first provision of Regulation 27.1 cannot be accepted, as the RoE allowed has to be considered for all purposes, and if the Utility chooses to claim lower than normative RoE for any reason, then all consequences of the same have to be faced.

The Commission has accordingly modified Regulation 27.1, as under:

"27.1 For a capital investment Scheme declared under commercial operation on or after April 1, 2020, debt-equity ratio as on the date of commercial operation shall be 70:30 of the amount of capital cost approved by the Commission under Regulation 24, after prudence check for determination of Tariff:

Provided that the equity investment to be considered in any year shall not exceed the difference between the <u>sum of</u> cumulative return on equity allowed by the Commission in previous years, <u>efficiency gains and losses, incentives and disincentives, and income earned from investment of return on equity</u>, and the cumulative equity investment approved by the Commission in previous years, unless the Generating Company or Licensee or MSLDC submits documentary evidence for the actual deployment of equity and explain the source of funds for the equity:

Provided further that the Generating Company or Licensee or MSLDC shall substantiate such investment of return on equity and income thereon through documentary evidence:…"

4.16 Regulation 27.2: Debt-Equity Ratio after retirement of assets

4.16.1 Proposed in draft MYT Regulations, 2019

"27.2 In case of the Generating Company or Licensee, if any fixed asset is capitalised on account of capital expenditure Scheme prior to April 1, 2020, the debt-equity ratio allowed by the Commission for determination of Tariff for the period ending March 31, 2020 shall be considered:

Provided that in case of retirement or replacement or de-capitalisation of the assets, the balance equity capital invested in the regulated Business approved in accordance with Regulation 27.1, shall be deducted from the regulatory equity of the Business:

Provided further that in case of retirement or replacement or de-capitalisation of the assets, the debt capital approved as mentioned above, shall be reduced to the extent of outstanding debt component based on documentary evidence, or the outstanding normative loan component, as the case may be, of the original cost of such assets."

4.16.2 Comments received

AEML submitted that the first proviso of this Regulation is inconsistent with Regulation 27.4. Proviso of Regulation 27.2 refers to Regulation 27.1 where 30% equity will be considered as balance, while Regulation 27.4 speaks about reduction to the extent of difference between accumulated depreciation and cumulative repayment of loan. AEML submitted that equity should be considered invested for the purpose of RoE till the asset is physically retired and hence, the proviso needs to be corrected to include only those assets that are retired or replaced prior to completion of Useful Life.

4.16.3 Analysis and Commission's Decision

As stated earlier, the Commission has deleted the Regulation 27.4 proposed in the draft MYT Regulations, 2019. Regulation 27.2 of the draft MYT Regulations, 2019 is the same as Regulation 26.2 of the MERC MYT Regulations, 2015, and is consistent with the modified Regulation 27.1 of the final MYT Regulations, 2019, and shall be applicable only in case of retirement of assets prior to completion of useful life. Hence, no modification is required in Regulation 27.2 of the MYT Regulations, 2019.

4.17 Regulation: 28.1 Depreciation

4.17.1 Proposed in draft MYT Regulations, 2019

"28.1 The Generating Company, Licensee, and MSLDC shall be permitted to recover depreciation on the value of fixed assets used in their respective Businesses, computed in the following manner:

(a) The approved original cost of the fixed assets shall be the value base for calculation of depreciation:

Provided that the depreciation shall be allowed on the entire capitalised amount of the new assets after reducing the approved original cost of the retired or replaced or de-capitalised assets.

(b) Depreciation shall be computed annually based on the straight-line method at the rates specified in the Annexure I to these Regulations:

Provided that the Generating Company or Licensee or MSLDC shall ensure that once the individual asset is depreciated to the extent of seventy percent, remaining depreciable value as on 31st March of the year closing shall be spread over the balance Useful Life of the asset including the Extended Life, as provided in this Regulation:

Provided further that the Generating Company or Licensee or SLDC shall submit all such details or documentary evidence as may be required, to substantiate the above claims.

(c) The salvage value of the asset shall be considered at 10 per cent of the allowable capital cost and depreciation shall be allowed upto a maximum of ninety per cent of the allowable capital cost of the asset:

Provided that the Generating Company or Licensee or SLDC shall submit certification from the Statutory Auditor for the capping of depreciation at ninety per cent of the allowable capital cost of the asset:

Provided further that the salvage value of Information Technology equipment and computer software shall be considered at 0 per cent of the allowable capital cost.”

4.17.2 Comments received

TPC submitted that depreciation should be allowed on approved capital cost instead of original cost, in line with CERC and DERC Regulations. Hence, the word ‘original’ in sub-clause (a) is proposed to be replaced with ‘capital’. TPC requested the Commission to incorporate suitable provisions to safeguard the interest of the Utility in case of any unrecovered depreciation after the useful life and expiry of term of PPA, by allowing the Utility to spread the balance depreciable value beyond 70% over the balance useful life of the asset or up to the date of validity of PPA, whichever is earlier.

AEML requested the Commission to specify the Useful Life of specific asset class separately instead of clubbing assets under Distribution system or AC/DC substation, as in the absence of specific mention of Useful Life of various different asset types in the Regulations, each Utility would be adopting its own approach. Therefore, it is necessary to standardize the Useful Life of different asset types so that each Utility considers the same in its computations of depreciation and also to overcome the problem of actual operational life being much shorter in case of certain asset classes.

AEML submitted that the Depreciation is capped at 90% only for regulatory purposes and not for statutory accounts and hence, certification from Statutory Auditor is not possible as the Statutory Auditor will not certify regulatory depreciation. However, a certificate from a qualified Chartered Accountant can be obtained by showing him the computations. Hence, the Regulations should specify certification from either Statutory Auditor or any qualified Chartered Accountant. Further, some of the assets like IT equipment and software can be depreciated up to 100% and hence, the second proviso may be modified by specifying that certificate for capping the depreciation up to the limits specified in the Regulations can be provided.

MSPGCL requested the Commission to delete the clause of providing certification from Statutory Auditor for capping of depreciation at 90% of the allowable cost of the Asset since the capital cost in the Company’s books of accounts will be different due to various disallowances made by the Commission while approving capital cost for tariff purposes. Due to capital disallowances, the detailed cost of various assets in regulatory books would not be available with the Company for satisfying the auditor.

MSETCL submitted that the clause of providing certificate from Statutory Auditor for capping of depreciation up to 90% should be made applicable to only those assets that are acquired after 1 April 2020 as the Financial Statements of the Company are already audited; hence, additional certification will increase the cost.

Dhariwal Infrastructure Limited submitted that the replacement of assets of the Generating Company is approved by the Commission and in such cases, the useful life of the new asset should be commensurate with the useful life of the project and hence, the Generating Company should be allowed to recover the depreciation of the replaced assets within the balance useful life of the project, by considering the new asset as a replacement for the old asset from the inception and serving till the useful life. Dhariwal also requested that the Generating Stations, which have long term-loan more than 70% of the capital cost should be allowed to recover the depreciation as per the rates prescribed in Annexure 1, to the extent of actual debt component in the Capital Cost.

4.17.3 Analysis and Commission's Decision

As regards the request to replace the word "original" with "capital", the stakeholder has not submitted any justification for the same, apart from citing CERC and DERC. The Commission is of the view that it is appropriate to compute depreciation on the "original" cost of the asset, as has been done for all these years, and hence, has not modified clause (a) of Regulation 27.1.

As regards the request to allow the Utility to spread the balance depreciable value beyond 70% over the balance useful life of the asset or up to the date of validity of PPA, whichever is earlier, the Commission is of the view that for consistent application of the Regulations, the asset has to be depreciated over the useful life of the asset, irrespective of whether or not the PPA tenure is co-terminus with the life of the asset.

The Commission has considered the request of specifying useful life of each of the asset class in order to bring consistency in the treatment of depreciation by each of the Generator/Utilities. The Commission has also made modifications in the second proviso of sub-clause (c) and added the fourth proviso to reflect 100% depreciation for IT equipment and software.

The Commission is of the view that the certificate from Statutory Auditor can be provided by the Generator/Utility as such certificate is submitted to the Commission for regulatory accounts. The Generator/Utility would hence, be in a position to also provide statutory auditor certificate for capping depreciation up to 90% or 100% (in the case of IT equipment software). The Commission proposes to continue with the clause of statutory auditor certificate for verification of depreciation.

The Commission is of the view that the request that the Generating Company should be allowed to recover the depreciation of the replaced assets within the balance useful life of the project, has no merit, as the replaced asset cannot be eligible for further depreciation, as it is not being used for the benefit of the beneficiaries.

As regards the request that Generating Stations, which have long term-loan more than 70% of the capital cost, should be allowed to recover the depreciation as per the rates prescribed in

Annexure 1 to the extent of actual debt component in the Capital Cost, the Commission has consciously allowed depreciation upto 70% of the asset cost considering the normative debt-equity ratio of 70:30, as the depreciation is intended to provide cash flow support for repayment of debt. It may be noted that CERC allows depreciation as per the rates specified in the Depreciation Schedules only for the first 12 years after COD, which will typically amount to 63.4% considering the typical depreciation rate of 5.28%, which is less than even 70%.

The Commission has accordingly modified clause (c) of Regulation 28.1, as under:

"(c) *The salvage value of the asset shall be considered at 10 per cent of the allowable capital cost and depreciation shall be allowed upto a maximum of ninety per cent of the allowable capital cost of the asset:*

Provided that the salvage value of Information Technology equipment and computer software shall be considered at 0 per cent of the allowable capital cost:

Provided further that the Generating Company or Licensee or SLDC shall submit certification from the Statutory Auditor for the capping of depreciation at ninety per cent of the allowable capital cost of the asset:

Provided also that such certification from the Statutory Auditor shall be submitted for the capping of depreciation at hundred per cent of the allowable capital cost of the asset for Information Technology equipment and computer software."

4.18 Regulation 28.7: Depreciation and repayment of equity

4.18.1 Proposed in draft MYT Regulations, 2019

"28.7 Depreciation allowed for each year of the Control Period from FY 2020-21 to FY 2024-25 shall be deemed to be equal to the loan repayment, up to the ceiling of seventy percent of asset cost or actual debt component used for funding such asset in case the debt funding is higher than seventy percent of the asset cost:

Provided that depreciation allowed for each year of the Control Period from FY 2020-21 to FY 2024-25 beyond seventy percent of asset cost or actual debt component used for funding such asset in case the debt funding is higher than seventy percent of the asset cost, shall be deemed to be equal to repayment of equity during that year."

4.18.2 Comments received

MEGPTCL, AEML, MSETCL and SBI Caps requested to continue with the approach adopted in MYT Regulations, 2015 in this regard, by either deleting Regulation 28.7 or modifying it such that there shall be no reduction in equity in case cumulative depreciation has reached more

than 70% of the asset cost. They submitted that equity should be considered as invested for the purpose of RoE, so long as the asset remains physically in service. No part of depreciation should be treated as repayment of equity. They added that RoE is an incentive to operate and maintain the infrastructure even after the plant is fully depreciated. Further, the projects have been commissioned keeping the parameters set at the then prevailing time. Changing of such criteria mid-way through the life of the project would impact financial health of the project and may have detrimental effect on viability of the entity. Government Companies that do not receive equity support from the Government shall be constrained while funding their equity requirement. Further, in case the proposal of allowing depreciation beyond seventy percent for repayment of equity is accepted by the Commission, the Commission should allow RoE during construction stage to maintain status quo.

AEML submitted that there is inconsistency in Regulation 27.2 and Regulation 28.7. Regulation 27.2 signifies that equity invested in assets before 31st March 2020, shall be considered as invested for tariff purpose even after depreciation of any such asset exceeds 70% or actual debt, as the case may be. However, Regulation 28.7 states generally that depreciation beyond 70% of asset cost or actual debt component shall be treated as repayment of equity, which will include assets capitalized up to 31st March 2020. The inconsistency in the Regulation should be rectified.

4.18.3 Analysis and Commission's Decision

As discussed above, the Commission has decided to delete the proposed second proviso to Regulation 27.1 and proposed Regulation 27.4 of the draft MYT Regulations, which linked the depreciation beyond 70% or actual loan component, to reduction in the equity base. Hence, **the Commission has also deleted Regulation 28.7 and its proviso**, to ensure consistency.

4.19 Regulation 29.1: Return on Equity

4.19.1 Proposed in draft MYT Regulations, 2019

"29.1 Base Return on Equity for the Generating Company, Transmission Licensee, Distribution Wires Business and MSLDC shall be allowed on the equity capital determined in accordance with Regulation 27 for the assets put to use, at the rate of 14 per cent per annum in Indian Rupee terms, and for the Retail Supply Business, Return on Equity shall be allowed on the amount of equity capital determined in accordance with Regulation 27 at the rate of 15.5 per cent per annum in Indian Rupee terms:

Provided that in case the Generation Company or Licensee or MSLDC claims Return on Equity at a rate lower than the normative rate specified above for any particular year, then such claim for lower Return on Equity shall be unconditional:

Provided further that such claim for lower Return on Equity shall be allowed subject to the condition that the reduction in Return on Equity shall be foregone permanently for that year and shall not be allowed to be recouped at the time of Mid-Term Review or true-up as applicable."

4.19.2 Comments received

TPC, SBI Caps, AEML, MSPGCL, VIPL, APTCL, MBPPL, BEST, NUPLLP, and MEGPTCL submitted that the rate of RoE should be retained as per the MYT Regulations, 2015, as there is substantial financial stress in the power sector, which is making lenders uncomfortable in lending to the power projects. Numerous risks and uncertainties such as land acquisition, regulatory and environmental approvals, fuel security, demand risk, market risk, financial risk, etc., are involved in the business and this is demonstrated by stranded assets / incomplete power projects in the country. Since the sector faces significant risk, therefore, adequate return would be required for attracting prospective investments in the sector. Power projects have long gestation period where project viability is based on long-term cash flows which is determined by RoE. A drastic change in RoE may lead to material adverse change in the financial projections and can lead to potential breach of covenants/terms of the financial agreements, thereby triggering a default or credit rating downgrade.

The Utilities added that there is a need for regulatory certainty and promotion of private sector investment in the power sector by providing adequate returns to regulated businesses. Cost of Equity shall be the same so long as the nature of the business is same, regardless of the geographical location of the company, except in circumstances where a geographical location distinctly magnifies or diminishes the business as usual risk of the Company.

Developers are taking additional efforts to meet lenders' expectations for providing debt funding and therefore, such action requires compensation. The beta considered in the CAPM formula for benchmarking RoE does not reflect the true picture of the potential risks faced by standalone Companies in the power sector. The factors depend on market volatility, which is a short-term phenomenon. Further, interest rates are widely fluctuating and hence, to reduce RoE for five years based on the short-term lower interest rate will be detrimental to the sector.

The Act provides that the Commission while specifying the terms and conditions for determination of tariff, shall be guided by the principles and methodologies specified by the CERC for determination of tariff for Generating Companies and Transmission Licensees. CERC has specified RoE for Generating Companies/Transmission Licensees as 15.5%. CERC regulates PSU's, which are perceived as relatively lower risk, being backed by the GoI's Sovereign Guarantee. Shareholders of privately held Companies will naturally perceive higher risks leading to expectation of high RoE. Other SERCs like TSERC, AERC, UERC, KERC, WBERC, etc. have adopted similar RoE norms. Further, in the States that have adopted 14% RoE, the rate of RoE has been the same since the inception of Regulatory Commission and no

SERC has reduced ROE mid-way. APTEL, in its Judgment in Appeal No. 103, 104 and 105 of 2012, has stressed on the need for regulatory certainty in the sector, because frequently changing policies create confusion and uncertainty in the minds of both developers and financiers and this does not augur well for the sector.

The stakeholders submitted that the thermal generators are fighting for survival due to competition from Renewable Energy generation, difficulties in fuel arrangements and recovery issues, etc. The market forces are likely to exert downward pressure on the Internal Rate of Return (IRR) of the new projects. According to CEA, the capacity addition is no more a major challenge and adequate installed capacity exists to meet the demand for the next 8-10 years. Interest rates have also come down in recent times. Hence, there is market dynamics which favours lower RoE; however, such reduction will have negative impact on the equity already invested in the existing and under construction projects, creating further financial stress on such projects. Different rate of RoE for new projects (where financial closure is yet to be achieved) may be thought of, with different rates for generation and transmission projects.

Dhariwal Infrastructure Limited submitted that the Commission may consider RoE at 16.5% instead of proposed rate of 14% for Generation Business, which would ensure adequate capital to plough back to the business for meeting shareholders' expectations as well as future investments in the sector.

MSETCL submitted that the rate of RoE should be higher than that specified in the MYT Regulations, 2015. Fresh capitalization would be lower in value in future years than the capitalization in past years, whereas the O&M expenditure would continue to increase in large proportion in future years, in order to maintain the created assets. Reduction of rate of RoE would adversely affect the cash flow when the capitalization is less and disallowance of expenditure by the Commission is more, e.g., non-consideration of Income Tax, disallowance of non-regulated expenses, etc. The cost of equity, from the time, it is deployed in the business to the time recovery in terms of RoE is allowed by Commission, is borne by the Licensee. Therefore, the Licensee should be compensated by more RoE.

MSETCL added that claim for lower rate of ROE is based on cash flow requirements. However, any contingencies at future date cannot be ruled out. In such a scenario, the projection is to be reviewed at a realistic level and the projections are revised while filing the MTR Petition. Hence, making the provisional claim of lower ROE as unconditional, is not justified.

MSEDCL submitted that considering the reduced interest rates and the historic trend, RoE of Generating Companies/Transmission Licensees needs to be reduced and needs to be capped at 14%. The credit rating of Generating Companies/Transmission Licensees are good, and lenders also perceive this business as less risky, compared to the Distribution Business, which involves crores of consumers, and sale to different segments of society having different paying capacity. Hence, recovery management is difficult task. Distribution Business risks are higher in terms

of collection and losses and thus, the RoE specified in the MYT Regulations, 2015 may be continued for next MYT Control Period for the Distribution Wires and Retail Supply businesses.

4.19.3 Analysis and Commission's Decision

As stated in the Electricity Act, 2003 the Commission while specifying the terms and conditions for determination of tariff shall be guided by the principles and methodologies specified by the CERC for determination of tariff for Generating Companies and Transmission Licensees. The CERC Regulations are not binding on the Commission.

Further, the Commission clarifies that the rate of RoE has not been reduced, rather it has been rationalised, and allowed in two parts, i.e., one fixed RoE equal to the Base RoE, and the other variable RoE linked to the Additional RoE. The intention of incorporating a variable component of RoE, is to link part of the RoE to improved operational performance, in order to incentivise better performance. Thus, Utilities who achieve better performance will be able to earn the existing rate of RoE, as specified in the MYT Regulations, 2015, while Utilities whose performance is below the specified levels, will fully earn the fixed Base RoE, or full Base RoE and part of the Additional RoE. The Commission has explicitly specified this philosophy in the final MYT Regulations, 2019, by introducing a new Regulation 29.1. Thus, the concerns of the Utilities regarding the proposed 'reduction' in the rate of RoE are addressed accordingly.

It is also clarified that the Base RoE shall be allowed at the time of determination of tariff for the ensuing years. The Additional RoE shall be allowed only at the time of true-up, as the performance can be assessed only at the time of true-up, based on the submissions made by the Utilities and due prudence check.

As regards the instances of Utilities claiming lower than normative RoE, as specified in the draft MYT Regulations, 2019, the Utilities may claim lower than normative ROE in their MYT/MTR Petitions for the ensuing years. However, if lower ROE is claimed by the Utility in the MYT/MTR Petitions, then in such case the ROE shall not be revised to the ceiling rate again for the Utility at the time of provisional true-up or final true-up for the respective year.

The Commission has accordingly introduced a new Regulation 29.1, as under:

"*29.1 Return on Equity for the Generating Company, Transmission Licensee, Distribution Wires Business and MSLDC shall be allowed on the equity capital determined in accordance with Regulation 27 for the assets put to use, at the rate of up to 15.5 per cent per annum in Indian Rupee terms, and for the Retail Supply Business, Return on Equity shall be allowed on the amount of equity capital determined in accordance with Regulation 27 at the rate of up to 17.5 per cent per annum in Indian Rupee terms:*

Provided that Return on Equity shall be allowed in two parts, viz., Base Return on Equity, and Additional Return on Equity linked to actual performance:

Provided further that Additional Return on Equity shall be allowed at time of truing up for respective year based on actual performance, after prudence check of the Commission."

4.20 Regulation 29.2: Return on Equity for additional capitalization after cut-off date

4.20.1 Proposed in draft MYT Regulations, 2019

"29.2 The Base Return on Equity shall be computed in the following manner:

…

Provided that Base Return on Equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system."

4.20.2 Comments received

AEML, MEGPTCL, and MSETCL submitted that the first proviso of Regulation 29.2 should be modified such that equity invested in additional capitalization shall attract the same rate of RoE as the original equity capital, and also, RoE for any additional capitalization after cut-off date within or beyond the original scope should be allowed. They submitted that all additional capitalization is approved by the Commission after rigorous prudence checks about its need, justification and financial prudence in terms of cost incurred and benefits to the beneficiary. Once prudence check is completed, there is no reason why such additional capitalization should be treated differently by allowing only weighted average interest rate on debt, as opposed to RoE. This would discourage investors, as investors would not want to infuse equity to get return at debt interest rates. This would lead to nil equity infusion for additional capitalization.

The stakeholders submitted that there is no mechanism available to protect the equity investment of the investors, which makes the risk associated with the equity capital very high. Therefore, the returns available on any equity investment should also be commensurate with such risk perception and hence, the rate for ROE for any additional capitalization after the cut-off date within or beyond the original scope should be retained at 15.5%.

The stakeholders added that capital expenditure on account of revised emission standards, fly ash disposal, etc., are mandatory and any proposal to reduce rate of RoE for such investment is regressive. Additional capitalization required to meet revised emission standards and equipment such as FGD, etc., at reduced rate of RoE will have adverse impact on financial

position of the developer and also have cascading impact on the cost of debt on account of increased risk perception of lenders.

SBI Caps submitted that the return on equity investment cannot be compared to interest rate of debt as the characteristics of these two instruments are completely different.

Dhariwal Infrastructure Limited submitted that RoE on additional capitalisation after cut-off date within or beyond the original scope of work should be allowed at 16.50% on account of the fact that there is an implicit discount in the tariff for the beneficiaries on account of delayed capitalisation since the additional assets can realise returns for a shorter period up to the useful life of the asset.

4.20.3 Analysis and Commission's Decision

The Commission is of the view that the capex on account of revised emission standards would be mandatory for the Generating Station and hence, additional capitalization even after cut-off date on account of such revised emission standards shall be excluded along with additional capitalisation due to Change in Law, from the additional capitalisation to be allowed RoE at the weighted average rate of interest on actual loan portfolio.

However, additional capitalization for any other reasons beyond cut-off date beyond the original scope shall be allowed RoE at the weighted average rate of interest of actual loan portfolio. The cut-off date has been extended for three years from the date of commercial operation and hence Generators/Licensee have been provided enough time to achieve additional capitalization upto the cut-off date. The Utilities seeking to undertake additional capitalisation for reasons such as efficiency improvement, after the cut-off date and obviously beyond the original scope, are free to do so for earning RoE at the lower rate, as the efficiency improvement will ensure that the Utilities either earn incentive from efficiency gains or at least do not have to bear efficiency losses. If this is not done, the Utilities will be able to earn RoE on the equity invested in such additional capitalisation incurred for ensuring efficiency improvement, while at the same time being eligible to earn efficiency gains on account of such additional investment. This is not fair to the beneficiaries of such Utilities.

The Commission has accordingly modified the proviso to Regulation 29.2, as under:

"29.3 The Base Return on Equity shall be computed in the following manner:

...

Provided that Base Return on Equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law <u>or revised emission standards</u>, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system."

4.21 Regulation 29.3: RGMO/FGMO Installations

4.21.1 Proposed in draft MYT Regulations, 2019

"29.3 In case of a new project, the rate of Return on Equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the SLDC."

4.21.2 Comments received

MSPGCL submitted that exemption may be given to older Units that are finding it difficult to fulfil the requirements of RGMO and FGMO.

MEGPTCL and MSETCL submitted that reduction in rate of RoE by 1% for non-commissioning of data telemetry and communication set up, should not be made applicable, and the maximum penalty of 0.1% during deficiency period only may be considered, as Generating Stations/Licensees cannot be held responsible for data telemetry and communication system to be setup.

4.21.3 Analysis and Commission's Decision

The Commission is of the view that it is necessary for all Generating Stations/Licensee to follow the requirements of RGMO, FGMO, data telemetry and communication system for efficient operation of the grid. The Commission has therefore, retained the penalty of 1% reduction in RoE if assets are set-up without such mandatory requirements.

4.22 Regulation 29.5: Additional Returns for Generating Company/Licensee

4.22.1 Proposed in draft MYT Regulations, 2019

"29.5 In case of a thermal generating station, with effect from 1.4.2020, at the time of true-up:

a) rate of Return on Equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute, for the year in which such ramp rate is not achieved;

b) an additional rate of Return on Equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject

to ceiling of additional rate of Return on Equity of 1.00%, for the year in which such ramp rate is achieved;

c) an additional rate of Return on Equity shall be allowed as per the following schedule:

i. 0.25% for Unit/Station that achieves Mean Time Between Failure (MTBF) of at least 90 days;

ii. 0.50% for Unit/Station that achieves Mean Time Between Failure (MTBF) of at least 180 days;

iii. 1.00% for Unit/Station that achieves Mean Time Between Failure (MTBF) of at least 240 days:

Provided that the Mean Time Between Failure (MTBF) shall be computed as provided in Annexure-III to these Regulations.

i. In case of Distribution Wires Business, an additional rate of Return on Equity shall be allowed at the time of true-up as per the following schedule:

a) 0.25% for annual improvement in the Asset Turnover Ratio by at least 2%;

b) 0.50% for annual improvement in the Asset Turnover Ratio by at least 5%;

c) 0.75% for annual improvement in the Asset Turnover Ratio by at least 8%;

d) 1.00% for annual improvement in the Asset Turnover Ratio by at least 10%,

Where the Asset Turnover Ratio shall be computed as the ratio of Energy Wheeled by the distribution system in Million Units to the Gross Fixed Assets of the combined Distribution Wires Business and Retail Supply Business in Rupees Crore:

Provided that the Asset Turnover Ratio shall be determined by the Commission in the respective Multi-Year Tariff Order."

4.22.2 Comments received

MEGPTCL submitted that Transmission Licensees should also be given enough opportunity to earn additional returns over and above the base return as allowed for Generation Companies and Distribution Licensees.

AEML requested the Commission to clarify regarding Regulation 29.5 (c) so that the Mean Time Between Failures (MTBF) targets apply to generating Units of a station and not for the station as a whole, so that the same treatment can be accorded to all Units, regardless of whether tariff is determined Unit-wise or for Station as a whole. AEML also suggested that reasonable

targets for MTBF should be specified for earning additional RoE, considering the actual performance of the Units/Stations.

AEML submitted that targets need to be more realistic and achievable and hence, 0.25% additional RoE should be provided for every 0.5% increase in ramp rate and hence, maximum 1% additional RoE can be achieved with a ramp rate of 2%. The additional RoE should be in discrete steps of 0.25%. Further, the report submitted by POSOCO suggests that maximum ramping up rate achieved in the country was 1.89 %/min, while the maximum ramping up rate achieved in Maharashtra was 1.62% / min.

AEML submitted that RoE for Distribution Wire Business may be linked to peak demand, being more appropriate parameter as compared to energy wheeled for computation of additional RoE. Further, the improvement in Asset Turnover Ratios provided for earning additional RoE are too stringent and theoretical to actually realize any additional RoE. Hence, the same may be lowered based on historical data.

TPC proposed that the GFA of the Retail Supply business should not be considered, while computing asset turnover ratio, and additional RoE should be allowed for extra utilization of distribution wire assets.

Prayas Energy Group suggested that the definition of asset turnover ratio be explicitly defined on the basis of energy sales to DISCOMs and final energy consumption by Open Access and captive consumers to get a better sense of the utilization of the DISCOM's network rather than incentivize its inefficiency in terms of distribution losses by considering energy wheeled, which includes distribution losses. Incentives similar to those specified in Regulation 29.5 (i) can be specified for Transmission Licensees on the basis of energy wheeled (after explicitly accounting for losses). The base RoE can also be lowered to offer additional RoE based on performance.

MSPGCL requested that Chandrapur TPS Units # 3 to 7 should be exempted from the condition of achieving ramp rate of 1% per minute. MSPGCL submitted that the ramp rate for Units is primarily based on turbine design and governing system available, and is thus, an inherent parameter for a Unit, once commissioned. MSPGCL added that events like unit outage due to grid failure, zero schedule or Reserve Shut Down (RSD) are uncontrollable events for Generating Companies and should be excluded from MTBF calculations.

NUPLLP submitted that the additional RoE for Distribution Licensees may be increased further to 1.25% for annual improvement in the Asset Turnover Ratio by at least 15% and 1.50% for the annual improvement in the Asset Turnover Ratio by at least 20%.

4.22.3 Analysis and Commission's Decision

As clarified earlier, the Commission has rationalised the rate of RoE, and allowed in two parts, i.e., one fixed RoE equal to the Base RoE, and the other variable RoE linked to the Additional RoE. The intention of incorporating a variable component of RoE, is to link part of the RoE to improved operational performance, in order to incentivise better performance. It is also clarified that the Additional RoE shall be allowed only at the time of true-up, as the performance can be assessed only at the time of true-up, based on the submissions made by the Utilities and due prudence check.

Thus, the existing RoE rates of 15.5% for the Generating Company, Transmission Licensee, Distribution Wires Business and MSLDC, and 17.5% for the Retail Supply Business, shall act as a ceiling, and the Utilities should have the opportunity to earn Additional RoE to the extent of the gap between the existing RoE rates and the revised Base RoE specified in the MYT Regulations, 2019.

The details of the modifications incorporated by the Commission in the MYT Regulations, 2019 to achieve the above-stated objectives are given below:

Additional Returns for Generation Business

The Commission has considered the submissions of the Generating Companies that the performance targets proposed in the draft MYT Regulations, 2019 for earning additional RoE are on the tighter side, and may not provide enough scope for even efficiently performing Generating Companies to earn additional RoE to make up the difference in Base RoE rates, as substantiated by the POSOCO study. Hence, the Commission has relaxed the performance targets for earning additional RoE as discussed below.

The Generating Companies should have the opportunity to earn Additional RoE to make up the difference in the Base RoE, hence, the Commission has decided to delete the proposed sub-clause (a) of Regulation 29.5, which specified that the RoE shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute. However, the achievement of ramp rate above 1% has been further incentivized, by specifying additional RoE of 0.25% for every incremental ramp rate of 0.10% per minute over and above the ramp rate of 1% per minute, subject to the ceiling of 0.50% for the year in which such ramp rate is achieved. Further, the additional RoE shall be allowed on pro-rata basis for incremental ramp rate of more than 0.10% per minute.

The Commission has modified the Regulations to specify that MTBF targets are for each Unit of the Station in order to ensure consistent treatment across Units, irrespective of whether the tariff is determined Unit-wise or Station-wise. The Commission has also added a proviso to specify that the equity base for the respective Unit shall be considered in proportion of the

installed capacity of the generating station, in case the tariff is determined for generating station as a whole. Further, the MTBF targets and corresponding additional RoE have been rationalized as under:

i. 0.50% for Unit that achieves MTBF of at least 45 days;

ii. 0.75% for Unit that achieves MTBF of at least 90 days;

iii. 1.00% for Unit that achieves MTBF of at least 120 days:

The Commission has also excluded any planned outage, grid failure, zero schedule and reserve shutdown from the computations of MTBF.

Thus, any Generating Unit that achieves MTBF of at least 120 days shall be entitled to earn additional RoE of 1%, and if the same Generating Unit also achieves ramp rate of upto 1.4% per minute (0.4 % above minimum ramp rate of 1%), then it shall be entitled to the additional RoE of maximum 0.5%, thereby making up the difference of 1.5% between 15.5% RoE specified in the MYT Regulations, 2015 and 14% Base RoE specified in the MYT Regulations, 2019.

<u>Additional Returns for Transmission Business</u>

In the draft MYT Regulations, the Commission had not proposed any additional RoE for the Transmission Licensees, though the Base RoE has been rationalized for Transmission Licensees also. The Transmission Licensees have requested for scope for earning additional RoE. The Commission is of the view that the Transmission Licensees have less control over asset utilization or energy flow on their system, as the same is dependent on the energy injected by the generators and energy scheduled and drawn by the Distribution Licensees. Hence, the most appropriate performance parameter for Transmission Licensees is the system Availability. However, there is already an Availability Incentive specified in the draft MYT Regulations, wherein the Transmission Licensee is entitled to additional Annual Transmission Charges in proportion to the Availability in excess of the normative Availability targets for incentive consideration.

The Commission has hence, decided to rationalize the additional RoE allowable for Transmission Licensees in the following manner:

(a) The Availability Incentive in the form of additional Annual Transmission Charges linked to Transmission Availability has been deleted.

(b) The target Availability for earning additional RoE has been specified as 99% and 96% for AC systems and HVDC systems, respectively, in Regulation 60.1(b) of the MYT Regulations, 2019.

(c) The additional rate of Return on Equity shall be allowed on pro-rata basis for incremental Availability higher than Target Availability.

(d) For every 0.50% over-achievement in Transmission Availability up to Transmission Availability of 99.50% for AC System and 96.50% for HVDC bi-pole links and HVDC back-to-back stations, rate of return shall be increased by 0.75%;

(e) For every 0.25% over-achievement in Transmission Availability above 99.50% for AC System and 96.50% for HVDC bi-pole links and HVDC back-to-back stations, rate of return shall be increased by 0.75%, subject to ceiling of additional rate of Return on Equity of 1.50%.

Thus, any Transmission Licensee that achieves Transmission Availability of 99.75% for AC Systems or Transmission Availability of 96.75% for HVDC systems shall be entitled to earn additional RoE of 1.50%, thereby making up the difference of 1.5% between 15.5% RoE specified in the MYT Regulations, 2015 and 14% Base RoE specified in the MYT Regulations, 2019.

Additional Returns for Distribution Business

In the draft MYT Regulations, the Commission had additional RoE for the Distribution Licensees linked to the Asset Turnover Ratio. In view of the comments and suggestions received from the stakeholders on the proposed approach for allowing additional RoE, the Commission has reconsidered the issue, and is of the view that after Distribution Losses, the Wires Availability is the next most important performance parameter for the Wires Business.

Hence, the Commission has linked the additional RoE for the Wires Business to the Wires Availability, as computed by the following formula:

Wires Availability = (1- (SAIDI / 8760)) x 100, where SAIDI shall be calculated in accordance with the definition specified in MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014, as amended from time to time.

In order to reflect the variation in area of supply, urban and rural mix, consumer mix, and existence of large-scale overhead wires of MSEDCL vis-à-vis that of other city-based Distribution Licensees, the target Wires Availability has been specified as 95% for MSEDCL, and 98% for other Distribution Licensees. The framework of additional RoE for Distribution Licensees has been specified as under:

a) The target Wires Availability for recovery of base rate of return on equity shall be 95 percent for MSEDCL and 98% for other Distribution Licensees;

b) For every 0.50% over-achievement in Wires Availability, rate of return shall be increased by 0.50%, subject to ceiling of additional rate of Return on Equity of 1.50%.

Thus, if MSEDCL achieves Wires Availability of at least 96.50% and other Distribution Licensees achieve Wires Availability of at least 99.50%, they shall be entitled to earn additional RoE of 1.50%, thereby making up the difference of 1.5% between 15.5% RoE specified in the MYT Regulations, 2015 and 14% Base RoE specified in the MYT Regulations, 2019. Hence, the highest RoE achievable would be 15.5% for Wires Business.

For the Retail Supply Business, the Commission has linked the Additional RoE to the percentage of assessed bills and the overall collection efficiency, with ceiling additional RoE of 1% each, against achievement of targets of reduction in percentage of assessed bills, and improvement in overall collection efficiency, as under:

Additional RoE for Reduction in percentage of assessed bills

a) If the percentage of assessed bills is less than 1.5% of the total number of bills issued during the year, then rate of return shall be increased by 1%;

b) If the percentage of assessed bills is more than 1.5% of the total number of bills issued during the year, for every 0.5% reduction in the percentage of assessed billing, rate of return shall be increased by 0.25%, subject to ceiling of additional rate of Return on Equity of 1.00%.

Additional RoE for Improvement in overall collection efficiency

c) If overall collection efficiency for the year is above 99 %, then rate of return shall be increased by 1%;

d) If overall collection efficiency for the year is below 99 %, for every 0.5% improvement in the overall collection efficiency, rate of return shall be increased by 0.25%, subject to ceiling of additional rate of Return on Equity of 1.00%.

Thus, the Distribution Licensees can earn maximum additional RoE of 1% against reduction in percentage of assessed bills, and another maximum additional RoE of 1% against improvement in overall collection efficiency, thereby making up the difference of 2% between 17.5% RoE specified in the MYT Regulations, 2015 and 15.5% Base RoE specified in the MYT Regulations, 2019. Hence, the highest RoE achievable would be 17.50 % for Retail Supply Business.

The Commission has accordingly modified Regulation 29.6 and 29.8, and added Regulations 29.7 and 29.9, as under:

"29.6 In case of a thermal generating Unit, with effect from 1.4.2020, at the time of true-up:

a) an additional rate of Return on Equity of 0.25% shall be allowed for every incremental ramp rate of 0.10% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of Return on Equity of 0.50%, for the year in which such ramp rate is achieved:

Provided that the additional rate of Return on Equity shall be allowed on pro-rata basis for incremental ramp rate of more than 0.10% per minute.

b) an additional rate of Return on Equity shall be allowed as per the following schedule:

i. 0.50% for Unit that achieves Mean Time Between Failure (MTBF) of at least 45 days;

ii. 0.75% for Unit that achieves Mean Time Between Failure (MTBF) of at least 90 days;

iii. 1.00% for Unit that achieves Mean Time Between Failure (MTBF) of at least 120 days:

Provided that the Mean Time Between Failure (MTBF) shall be computed as provided in Annexure-III to these Regulations:

Provided further that the equity base for the respective Unit shall be considered in proportion to the installed capacity of the generation station, in case the tariff is determined for the generation station as a whole.

29.7 In case of Transmission, an additional rate of Return on Equity shall be allowed on Transmission Availability, at time of truing up as per the following schedule:

a) For every 0.50% over-achievement in Transmission Availability up to Transmission Availability of 99.50% for AC System and 96.50% for HVDC bi-pole links and HVDC back-to-back stations, rate of return shall be increased by 0.75%;

b) For every 0.25% over-achievement in Transmission Availability above 99.50% for AC System and 96.50% for HVDC bi-pole links and HVDC back-to-back stations, rate of return shall be increased by 0.75%, subject to ceiling of additional rate of Return on Equity of 1.50%;

Provided that the additional rate of Return on Equity shall be allowed on pro-rata basis for incremental Availability higher than Target Availability:

Provided further that Target Availability for additional rate of Return on Equity shall be as per Regulation 60.

29.8 In case of Distribution Wires Business, an additional rate of Return on Equity shall be allowed on Wires Availability at the time of true-up as per the following schedule:

a) The target Wires Availability for recovery of base rate of return on equity shall be 95 percent for MSEDCL and 98% for other Distribution Licensees;

b) For every 0.50% over-achievement in Wires Availability, rate of return shall be increased by 0.50%, subject to ceiling of additional rate of Return on Equity of 1.50%;

c) Wires Availability shall be computed in accordance with the following formula:

Wires Availability = (1- (SAIDI / 8760)) x 100:

Provided that the System Average Interruption Duration Index (SAIDI) shall be calculated in accordance with the definition specified in Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014, as amended from time to time.

29.9 In case of Retail Supply Business, an additional rate of Return on Equity shall be allowed at the time of true-up, as per the following schedule:

a) If the percentage of assessed bills is less than 1.5% of the total number of bills issued during the year, then rate of return shall be increased by 1%;

b) If the percentage of assessed bills is more than 1.5% of the total number of bills issued during the year, for every 0.5% reduction in the percentage of assessed billing, rate of return shall be increased by 0.25%, subject to ceiling of additional rate of Return on Equity of 1.00%.

c) If overall collection efficiency for the year is above 99 %, then rate of return shall be increased by 1%;

d) If overall collection efficiency for the year is below 99 %, for every 0.5% improvement in the overall collection efficiency, rate of return shall be increased by 0.25%, subject to ceiling of additional rate of Return on Equity of 1.00%."

4.23 Regulation 30.9: Interest During Construction (IDC)

4.23.1 Proposed in draft MYT Regulations, 2019

"30.9 The excess interest during construction on account of time and/or cost overrun as compared to the approved completion schedule and capital cost or on account of excess drawal of the debt funds disproportionate to the actual requirement based on Scheme completion status, shall be allowed or disallowed partly or fully on a case to case basis, after prudence check by the Commission based on the justification to be submitted by the Generating Company

or Transmission Licensee or Distribution Licensee along with documentary evidence, as applicable:

Provided that where the excess interest during construction is on account of delay attributable to an agency or contractor or supplier engaged by the Generating Entity or the Transmission Licensee, any liquidated damages recovered from such agency or contractor or supplier shall be taken into account for computation of capital cost:

Provided further that the extent of liquidated damages to be considered shall depend on the amount of excess interest during construction that has been allowed by the Commission:

Provided also that the Commission may also take into consideration the impact of time overrun on the supply of electricity to the concerned Beneficiary."

4.23.2 Comments received

MSETCL suggested to review the Regulation to accommodate unprecedented / unexpected events that occur at a future date during the construction period like ROW, land/crop compensation and other factors, which are beyond the control of MSETCL.

4.23.3 Analysis and Commission's Decision

The Regulation clearly specifies that the excess interest during construction shall be allowed or disallowed partly or fully on a case to case basis, after prudence check by the Commission, based on the justification to be submitted by the Generating Company or Transmission Licensee or Distribution Licensee along with documentary evidence. Therefore, there is no need to modify this Regulation.

4.24 Regulation 30.10: Refinancing of Loan

4.24.1 Proposed in draft MYT Regulations, 2019

"30.10 The Generating Company or the Licensee or the MSLDC, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and them in the ratio of 2:1, subject to prudence check by the Commission:

Provided that refinancing shall not be done if it results in net increase on interest:

Provided further that if refinancing is done and it results in net increase on interest, then the rate of interest shall be considered equal to the Base Rate as on the date on which the Petition for determination of Tariff is filed:

Provided also that the re-financing shall not be subject to any conditions that are not in line with standard loan documents:

Provided also that the Generating Company or the Licensee or the MSLDC, as the case may be, shall submit documentary evidence of the costs associated with such re-financing:

Provided also that the net savings in interest shall be computed after factoring all the terms and conditions, and based on the weighted average rate of interest of actual portfolio of loans taken from Banks and Financial Institutions recognised by the Reserve Bank of India, before and after re-financing of loans:

Provided also that the net savings in interest shall be calculated as an annuity for the term of the loan, and the annual net savings shall be shared between the entity and Beneficiaries in the specified ratio."

4.24.2 Comments received

MEGPTCL proposed that the first to fifth provisos of Regulation 30.10 should be amended such that the actual rate of interest after refinancing should be allowed, as it may be the case that as per existing loan contract, Transmission Licensee may have to suffer financial burden, whereas the Licensee can enter into a new financial agreement resulting in slightly higher interest rates, but will still save relative to the higher burden of interest of existing financial arrangement.

AEML submitted that the second, third and fifth provisos of Regulation 30.10 should be modified such that the interest rate should revert to the interest rate existing prior to the refinancing effort, in case the refinancing results in net increase on interest. AEML also added that ambiguous terms such as "standard loan document" may be removed from the Regulations, as there is no such standard loan agreement. AEML added that the reference to recognition by RBI may be removed from the Regulations, as the same is not applicable for foreign lending institutions.

TPC and Dhariwal Infrastructure Limited proposed that the net savings on account of refinancing should be shared in equal ratio between the beneficiaries.

4.24.3 Analysis and Commission's Decision

The Commission is of the view that it is the responsibility of the Utility to prove the benefit of refinancing. Unless there is a benefit in refinancing in terms of net savings on interest,

refinancing shall not be allowed. The Commission has therefore retained the clauses specifying that the rate of interest shall be considered equal to the Base Rate, in case refinancing results in net increase on interest.

The Commission has taken into consideration the suggestions of the stakeholders and replaced the term ‘standard load document’ with ‘adverse terms and conditions and additional cost’.

The Commission has also included the phrase ‘for Indian Institutions’ in the fifth proviso referring to recognition by the Reserve Bank of India.

The Commission has accordingly modified the relevant clauses of Regulation 30.10, as under:

30.10 The Generating Company or the Licensee or the MSLDC, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest:

...

Provided also that the re-financing shall not be subject to any adverse terms and conditions and additional cost:

...

Provided also that ... loans taken from Banks and Financial Institutions recognised by the Reserve Bank of India for Indian institutions, before and after re-financing of loans:...

4.25 Regulation 30.11: Interest on Security Deposit

4.25.1 Proposed in draft MYT Regulations, 2019

“30.11 Interest shall be allowed only on the amount held in cash as security deposit from Transmission System Users, Distribution System Users and Retail consumers at the Bank Rate as on 1st April of the Year for which the interest is payable:

Provided that at the time of Truing-up, the interest on the amount of security deposit for the year shall be considered on the basis of the actual interest paid by the Licensee during the year, subject to prudence check by the Commission.”

4.25.2 Comments received

Prayas Energy Group requested to amend the Regulation 30.11 by allowing Base Rates rather than the Bank Rates for interest on security deposits. Prayas submitted that charging Bank Rate instead of Base Rate only defers recovery of costs, as the actual interest shall exceed the amount

allowed by the Commission, which shall be allowed at the time of true-up, thereby increasing the carrying cost burden (till the time of true-up) rather than reducing the ARR.

AEML submitted to amend the Regulation 30.11 so as to keep the interest rate at the same level as that of MYT Regulations, 2015, i.e., SBI MCLR (as on 1st April of the financial year) plus 150 Basis Points. AEML submitted that the Distribution Licensee finds it difficult to recover security deposit from consumers as it is over and above the charges for consumption of electricity, and reducing the interest rates will create disincentive for consumers to pay their security deposit and discourage them from paying the additional security deposit.

4.25.3 Analysis and Commission's Decision

The interest shall be payable at Bank Rate on the consumer security deposit, and thus, the actual interest cannot exceed the amount allowed by the Commission. Further, the intent of allowing recovery of actual interest paid at the time of true-up, is to ensure that the interest cost passed through is not a calculated amount, as the security deposit may vary over the year. Thus, there will be no carrying cost burden, as anticipated by the stakeholder.

Further, higher interest rates leads to unnecessary cost in the ARR. Consumers will not pay higher security deposit merely because the interest rates are higher. Moreover, it is the duty of the Licensee to ensure that security deposit is paid by all consumers in line with Supply Code Regulations.

Therefore, there is no need to modify this Regulation.

4.26 Regulation 32.1: Interest on Working Capital for Generation

4.26.1 Proposed in draft MYT Regulations, 2019

"32.1 Generation

(a) In case of coal based/lignite-fired Generating Stations, working capital shall cover:...

(i) Cost of coal or lignite and limestone towards stock, if applicable, for ten days for pit-head Generating Stations and twenty days for non-pit-head Generating Stations, for generation corresponding to target availability, or the maximum coal/lignite stock storage capacity, whichever is lower;

…

minus

(vii) Payables for fuel (including oil and secondary fuel oil) to the extent of thirty days of the cost of fuel computed at target availability, depending on the modalities of payment:

Provided that in case the Fuel Supply Agreement provides for payment of cost of fuel in advance, the payables for fuel shall not be deducted for the purpose of computing the working capital requirement to the extent of actual payment of such advance, as substantiated by documentary evidence:

Provided further that for the purpose of Truing-up, the working capital shall be computed based on the scheduled generation or target availability of the generating Station, whichever is lower:

Provided also that for the purpose of Truing up, the working capital shall be computed based on the actual average stock of coal or lignite and limestone or normative stock of coal or lignite and limestone of the generating Station, whichever is lower:

…. Provided that for the purpose of Truing-up for any year, interest on working capital shall be allowed at a rate equal to the weighted average Base Rate prevailing during the concerned Year plus 150 basis points."

4.26.2 Comments received

VIPL submitted that Regulation 32.1 should be amended as follows:

a. Cost of coal towards coal stock should be considered as 60 days for non-pit head generating stations;
b. Reduction of fuel payable for 30 days should be deleted from the Regulations while determining the working capital requirement of generating companies;
c. Continue the existing approach and not allow interest on working capital on actual coal stock, which would be contrary to the directions of Government of India;
d. Modifying the definition of the Bank Rate in line with the CERC Tariff Regulations, 2019 and define the Bank Rate as the Base Rate of interest plus 350 basis points.

VIPL submitted that if adequate fuel stock is not maintained, the generator shall lose out on fixed charges and peak off-peak recovery. Further, advance payment needs to be made to CIL and Railways. VIPL added that Base Rate plus 150 basis points is grossly insufficient as no lenders lend money for short-term at Base Rate plus 150 basis points. CERC after taking such factors into consideration has allowed Bank Rate as MCLR plus 350 basis points in the CERC Tariff Regulations, 2019.

AEML, TPC, SBI Caps and Dhariwal Infrastructure Limited requested to retain the existing proviso related to coal cost of thirty days of non-pit-head coal in the working capital computation. TPC submitted that the voyage time for coal shipment is around 13-14 days, the

loading of coal at Loading Port takes 5-7 days, and unloading of coal at Mumbai takes 6-8 days. This time cycle does not include the time required for movement of coal by coal supplier to the Loading Port as well as the time required for arranging the ship for transportation from Loading Port to Mumbai. Hence, the IoWC may be computed based on 30 days of coal stock instead of proposed 20 days stock.

AEML submitted that the changes in coal stock made by CERC are not applicable for plants like ADTPS, as coal stocking period for domestic coal is above 30 days and, for imported coal, it is about 6 months. The average coal stock in days have been 73 days during FY 2016-17, 24 days during FY 2017-18, 30 days during FY 2018-19- and 69 days during FY 2019-20. The coal stock was abnormally during 2017-18 low due to serious supply-side issues from SECL. Most of the non-pithead plants of NTPC are operating at less than normative coal stock, but that is because of lower coal supply by Coal India and its subsidiaries and transportation bottlenecks. It is not business as usual, but an aberration due to external reasons. The proposed proviso attempts to reset the average coal stock to actual, in case the same has been lower than normative level of 20 days. This blurs the lines between normative and actual performance and further squeezes the margins for efficiency gains or increases the efficiency losses.

AEML submitted that coal stock days should be considered at the normative level, even at the time of true-up, and only normative interest on working capital based on target availability, should be considered for tariff purposes as well as for true-up.

MSPGCL submitted that the coal stock should be allowed on actual basis subject to prudence check, when Generating Companies have to off-take a minimum quantum of coal failing which a penalty is levied as per FSA. MSPGCL also submitted to delete the sub-clause 32.1 (vi) regarding deduction of payables for computation of normative working capital in line with CERC Tariff Regulations, 2019.

MSEDCL submitted that working capital requirement for Generation Business should be computed based on actual data for last 2 years, and secondary fuel oil should be reduced to 1 month, and actual coal stock may be considered.

4.26.3 Analysis and Commission's Decision

The Commission has considered the submission of the stakeholders and retained the cost of coal stock of 15 days (for pit-head) and 30 days (for non-pit-head) plants, as specified in the MYT Regulations, 2015.

The Commission has already addressed the concerns regarding advance payment for fuel in the draft MYT Regulations, 2019, under proviso to Regulation 32.1, which specifies that in case the FSA provides for fuel payment in advance and documentary evidence for such advance payment is submitted, then the payables for fuel shall not be deducted while computing the

normative working capital requirement. The Commission has considered the lower of actual or normative coal stock at the time of true-up. This methodology has been followed by the Commission since the MYT Regulations, 2015 and hence, there is no need to change the treatment of coal stock at the time of true-up.

The rate of IoWC at Base Rate + 150 basis points has been specified in the MYT Regulations, 2015 itself and is appropriate. There is no basis for allowing higher interest rate.

The Commission has accordingly modified the relevant clause of Regulation 32.1, as under:

"*32.1 Generation*

(a) In case of coal based/lignite-fired Generating Stations, working capital shall cover:

(i) Cost of coal or lignite and limestone towards stock, if applicable, for <u>*fifteen*</u> *days for pit-head Generating Stations and* <u>*thirty*</u> *days for non-pit-head Generating Stations, for generation corresponding to target availability, or the maximum coal/lignite stock storage capacity, whichever is lower;…*"

4.27 Regulation 32.2: Interest on Working Capital for Transmission

4.27.1 Proposed in draft MYT Regulations, 2019

32.2 Transmission

(a) The working capital requirement of the Transmission Licensee shall cover:...

... Provided that for the purpose of Truing-up for any year, interest on working capital shall be allowed at a rate equal to the weighted average Base Rate prevailing during the concerned Year plus 150 basis points.

4.27.2 Comments received

MSETCL proposed to replace the phrase of "revenue from sale of electricity" in the proviso of Regulation 32.2 with "Revenue from Transmission charges".

MEGPTCL requested to amend proviso of sub-clause (b) of Regulation 32.2, by changing the rate of IoWC to SBI Base Rate plus 350 basis points in line with CERC Regulations 2019, as lending rates for particular Company depends on the credit rating and it is higher for private sector.

4.27.3 Analysis and Commission's Decision

The Commission has revised the clause from draft Regulation by replacing the phrase "revenue from sale of electricity" with "Revenue from Transmission charges". Further, the rate of interest on Working Capital at Base Rate + 150 basis points has been specified in the MYT Regulations, 2015 itself and is appropriate. There is no basis for allowing higher interest rate.

The Commission has accordingly modified the first proviso to Regulation 32.2, as under:

"*Provided further that for the purpose of Truing-up for any year, the working capital requirement shall be re-computed on the basis of the values of revised normative Operation & Maintenance expenses and actual Revenue from Transmission Charges excluding incentive, if any, and other components of working capital approved by the Commission in the Truing-up before sharing of gains and losses*;".

4.28 Regulation 32.4: Interest on Working Capital for Retail Supply

4.28.1 Proposed in draft MYT Regulations, 2019

"32.4 Retail Supply of Electricity

(a) The working capital requirement of the Retail Supply Business shall cover:...

...

(iii) One and half months equivalent of the expected revenue from sale of electricity at the Tariff approved by the Commission for ensuing year/s, and including revenue from cross-subsidy surcharge and additional surcharge, if any;...

.... Provided that for the purpose of Truing-up for any year, interest on working capital shall be allowed at a rate equal to the weighted average Base Rate prevailing during the concerned Year plus 150 basis points."

4.28.2 Comments received

MSEDCL requested to amend Regulation 32.4 (a)(iii) whereby receivables should be computed as sum of revenue from its consumer categories based on its billing cycle. MSEDCL submitted that the provision of 1.5 months of expected revenue ignores the fact that all consumer categories are not billed on monthly basis, for e.g., agriculture consumers are billed every three months which is not considered in the MYT Regulations. Thus, for computation of Working Capital, receivables should be computed as sum of revenue from its consumer categories based on its billing cycle, and the generalized formula for computing receivables for each category

should be: 1.50 + (n-1), where n = billing cycle in months, i.e., 1 month for categories except Agriculture and 3 months for Agriculture category.

BEST suggested that the time period for considering receivables for normative working capital requirement should be retained as one and a half months in Clause 32.3 a(iii) and Clause 32.4 a(iii) as in MERC MYT Regulations, 2011. Further in Clause 32.3 a(i) and Clause 32.4 a(i), one-month actual average O&M expenses should be considered for estimating working capital and thereafter interest on working capital.

4.28.3 Analysis and Commission's Decision

The Commission is of the view that receivables for computing working capital requirement are not computed category-wise and are considered equal to the total ARR at the time of tariff determination and equal to the total actual revenue of the year, at the time of true-up. Further, for all consumer categories with monthly billing cycle, the average period of receivables would be around 40 days (15 days for average consumption during month plus 25 days for billing and bill collection). For categories where the billing cycle is longer than 1 month, the receivables amount would be higher. The impact is not significant, even for MSEDCL, as around Rs. 11,000 crore out of Rs. 74,000 crore would have to be considered for 3 months instead of 45 days, and the weighted average works out to 47.4 days, even after considering the receivables period for the majority of the categories as 45 days. Hence, there is no requirement to modify the Regulations on this account.

The period for receivables was reduced from 2 months specified in the MYT Regulations, 2011 to 1.5 months in the MYT Regulations, 2015, on the basis that the actual working capital requirement was significantly lower than the normative requirement for all/most Distribution Licensees. The situation is still the same, and hence, there is no need the change the clause with respect to receivables for Retail Supply Business.

4.29 Regulation 32.6: Treatment of Interest on Working Capital

4.29.1 Proposed in draft MYT Regulations, 2019

"32.6 For the purpose of Truing-up for each year, the variation between the normative interest on working capital computed at the time of Truing-up and the actual interest on working capital incurred by the Generating Company or Licensee or MSLDC, substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss, as the case may be, on account of controllable factors, and shared between it and the respective Beneficiary or consumer as the case may be, in accordance with Regulation 11:

Provided that the Delayed Payment Surcharge and Interest on Delayed Payment billed by the Generating Company or Licensee or MSLDC shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be:

Provided also that if actual interest on working capital exceeds the normative interest on working capital, then the interest expenses incurred for funding of Regulatory Assets approved by the Commission shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be."

4.29.2 Comments received

JPTL, TPC, and AEML requested to amend Regulation 32.6 and allow normative IoWC even if internal accruals have been used for financing of working capital, in line with CERC Regulations, as internal accruals also have an associated cost. They added that hence, gain in IoWC should not be considered as an efficiency gain in line with APTEL Judgments in Appeal No.17 of 2011, Appeal No.18 of 2011 and Appeal No.19 of 2011 dated 31st August 2012.

JPTL, TPC, AEML, NUPLLP, MSPGCL and MSETCL submitted that deduction of interest on delayed payment billed by Generator from actual IoWC shall result in negative IoWC if partially or fully financed by internal accruals. Therefore, if delay of payment by debtors is financed by internal accruals, the said provision should not be made applicable. They added that on one hand Regulation 34.4 provides that Income tax on DPS is to be borne by the Utility and cannot be passed through, treating it similar to "non-regulatory income", and on the other hand the same DPS is getting factored against the IoWC for regulatory business.

MSEDCL submitted delayed payment charges paid to generators or recovered from consumers should not be considered for computing sharing of gains/losses, as the same are not considered in ARR.

AEML and MEGPTCL submitted that comparison of normative IoWC at the time of truing up with actual IoWC is not correct. The Commission may provide guidelines as to how to find out the extent of internal fund deployment used for Working Capital and how to evaluate the cost of such internal funds. AEML added that the Licensee may not be able to provide evidence for deployment of internal sources, which does not mean that working capital is zero. There could also be a possibility where part funding is through loan and part funding is through internal funds, and assigning zero cost to such internal funds does not provide correct IoWC. Further, the funding of regulatory assets is done by availing working capital loan and Licensee has to pay interest on this loan, hence, instead of deducting interest expenses on funding of regulatory assets from actual interest paid, a higher rate of interest should be allowed on funding of regulatory asset.

4.29.3 Analysis and Commission's Decision

The Commission has not proposed any principal change in the method of issue of sharing of efficiency gains/losses between actual and normative IoWC, vis-à-vis the MYT Regulations, 2015. The DPC was also being deducted from the actual IoWC, for computation of the efficiency gains/losses, and only the method of doing so has been elaborated and clarified in the MYT Regulations, 2019. Further, as the Commission is separately allowing Carrying Cost on Regulatory Assets, the Commission has specified that if actual IoWC exceeds the normative IoWC, then the Carrying Cost on Regulatory Assets shall be deducted from the actual IoWC, before sharing of the efficiency gain or efficiency loss, in order to avoid double accounting of the Carrying Cost on the Regulatory Assets.

The MYT Regulations, 2015 as well as the MYT Regulations, 2019 thus, ensure that in case the Utility incurs higher actual IoWC than normative, the losses are shared with the beneficiaries, and if the Utility incurs lower actual IoWC than normative, the gains are shared with the beneficiaries, which is very fair. The Commission is of the view that working capital is a controllable parameter and like any other controllable parameters, the treatment shall be the same, i.e., sharing of gains/losses as applicable between the normative and actual parameters has to be done. The APTEL Judgments referred by the stakeholders is not applicable, as the same is with reference to the extant MYT Regulations, and all Judgments have to be seen based on the context and extant framework.

The DPS is charged to compensate for the delay in payment of bills. Thus, the DPS off-sets the increase in IoWC beyond normative, due to delay in payment of receivables. Earlier, in the MYT Regulations, 2011, the income from DPS was considered under Non-Tariff Income, the Income Tax on the same was allowed, and the actual income from DPS was not deducted from the actual IoWC for sharing of gains and losses. From the MYT Regulations, 2015 onwards, as the revenue from DPS is not considered under the Non-Tariff Income, the Income Tax on DPS is not allowed to be recovered from the beneficiaries, and the DPS is reduced from the actual IWC, so that the Utility does not gain twice, as the difference between actual and normative IWC is shared.

The Commission has modified the proviso to Regulation 32.6 to reflect the fact that certain Utilities are accounting for the DPS and Interest on Delayed Payment as income only after the amounts are received.

The Commission has accordingly modified the proviso to Regulation 32.6, as under:

"*Provided that the Delayed Payment Surcharge and Interest on Delayed Payment <u>as per books of accounts of</u> the Generating Company or Licensee or MSLDC shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be:…*"

4.30 Regulation 33: Carrying Cost or Holding Cost

4.30.1 Proposed in draft MYT Regulations, 2019

"The Commission shall allow Carrying Cost or Holding Cost, as the case may be, on the admissible amounts, with simple interest, at the weighted average Base Rate prevailing during the concerned Year, plus 150 basis points:

Provided that Carrying Cost or Holding Cost shall be allowed on the net entitlement after sharing of efficiency gains and losses as approved after true-up:

Provided further than in case of Transmission Licensees, the Transmission Incentive shall be deducted from the net entitlement, for the purpose of computing Carrying Cost or Holding Cost:

Provided also than in case of Distribution Licensees, the Incentive on account of Distribution Losses, as applicable, shall be deducted from the net entitlement, for the purpose of computing Carrying Cost or Holding Cost."

4.30.2 Comments received

VIPL and MEGPTCL requested to amend Regulation 33 and define the Bank Rate in line with the CERC Tariff Regulations, 2019 as the Base Rate of interest plus 350 basis points, and consider the same for computing the carrying cost and holding cost, as no lender lends money for short-term at Base Rate.

MSETCL submitted that the second proviso may be amended to include transmission incentive while calculating carrying cost or holding cost, as the transmission incentive is accrued only on the achievement of desired efficiency on the availability of the transmission system.

AEML, MEGPTCL and SBI Caps suggested that the Carrying Cost or Holding Cost should be permitted at monthly/yearly compounded interest, since banks are charging interest on compounding basis only.

APTCL and Rattan India Power Limited submitted that the carrying cost or holding cost should be allowed based on actual weighted average cost of the capital of the Company, as certified by the Statutory Auditor of the Company, since carrying cost and holding cost represent liabilities which are already incurred and recovery of the same is to be made at a later date.

SBI Caps and MSEDCL submitted that incentives payable to Licensees should not be adjusted from the net entitlement for the purpose of computing carrying cost, as incentive is not related to issue of delayed payment or carrying cost. MSEDCL submitted that the incentive on account

of Distribution Loss is not provided and hence, this provision for Distribution Licensee needs to be deleted.

4.30.3 Analysis and Commission's Decision

The Commission is of the view that the interest rate for computing Carrying/Holding Cost at Base Rate + 150 basis points has been specified in the MYT Regulations, 2015 itself and is appropriate. There is no basis for allowing higher interest rate. The Bank Rate (RBI) has been defined for interest on security deposit, and Base Rate (MCLR +150 basis points) has been defined for Carrying/Holding Cost. The stakeholders are confusing with the Bank Rate defined by CERC, which is akin to the Base Rate defined by this Commission.

Further, any incentive payable to the Licensee is computed at the time of true-up and thus, the amount gets crystallized after true-up, therefore, the same needs to be deducted from the net entitlement before computing carrying/holding cost. Distribution Loss is a controllable parameter and incentive/disincentive on account of distribution loss is provided for in the Regulations, hence, this proviso has to be retained. However, **the Commission has deleted the proviso related to deduction of Transmission Incentive from the net entitlement**, as the Transmission Incentive mechanism itself has been deleted, and replaced with additional RoE, as discussed earlier.

The Commission has been allowing interest on Carrying/Holding Cost on simple interest only and there is no question of consideration of compound interest. The issue was raised during MYT Regulations, 2015 and was addressed by the Commission at that time.

Carrying cost is allowed to the Generating Company/Licensee as a compensation for delay in realizing its revenue on time due to the regulatory process, at normative rate of interest linked to MCLR prevailing in the markets. The interest rate for allowance of carrying/holding cost is considered the same across all entities, irrespective of the actual weighted average cost of capital of individual Company.

4.31 Regulation 34: Income Tax

4.31.1 Proposed in draft MYT Regulations, 2019

"34.1 The Income Tax actually paid by the Generating Company or Licensee or MSLDC for the regulated business shall be reimbursed through the Tariff charged to the Beneficiary/ies, subject to the conditions stipulated in Regulations 34.2 to 34.5.

34.2 The Commission, in its MYT Order, shall provisionally approve Income Tax payable for each year of the Control Period based on the actual Income Tax paid by the Generating

Company or Licensee or MSLDC, in case the Generating Company or Licensee or MSLDC has not engaged in any other regulated or unregulated Business or Other Business, as allowed by the Commission relating to the electricity Business regulated by the Commission, as per latest available Audited Accounts, subject to prudence check:

Provided that in case the Generating Company or Licensee or MSLDC has engaged in any other regulated or unregulated Business or Other Business, and the actual Income Tax paid by the Generating Company or Licensee or MSLDC has to be allocated to the different Businesses, then the Income Tax shall be provisionally allowed based on the Income Tax on the regulatory Profit Before Tax, as allowed by the Commission relating to the electricity Business regulated by the Commission, subject to prudence check:

Provided further that no Income Tax shall be considered on the amount of income from Delayed Payment Charges or Interest on Delayed Payment or Income from Other Business, as well as on the income from any source that has not been considered for computing the Aggregate Revenue Requirement:

Provided also that no Income Tax shall be considered on the amount of efficiency gains and incentive approved by the Commission, irrespective of whether or not the amount of such efficiency gains and incentive are billed separately:

…

34.4 Variation between the Income Tax actually paid or Income Tax on regulatory Profit Before Tax of the regulated Business of Generating Company or Licensee or MSLDC, as applicable, and the Income Tax approved by the Commission for the respective Year after truing up, shall be allowed for recovery as part of the Aggregate Revenue Requirement at the time of Mid-term Review or Truing-up, subject to prudence check:

Provided that Profit or Loss calculated after taking into account all the components of Aggregate Revenue Requirement (except Income Tax) and revenue approved by the Commission as specified in these Regulations shall be considered as Regulatory Profit or Loss for that year at the time of Mid-Term Review or Truing-up subject to prudence check:

…

Provided also that Income Tax of regulated business shall not exceed the actual Income Tax paid by the Company as a whole:

Provided also that if no Income Tax has been paid by the Company as a whole, then no Income Tax shall be recoverable from the Beneficiary/ies of the regulated business

34.5 Income Tax on any income stream from sources other than the Business regulated by the Commission shall not constitute a pass-through component in Tariff, and Income Tax on such other income shall be borne by the Generating Company or Licensee or MSLDC, as the case may be."

4.31.2 Comments received

AEML suggested to amend Regulation 34.1 by adopting the methodology in MYT Regulations 2015, and amending the first proviso of Regulation 34.4 to exclude RoE and expenses allowed as provision e.g., contingency reserve, etc., for computing regulatory Profit Before Tax, as ROE should also be excluded from the computation, and Contribution to Contingency Reserves is not considered a tax-deductible expense as per Sec. 115JB of the Income Tax Act, 1961. AEML added that the principles of Income Tax already settled by the Hon'ble APTEL should not be circumvented, and hence, the existing approach of Regulatory Profit Before Tax should be continued for allowing Income Tax, at the time of true-up.

AEML submitted that for a Company with both regulated and un-regulated businesses, it is possible that due to losses in un-regulated business, the overall Income Tax for the Company as a whole reduces or becomes nil. Similarly, even in a Company having only regulated business, it is possible that expenses that are otherwise not permissible or allowed for Regulated ARR, but are Tax deductible, reduce or nullify the Income Tax liability of the Company. In both the above cases, effectively, the Income Tax liability of the regulated business reduces or is completely eliminated due to expenses not considered for regulated business. Considering lower Income Tax due to expenses outside the regulated ARR or of another business would amount to cross-subsidization, which is clearly prohibited as per the Judgments of the Hon'ble APTEL. It transcends the financial ring-fencing between regulated and other businesses and ventures into expenses and revenues not under regulatory jurisdiction.

AEML, TPC and MEGPTCL submitted that the Commission could follow CERC's approach of grossing up RoE by applicable Tax Rate, which would be simple to implement, consistent with CERC and not prone to the various complications of Income Tax provisions. Further, the Commission should compute the Income Tax on accrual basis, i.e., including the past Revenue Gaps allowed for recovery in the respective year.

MEGPTCL submitted that all the provisos to Regulation 34.4 need to be modified so that the payment or the provisions made towards Income Tax should be included in the calculation of ARR. Further, efficiency gains and incentives should be included for the purpose of Income Tax computation since, efficiency gains and incentives are derived from the operational efficiency of the Company.

VIPL suggested to amend fourth and fifth Proviso of Regulation 34.4 and continue with the existing approach of allowing the income on Regulatory PBT method. VIPL added that in case the Commission allows recovery of arrears, the Generating Company cannot claim Income Tax on account of arrears in regulated PBT in subsequent years. Deferment in recovery amount makes Generator liable to pay higher income tax due to accounting on accrual basis in the year it is booked but Generator is not allowed to get reimbursement of same in subsequent years when actual recovery of the same takes place.

4.31.3 Analysis and Commission's Decision

The Commission has considered the submissions of the stakeholders and decided to simplify the method of computation of Income Tax to be recovered through the ARR and Tariff. The RoE and additional RoE allowed to be recovered by the Commission are the legitimate profit of the Utility, and Income Tax has to be allowed on such profit, so that the Utilities are able to recover the assured RoE without having to pay Income Tax out of the RoE, which would result in lower effective RoE for the Utilities. Hence, the Commission has adopted the grossing up of RoE approach followed by the CERC, for allowing Income Tax to the Utilities. However, the Commission has built-in the following safeguards, while specifying the method of allowing Income Tax to the Utilities:

(a) No Income Tax shall be considered on the amount of efficiency gains and incentive approved by the Commission and on the income from DPS or Interest on Delayed Payment or Income from Other Business, as well as on the income from any source that has not been considered for computing the ARR;

(b) The deferred tax liability only before March 31, 2020 shall be allowed by the Commission, whenever they get materialised, after prudence check;

(c) The effective tax rate shall be considered on the basis of actual tax paid in the respective financial year by the concerned Utility;

(d) Provided that the actual tax paid on income from any other regulated or unregulated Business or Other Business shall be excluded for the calculation of effective tax rate;

The Income tax has not been allowed on the amount of efficiency gains and incentive approved by the Commission and on the income from DPS or Interest on Delayed Payment or Income from Other Business, in line with the approach followed in the MYT Regulations, 2015, based on the philosophy that the Utility has to pay the Income Tax on efficiency gains and incentives as well as on other income not considered for reducing the ARR.

The Commission has accordingly modified Regulation 34, as under:

"34.1 The Income Tax for the Generating Company or Licensee or MSLDC for the regulated business shall be allowed on Return on Equity, including Additional Return on Equity through the Tariff charged to the Beneficiary/ies, subject to the conditions stipulated in Regulations 34.2 to 34.6:

Provided that no Income Tax shall be considered on the amount of efficiency gains and incentive approved by the Commission, irrespective of whether or not the amount of such efficiency gains and incentive are billed separately:

Provided further that no Income Tax shall be considered on the amount of income from Delayed Payment Charges or Interest on Delayed Payment or Income from Other Business, as well as on the income from any source that has not been considered for computing the Aggregate Revenue Requirement:

Provided also that the Income Tax shall be computed for the Generating Company as a whole, and not Unit-wise/Station-wise:

Provided also that the deferred tax liability only before March 31, 2020 shall be allowed by the Commission, whenever they get materialised, after prudence check.

34.2 The rate of Return on Equity, including additional rate of Return on Equity as allowed by the Commission under Regulation 29 of these Regulations shall be grossed up with the effective tax rate of respective financial year.

34.3 The base rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

Rate of pre-tax return on equity = Base rate of Return on Equity / (1-t),

Where "t" is the effective tax rate

34.4 The effective tax rate shall be considered on the basis of actual tax paid in respect of financial year in line with the provisions of the relevant Finance Acts by the concerned Generating Company or Licensee or MSLDC, as the case may be:

Provided that, in case of the Generating Company or Licensee or MSLDC has engaged in any other regulated or unregulated Business or Other Business, the actual tax paid on income from any other regulated or unregulated Business or Other Business shall be excluded for the calculation of effective tax rate:

Provided further that effective tax rate shall be estimated for future year based on actual tax paid as per latest available Audited accounts, subject to prudence check.

34.5 In case of Generating Company or Licensee or MSLDC paying Minimum Alternate Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess:

Illustration:-

(a) In case of a Generating Company or Licensee or MSLDC paying Minimum Alternate Tax (MAT) at rate of 21.55% including surcharge and cess:

Base rate of return on equity = 15.50/(1-0.2155) = 19.758%

(b) In case of Generating Company or Licensee or MSLDC paying normal corporate tax including surcharge and cess:

(i) Estimated Gross Income of Company as a whole for FY 2020-21 is Rs. 1,000 crore;

(ii) Income Tax for the year on above is Rs 240 crore;

(iii) Effective Tax Rate for the year 2019-20 = Rs 240 Crore/Rs 1000 Crore = 24%;

(iv) Base rate of return on equity = 15.50/ (1-0.24) = 20.395%.

34.6 Variation between the Income Tax estimated by the Commission for future year during MYT Order and Mid Term Review Order and the Income Tax approved by the Commission for the respective Year after truing up for respective year, shall be allowed for recovery as part of the Aggregate Revenue Requirement at the time of Mid-term Review or Truing-up, subject to prudence check:

Provided that Income Tax on any income stream from sources other than the Business regulated by the Commission shall not constitute a pass-through component in Tariff, and Income Tax on such other income shall be borne by the Generating Company or Licensee or MSLDC, as the case may be."

4.32 Regulation 35.1: Contribution to Contingency Reserves

4.32.1 Proposed in draft MYT Regulations, 2019

"35.1 Where the Licensee has made a contribution to the Contingency Reserve, a sum not less than 0.25 per cent and not more than 0.5 per cent of the original cost of fixed assets shall be allowed annually towards such contribution in the calculation of Aggregate Revenue Requirement:

…Provided also that if the Licensee does not invest the amount of contribution to Contingency Reserves in authorised securities within a period of six months of the close of the Year, then the

contribution allowed in the calculation of Aggregate Revenue Requirement shall be disallowed at the time of true-up:

Provided also that if the Licensee does not invest the amount of contribution to Contingency Reserves in authorised securities for two consecutive Years, then the contribution to Contingency Reserves shall not be allowed in the calculation of Aggregate Revenue Requirement from the subsequent Year onwards."

4.32.2 Comments received

MEGPTCL, MSETCL, and MSEDCL submitted that the Licensee may be unable to invest the contingency reserves due to severe cash flow crunch faced by it on account of reduction in the ARR, hence, the Licensees should not be penalized, and the third and fourth provisos should be amended/deleted. Further, the Licensee may be allowed to deposit the cumulative amount of past provision into contingency reserves as per the availability of cash flow, with the decision regarding disallowance being taken at the time of True up for the year.

4.32.3 Analysis and Commission's Decision

The contribution to contingency reserves are allowed to Licensees so that a ready reserve fund is available to meet contingency requirements. Hence, the MYT Regulations also specify that these funds have to be invested in specified securities, so that they are readily available for use as and when the contingency arises. If the Licensee does not invest the contribution to contingency reserves in the specified securities, it amounts to utilizing the same amount for other regular expenses, thereby defeating the purpose for which the contribution to contingency reserves is allowed to the Licensee. Hence, the Commission had proposed in the draft Regulations that if the Licensee does not invest the amount of contribution to Contingency Reserves in authorised securities within the specified time period, then the contribution to Contingency Reserves shall be disallowed at the time of true-up, which is appropriate. The Commission had also proposed that if the Licensee does not invest the amount of contribution to Contingency Reserves in authorised securities for two consecutive Years, then the contribution to Contingency Reserves shall not be allowed in the calculation of Aggregate Revenue Requirement from the subsequent Year onwards. This was done with the intention of ensuring against misutilization of the contribution to contingency reserves on a regular basis.

Hence, no modifications have been made to these provisos of Regulation 35.1.

4.33 Regulation 35.2: Conditions for Drawal of Contingency Reserve

4.33.1 Proposed in draft MYT Regulations, 2019

"35.2 The Contingency Reserve shall not be drawn upon during the term of the Licence except to meet such charges as may be approved by the Commission as being:

(a) Expenses or loss of profits arising out of accidents, strikes or circumstances which the management could not have prevented;

(b) Expenses on replacement or removal of plant or works other than expenses requisite for normal maintenance or renewal;

(c) Compensation payable under any law for the time being in force and for which no other provision is made."

4.33.2 Comments received

MSEDCL submitted that the contingency reserves are required to be utilized for meeting the expenses in emergency situations and approval from the Commission can only happen post-facto and if there is any disallowance by Commission, it will adversely impact the financials of MSEDCL, as MSEDCL will not have any avenue to recover this obligatory expenditure. Hence, MSEDCL requested the Commission to bring more clarity regarding utilization of Contingency Reserves so as to enable Licensee to use it during certain situations and also remove the requirement of approval for drawing the reserves from contingency reserve for the expenditure heads specified in the Regulation.

4.33.3 Analysis and Commission's Decision

The Regulations were always intended such that the Licensee has to obtain the Commission's post-facto approval for withdrawal of Contingency Reserve for emergency situations specified in the Regulations. Hence, the same has been clearly specified in the Regulations, for additional clarity.

The Commission has accordingly modified Regulation 35.2, as under:

" 35.2 *The Contingency Reserve shall not be drawn upon during the term of the Licence except to meet such charges on account of:*

…

Provided that the Distribution Licensee shall obtain the Commission's post-facto approval for drawal of Contingency Reserve by submitting the necessary justification for the drawal of Contingency Reserve along with documentary evidence".

4.34 Regulation 36.1: Rebates, Incentives and Penalties

4.34.1 Proposed in draft MYT Regulations, 2019

"36.1 For payment of bills of generation Tariff or transmission charges or MSLDC Fees and Charges within 7 days of presentation of bills, through Letter of Credit or otherwise or through NEFT/RTGS, a rebate of 1% on billed amount, excluding the taxes, cess, duties, etc., shall be allowed."

4.34.2 Comments received

MSEDCL submitted that if the prompt payment rebate is passed through in the ARR, then the interest on borrowing availed to pay the Genco/Transco bills for availing the rebate should be allowed to be recovered through ARR at normative rates.

TPC suggested to add 'Standby Charges' under payment of bills. STU provides rebate on transmission charges net off TDS. TPC submitted that TDS is a tax deducted from the payments to STU and deposited with Income Tax authorities on behalf of STU. The TDS certificates are issued to STU for this deduction and STU receives credit of TDS amount during ITR filing for the relevant year. Hence, the rebate should be allowed on the gross amount of monthly Transmission charges / SLDC / Standby Charges bill, as CERC has also not excluded taxes and duties for the purpose of rebate.

4.34.3 Analysis and Commission's Decision

The prompt payment rebate should be claimed only if the Utility has cash to pay the bills before time, and it is not intended that the Utility take short-term loans to pay the bills before time. The interest cost of such short-term loans cannot be allowed. The working capital interest is computed based on normative payment schedule and if there is saving on account of working capital, the Utility is benefitted and can opt for prompt payment of bills of Generating Company/Licensee and avail rebates.

The Commission is of the view that rebate can be allowed only on the amount due to the same entity, and the billing entity cannot offer rebates on the taxes, cess, duties, etc., payable to statutory authorities. Hence, taxes and duties cannot be included for the purpose of rebates. The Commission has also not considered the request to allow Rebates on prompt payment of Standby Charges, as the same are through a separate arrangement between MSEDCL and the Mumbai Licensees.

Hence, no changes have been made in this Regulation.

4.35 Regulations 37.1 and 37.2: Delayed Payment Charge

4.35.1 Proposed in draft MYT Regulations, 2019

"37.1 In case the payment of bills of generation Tariff or transmission charges or MSLDC Fees and Charges by the Beneficiary is delayed beyond a period of 30 days from the date of billing, Delayed Payment Charge at the Base Rate as on 1st of the respective month plus 350 basis points per annum on the billed amount shall be levied for the period of delay by the Generating Company or the Transmission Licensee or MSLDC, as the case may be, notwithstanding anything to the contrary as may have been stipulated in the Agreement or Arrangement with the Beneficiaries.

37.2 In case the payment of bills of retail Tariff by the consumers is delayed beyond a period of 15 days for High Tension consumers and Extra High Tension consumers and 21 days for Low Tension consumers from the date of billing, Delayed Payment Charge on the billed amount, including the taxes, cess, duties, etc., shall be levied at the rate of 1.25% on the billed amount for the first month of delay:

Provided that for delay in payment of bills of retail Tariff beyond 60 days and up to 90 days from the date of billing, Interest on Delayed Payment on the billed amount, including the Delayed Payment Charges, taxes, cess, duties, etc., shall be levied at the rate of 12% per annum:

Provided further that for delay in payment of bills of retail Tariff beyond 90 days from the date of billing, Interest on Delayed Payment on the billed amount, including the Delayed Payment Charges, taxes, cess, duties, etc., shall be levied at the rate of 15% per annum…"

4.35.2 Comments received

MSETCL submitted that the DPC may be reconsidered and be linked to rate of ROE and not to Base Rate. The CAG empaneled auditor has pointed that the DPC rate should be higher than ROE, otherwise it would prompt Distribution Licensees to defer the payment of Monthly Transmission charges.

AEML, Dhariwal Infrastructure Limited, and NUPLLP submitted that higher DPC provides higher deterrence against payment delays by TSUs, hence, the Commission should retain the DPC for delay in payment of bills of generation Tariff or transmission charges, at the rate of 1.25% p.m., as specified in MYT Regulations, 2015. They added that in spite of DPC in place, there has been default in payment by the TSUs to the STU, which in turn has delayed the payment to the Transmission licensees. Multiple Petitions are being filed by Transmission Licensees and Orders are issued to STU to expedite the recovery process. Further reduction in interest rate shall lead to further defaults by TSU's, hence, the existing provisions may be

retained. They added that the reduction of DPC rate would further enable the Distribution Licensees to delay the payment towards the energy bills raised by the generators.

MEGPTCL submitted that the MYT Regulations should specify the priority of apportionment of payment among Late Payment Surcharge, past dues, current dues, etc., which encourages the Distribution Licensee to delay the payments as the LPS remain static. Further, DPS should be allowed on compounding basis.

MSEDCL submitted that only ceiling rate of DPC and interest on DPC may be specified, and the Licensee may be allowed to charge lower interest rate to certain categories. DPC acts as a deterrent against non-payment while disconnection is a punitive action. For Agricultural category consumers, deterrent action does not work and punitive action cannot be taken. Hence, levying higher interest rate on arrears would only increase the receivables/arrears in the accounts. Charging such high DPC only adds to arrears and hardly gets converted to cash. Therefore, ceiling rate may be specified.

NUPLLP submitted that in case of InSTS Charges, the DPC should be levied 30 days from the receipt of the bill (due date of the Bill) issued by STU and not from the date of issue of the Bill.

4.35.3 Analysis and Commission's Decision

The Commission reduced the rate of DPS for delay in payment of bills of generation Tariff or transmission charges or MSLDC Fees and Charges, in the Draft MYT Regulations in order to encourage payment of pending dues so that they can be cleared. The Commission has therefore, retained the rate of DPC specified in the Draft Regulations.

The Commission is of the view that specifying a ceiling rate for DPS may lead to different rates being charged to different categories, leading to discrimination amongst the payment defaulters, and has hence, specified the same rates of DPC for all Licensees and all consumer categories.

The Commission has specified in Regulation 37.1 and 37.2 of the final Regulations that the interest to be charged on DPS shall be on simple interest basis, as under:

"37.1 In case the payment of bills of generation Tariff or transmission charges or MSLDC Fees and Charges by the Beneficiary is delayed beyond a period of 30 days from the date of billing, Delayed Payment Charge <u>on simple interest basis</u> at the Base Rate as on 1st of the respective month plus 350 basis points per annum on the billed amount shall be levied for the period of delay by the Generating Company or the Transmission Licensee or MSLDC, as the case may be, notwithstanding anything to the contrary as may have been stipulated in the Agreement or Arrangement with the Beneficiaries.

37.2 In case the payment of bills of retail Tariff by the consumers is delayed beyond a period of 15 days for High Tension consumers and Extra High Tension consumers and 21 days for

Low Tension consumers from the date of billing, Delayed Payment Charge on the billed amount, including the taxes, cess, duties, etc., shall be levied on simple interest basis at the rate of 1.25% on the billed amount for the first month of delay:

Provided that for delay in payment of bills of retail Tariff beyond 60 days and up to 90 days from the date of billing, Interest on Delayed Payment on the billed amount, including the Delayed Payment Charges, taxes, cess, duties, etc., shall be levied on simple interest basis at the rate of 12% per annum:

Provided further that for delay in payment of bills of retail Tariff beyond 90 days from the date of billing, Interest on Delayed Payment on the billed amount, including the Delayed Payment Charges, taxes, cess, duties, etc., shall be levied on simple interest basis at the rate of 15% per annum."

4.36 Regulation 41: Annual Fixed Charges

4.36.1 Proposed in draft MYT Regulations, 2019

"The Annual Fixed Charges shall comprise the following components…

…

Less:

(g) Non-Tariff Income:…"

4.36.2 Comments received

MSPGCL requested to provide for sharing of Non-Tariff Income in the ratio of 50:50 between the Generation Company and Beneficiary in line with Regulation 62 of CERC Tariff Regulations, 2019. MSPGCL submitted that Non-Tariff Income is additional income generated by the Generating Companies by way of timely actions in scrap/waste/ash disposal, applying innovative methods for utilizing the available resources especially land for purposes other than power generation, etc. These are results of additional efforts taken by the Generating Companies and in order to incentivize such efforts, CERC provides for sharing of the Non-tariff Income in 50:50 ratio with beneficiaries.

4.36.3 Analysis and Commission's Decision

The Commission is of the view that Non-Tariff Income is an additional income generated from better utilization of assets created by the Generator/Licensee on the basis of recovery made through tariff charges approved by the Commission from the beneficiaries. The Commission

has always considered the entire Non-Tariff Income for reduction of the ARR of the Utilities, since the MYT Regulations, 2011. The Commission has hence, not modified this Regulation.

4.37 Regulation 43: Sale of Infirm Power

4.37.1 Proposed in draft MYT Regulations, 2019

"The supply of Infirm Power shall be accounted as deviation and shall be paid at Charges for Deviation for Infirm Power in accordance with the Maharashtra Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2019:

Provided that any revenue earned by the Generating Company from supply of Infirm Power after accounting for the fuel cost shall be used for reduction in Capital Cost and shall not be treated as revenue."

4.37.2 Comments received

MSPGCL requested to provide for adjustment of surplus or shortfall in fuel cost recovered against the capital cost. MSPGCL submitted that as the infirm power injection period and the DSM rates during such period are grossly uncontrollable for Generating Companies, it cannot be assumed that the fuel cost for the infirm power will be always fully recovered. In such case, it will be unjust if the shortfall is not allowed to be adjusted in capital cost or such shortfall can be allowed to be recovered as "revenue" expenditure while finalizing the capital cost.

4.37.3 Analysis and Commission's Decision

The Commission is of the view that DSM Regulations already provides for charges for Deviation for infirm power, which depends on the DSM rates at the time of injection. The MYT Regulations have only referred to this mechanism. Further, allowance of such adjustment through the MYT Regulations shall amount to deviation from the MERC DSM Regulations, 2019. The Commission has hence, not modified this Regulation.

4.38 Annexure I: Depreciation Schedule

4.38.1 Comments received

TPC submitted that there is typographical error in the Depreciation Schedule rates whereby the heading (h) is Batteries and sub heads are:

(i) Underground Cables including joint boxes and disconnected boxes.
(ii) Cable Duct System
Hence, the heading (h) may be changed to Cables.

TPC submitted that the useful life of meters may be considered in line with communication system as 15 years. DERC has also considered the useful life of meters as 15 years in its Tariff Regulations, 2017, and accordingly rate of depreciation may be allowed at 6%.

TPC further submitted that the depreciation rate of batteries may be modified to 18.00%, by considering a useful life of 5 years, as done by DERC in its Tariff Regulations, 2017.

TPC suggested that since SCADA System consists of IT and related equipment therefore, the same may be considered under IT equipment.

NUPLLP requested to modify the depreciation rate for meters, by considering the useful life of meters as around 12 years. NUPLLP added that the useful life is 6 years for some of the IT equipment such as server and networks, and 3 years for desktop and laptops, etc., as per the Companies Act, 2013. Hence, the depreciation rate needs to be modified to 30.00% for IT Equipment. Further, some software such as anti-virus has annual subscriptions, and hence, need to be depreciated at 100%.

BEST suggested that since the battery life is generally around 5 years, the depreciation rate allowed should be around 18%. Similarly, since, the life of electronic meters is generally around 8 years, the depreciation rate allowed should be around 11.25%.

4.38.2 Analysis and Commission's Decision

The Commission has considered the submissions of the stakeholders and increased the depreciation rate for batteries to 18% considering typical useful life of 5 years, and depreciation rate for meters to 9% considering typical useful life of 10 years, in Annexure I.

5 Norms and Principles for determination of Revenue Requirement and Tariff for Generation Companies

5.1 Regulation 39: Capital Expenditure for Revised Emission Standards

5.1.1 Proposed in draft MYT Regulations, 2019

"39.2 Tariff in respect of a Generating Station under these Regulations may be determined….

….39.3. Where the Tariff is being determined for a Stage or Unit of a Generating Station, the…."

5.1.2 Comments Received

Dhariwal Infrastructure Limited requested that Asset installed for implementation of revised emission standards should form part of the existing generation project and tariff thereof should be determined separately on submission of the completion certificate by the Board of the Generating Company.

5.1.3 Analysis and Commission's Decision

The issue of additional capital expenditure for compliance with revised emission standards is already addressed in Regulation 25.4. Hence, no modification is required in this Regulation.

5.2 Regulation 39: Time Period of filing and Pollution Control Measures

5.2.1 Proposed in draft MYT Regulations, 2019

"39.5 The Generating Company shall file the Petition for determination of provisional Tariff for new Generating Station, at least six months prior to the anticipated date of commercial operation of Generating Unit or Stage or Generating Station as a whole, as the case may be…

39.9 The Generating Company shall file the Petition for determination of final Tariff for new Generating Station within six months from the date of commercial operation of Generating Unit or Stage or Generating Station as a whole, as the case may be, based on the audited capital expenditure and capitalisation as on the date of commercial operation:…."

5.2.2 Comments Received

MSEDCL requested that the time period for filing of Petition for determination of final tariff should be reduced to 60 days prior to the anticipated date of COD from existing 180 days, in line with CERC Regulations, 2019.

Dhariwal Infrastructure Limited requested to include the provision for considering the site-specific factors and other additional requirement due to installation of various pollution control equipment like FGD under statutory mandate on case to case basis. Dhariwal requested for incorporation of a separate provision for O&M Expenses of FGD plant and other emission control equipment, a mechanism for recovery of the entire cost pertaining to the untied capacity for a generation plant with partial untied capacity and to allow additional capacity charges and energy/variable charges on account of implementation of pollution control system.

5.2.3 Analysis and Commission's Decision

The stakeholder has submitted that the Petition for determination of final tariff should be filed 60 days before anticipated date of COD of the generating Station. It is clarified that the Petition for determination of provisional tariff has to be filed at least 180 days before anticipated date of COD of the generating Station under Regulation 39.5, while the Petition for determination of final tariff has to be filed within 180 days from the date of COD of the generating Station under Regulation 39.5.

The Petition for determination of final tariff cannot be filed before the COD, as unless the COD is achieved, the completed and audited capital cost cannot be ascertained and submitted to the Commission. CERC has revised the time period to within 60 days from the anticipated date of COD, in the Tariff Regulations, 2019. The Commission has accordingly modified the time period to at least 60 days before anticipated date of COD for filing the Petition for provisional tariff. However, the Generating Company is free to file the Petition before the deadline of 60 days before anticipated date of COD, so that the provisional tariff is in place when COD happens. The Commission is of the view that the time period of within 180 days from the date of COD for filing the Petition for final tariff is appropriate, as the final accounts have to be prepared based on completed cost and necessary audit has to be done.

As discussed earlier, Regulation 25.4 has already considered additional capital expenditure towards compliance of revised emission standards. Also, the Commission has specified the auxiliary consumption norm for FGD plant. The implementation of FGD plants in existing stations is in initial stage. Hence, any technology or site-specific issues shall have to be dealt with on case to case basis. Hence, no modifications have been made to this Regulation.

5.2.4 Annual Coal Utilisation Plan

5.2.5 Proposed in draft MYT Regulations, 2019

No provisions were proposed in the draft MYT Regulations, 2019 in this regard.

5.2.6 Comments received

MSEDCL suggested that new provision should be incorporated requiring Generating Companies to submit their most efficient annual Coal Utilisation Plan along with the MYT Petition, including details of mines and corresponding plants where coal will be utilized by Generating Companies. This Plan should clearly indicate cost savings being passed on to the consumers. The Commission should approve coal related parameters based on the above Plan after prudence check. The Generating Company should clearly indicate minimum total variable cost of all plants together so as to achieve optimization by not running all plants but running only efficient plants with least variable cost.

5.2.7 Analysis and Commission's Decision

The Commission is of the view that the Generating Companies should be required to submit such long-term Fuel Utilisation Plan along with the MYT Petition, with the focus being on all fuels rather than coal alone. The Generating Companies will be required to have a long-term Station-wise generation plan, and a plan for sourcing the required quantum of different fuels, with a view to optimise/minimise the variable cost of generation, so as to benefit the consumers.

Hence, the Commission has introduced Regulation 40 related to submission of Fuel Utilisation Plan in the final MYT Regulations, 2019, as under:

*"**40 Fuel Utilisation Plan***

40.1 The Generating Company shall prepare and submit Fuel Utilisation Plan for the Control Period commencing on April 1, 2020, along with the Petition for determination of Tariff for the Control Period from April 1, 2020 to March 31, 2025, in accordance with Part A of these Regulations, to the Commission for approval.

40.2 The Fuel Utilisation Plan should ensure that fuel quantum is allocated to different generating Stations/Units in accordance with the merit order of different generation Stations/Units in terms of variable cost:

Provided that the fuel allocation should be such that, subject to system and other constraints, the least cost generating Stations/Units are operated at maximum availability and other generating Stations/Units are operated at maximum availability thereafter in the ascending order of variable cost

40.3 The Fuel Utilisation Plan shall comprise the following:

(a) Forecast of fuel requirement for each unit/station;

(b) Details of contracted source, annual contracted quantity, estimated availability from contracted sources and resultant shortage of fuel, if any, for each unit/station;

*(c)	Use of optimum mix of fuel;*

*(d)	Alternate arrangement for meeting shortage of fuel along with impact on variable cost of unit/station;*

*(e)	Plan for swapping of fuel source for optimising the cost, if any, along with detailed justification and cost savings;*

*(f)	Net cost savings in variable cost of each unit, if any, after optimum utilisation of Fuel:*

Provided that the forecast or estimates for the Control Period from FY 2020-21 to FY 2024-25 shall be prepared for each month over the Control Period:

Provided further that Fuel Utilisation Plan shall be prepared based on past data and reasonable assumptions for future.

*40.4	The beneficiary/ies shall file comments/suggestions on such Plan during proceedings of Tariff Petition as per Regulation 13.*

*40.5	The Commission shall approve the Fuel Utilisation Plan and rationalise the variable cost of generation for Generating Unit/Station based on such Plan and suggestions and comments received from the beneficiary/ies for the Control Period as part of its Order on the MYT Petition.*

*40.6	A Generating Company shall maintain data of actual performance of Unit/Station wise Fuel Utilisation vis-à-vis Fuel Utilisation plan approved by the Commission, along with justification for variation between approved and actual fuel utilisation plan and, shall put up such data within fifteen days from the end of each month, on the internet website of the Generating Company.*

*40.7	A Generating Company may, as a result of additional information not previously known or available to it at the time of submission of the Fuel Utilisation Plan under Regulation 40.1, apply for modification in the Fuel Utilisation Plan for the remaining part of the Control Period, as part of its Petition for Mid-term Review under Regulation 8:*

*40.8	The Commission may, as a result of additional information not previously known or available to the Commission at the time of approval of the Fuel Utilisation Plan under Regulation 40.1, if it deems appropriate, suo motu or on a Petition filed by the Generating Company, modify the Fuel Utilisation Plan for the remainder of the Control Period, as part of the Mid-term Review.*

*40.9	At time of truing up of respective year, the Commission shall scrutinise the implementation of actual Fuel Utilisation Plan vis-à-vis approved plan, deviations, if any, and*

justification submitted by a Generating Company thereon and; may disallow the variable cost of generation on account of operational inefficiencies in utilisation of fuel."

5.3 Regulation 40: Components of Tariff

5.3.1 Proposed in draft MYT Regulations, 2019

"40.1 The Tariff for sale of electricity from a thermal power Generating Station shall comprise two parts, namely, Annual Fixed Charge and Energy Charge"

5.3.2 Comments Received

Dhariwal Infrastructure Limited requested to provide for two-part tariff and two supplementary charges, viz., supplementary capacity charges for additional capitalization on account of implementation of revised emission standards and supplementary capacity charges, if any, on account of implementation of revised emission standards. This has already been incorporated in CERC Tariff Regulations, 2019.

5.3.3 Analysis and Commission's Decision

In draft Regulation 25.4, it has already considered additional capital expenditure towards compliance of revised emission standards. The tariff impact of such additional capital expenditure shall be approved by the Commission on case to case basis. While approving the same, the Commission shall also approve the revised Fixed Charges, to accommodate the impact of such additional capital expenditure. Hence, there is no modification to this Regulation.

5.4 Regulation 42: Renovation & Modernization

5.4.1 Proposed in draft MYT Regulations, 2019

"42.1 For undertaking Renovation and Modernisation for the purpose of extension of life beyond the useful life of the Generating Station or a Unit thereof, the Generating Company shall file a Petition for approval with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost, record of consultation with Beneficiaries and any other relevant information"

5.4.2 Comments Received

MSEDCL requested to add the proviso in Regulation 42.1, requiring the Generating Company to obtain the consent of the beneficiary for Renovation & Modernisation and submit the same along with the Petition for approval of the Renovation & Modernisation scheme.

Dhariwal Infrastructure Limited requested that Renovation & Modernisation should be allowed to be undertaken after specific years of service based on OEM recommendations. Depreciation and debt servicing cost should be allowed to be recovered within the balance useful life of the plant after considering the life extension. Renovation & Modernisation taken up before the completion of specified life can improve the operating conditions, and recovery of expenses will not affect the tariff in a major way. The Generating Companies that take up Renovation & Modernisation should be allowed to recover depreciation and debt servicing cost within expected life expectation.

Prayas Energy Group requested to add the provision that after completion of 25 years, the previous PPA will not be valid. In order to continue power procurement from the same source, a fresh PPA needs to be drawn. At that time, the Commission will evaluate the beneficiary's demand-supply position and alternative lower cost sources. Depreciated assets must be used to meet seasonal and/or peak requirements, instead of commissioning new Units. The Commission should ensure that no new capacity addition is permitted until all such existing and functional assets are fully utilised.

5.4.3 Analysis and Commission's Decision

The Generating Company intending to undertake Renovation & Modernisation, has tied up its capacity with the Distribution Licensee. The proposed Renovation & Modernisation will affect the quantum of supply as well as cost of procurement of power for the Distribution Licensee. The Commission finds merit in the submission that the consent from the Distribution Licensee should be obtained for any Renovation & Modernisation proposal.

As regards the suggestions regarding the circumstances under which Renovation & Modernisation shall be allowed and the recovery of such capital expenditure, the Commission is of the view that the Regulations are very clear on these aspects, and no modification is required on this account. It is for the Generating Company to assess the benefits of undertaking Renovation & Modernisation at any point of time, and convince the beneficiary as well as the Commission regarding the benefits of the proposed Renovation & Modernisation.

As regards the suggestions regarding the tenure of the PPA, the same is already approved while approving the PPA, and in case the Distribution Licensee desires to extend the PPA, it has to submit the necessary justification for the same, in accordance with the Regulations specifying the requirements of the Power Procurement Plan.

Hence, the Commission has modified the Regulation as under:

"43.1 For undertaking Renovation and Modernisation for the purpose of extension of life beyond the useful life of the Generating Station or a Unit thereof, the Generating Company shall file a Petition for approval with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial

package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost, record of consultation with Beneficiaries and consent received from the Beneficiaries, and any other relevant information."

5.5 Regulation 43: Sale of Infirm Power

5.5.1 Proposed in draft MYT Regulations, 2019

"The supply of Infirm Power shall be accounted as deviation and shall be paid at Charges for Deviation for Infirm Power in accordance with the Maharashtra Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2019:

Provided that any revenue earned by the Generating Company from supply of Infirm Power after accounting for the fuel cost shall be used for reduction in Capital Cost and shall not be treated as revenue"

5.5.2 Comments Received

Dhariwal Infrastructure Limited submitted that the treatment of supply of infirm power should be as per existing MYT Regulations, 2015, in order to avoid any loss on account of sale of infirm power by a Generating Company. The tariff for sale of infirm power from thermal generating station to the Distribution Licensee shall be equivalent to the actual fuel cost, including the secondary fuel cost, subject to prudence check. Further, a cap rate for treatment of infirm power may be specified. The capitalization of loss from sale of infirm power needs to be done, in case DSM charges recovered is less than the actual fuel expenses to be capitalized as part of the capital cost.

5.5.3 Analysis and Commission's Decision

In the Explanatory Memorandum, the Commission has detailed about the change in approach for sale of Infirm power in view of the implementation of MERC DSM Regulations, 2019. Regulation 9(9) of MERC DSM Regulations, 2019 specifies the charges payable for deviation for infirm power injected into grid. These charges are applicable not only to Generating Station under MoU route but also Generating Station under Competitive Bidding route. Hence, the Commission has retained this Regulation regarding sale of infirm power.

5.6 Regulation 45: Target availablity for Recovery of Fixed Cost

5.6.1 Proposed in draft MYT Regulations, 2019

"45.1 Target Availability for full recovery of Annual Fixed Charges shall be 85 per cent for all thermal Generating Stations, except those covered under Regulation 45.2.…"

5.6.2 Comments Received

MSPGCL submitted that the Availability Factor for full recovery of Annual Fixed Charges should be retained as 80% for Nashik TPS and Khaperkheda Units 1 to 4. MSPGCL submitted that the Units of Nasik TPS have completed an average life of 38-40 years. SECL was supplying coal with higher CV to the plant as per the design, with high transportation cost. The coal is being supplied from WCL from January 2016, which is comparatively inferior in quality with respect to SECL coal, resulting in lower availability. This coal swapping resulted in lower variable cost and lower loadability. In view of changed coal supply scenario and ageing of the Units, achieving Availability of 85% is not possible. Further, Units of Khaperkheda TPS (having capacity 210 MW) are old with average life of 29-30 years for Unit-1 and 2 and 18-19 years for Unit-3 and 4. Hence, availability norm for Khaperkheda Units 1 to 4 needs to be relaxed to 80%.

MSEDCL submitted that new PPAs, as per revised Bidding Guidelines, provide for 90% availability. As new Units of MSPGCL are supercritical, the target availability for such stations should be 90%. Further, in case of zero scheduling, the provision of peak and off-peak availability should not be applicable.

Dhariwal Infrastructure Limited stated that shortfall in coal supply under the designated FSA compels the generators to procure coal from alternate sources at higher prices in order to maintain the availability of generating units at the normative level. As the availability of domestic coal is not in the Generator's control and in view of the coal scarcity, the normative plant availability should be lowered to 80% to avoid under recovery of fixed charges.

5.6.3 Analysis and Commission's Decision

The Commission had proposed the norms for Availability for existing Generating Stations based on actual performance for past period and the same was detailed in the Explanatory Memorandum. Regarding Nasik TPS, it is noted that coal swapping has been undertaken and the benefit of this has already been passed on to consumers in terms of reduction in energy charges. As increasing the norms of availability for Nasik TPS may not be justified, the Commission decides to retain the normative Availability for Nasik TPS as 80% as specified in MYT Regulations, 2015. Regarding Khaparkheda TPS, the normative Availability was specified as 85% in the MYT Regulations, 2015, and the same has been achieved in the past.

Hence, no further relaxation is considered from the existing norm specified in MYT Regulations, 2015. Accordingly, the Commission specifies normative availability of 80% for Nasik TPS and 85% for Khaparkheda TPS.

For most other Units/Stations, the Commission has retained the normative Availability of 85%, at the same level as specified in MYT Regulations, 2015, considering the operational conditions, coal supply situation, approval of capital expenditure for efficiency improvement, etc. Arranging the necessary fuel for maintaining the normative Availability is the responsibility of the Generating Company, and the normative Availability cannot be reduced to 80% on this account.

As regards the submission that in case of zero scheduling, the provision of peak and off-peak availability should not be applicable, the Commission is of the view that zero scheduling is not envisaged to be a regular occurrence. The Distribution Licensee and Generating Company may make their submissions on this issue at the time of true-up for the respective year.

5.7 Regulation 45: Gross Station Heat Rate

5.7.1 Proposed in draft MYT Regulations, 2019

"45.8 Gross Station Heat Rate for New Coal and Lignite based thermal power generating……"

5.7.2 Comments Received

MSPGCL submitted that the words (sub-critical boilers) should be deleted for above 500 MW sets. The operational norms should be progressive and should be revised from time to time, with scope for efficiency gains and losses. Hence, it is required to specify the SHR norms at lower level rather than continuing with the norms specified earlier. The various factors affecting the Heat Rate are vintage, size, past generating history, past maintenance practices, condition of plant, etc. Further, no SHR norm has been specified for existing super-critical (660 MW) Units.

AEML requested to modify the Regulation such that the SHR norm is maintained at 2450 kcal/kWh for 200/210/250 MW sets. The improvement in efficiency is bound to plateau after a certain point in time and hence, adhering to constantly reducing norms would not only be infeasible but would also be financially detrimental to the Utilities. Also, vintage and present level of operational efficiency, etc., should also be considered while setting up norms. Further, with increasing penetration of Renewable Energy, it is expected that the thermal power plants will operate at lower PLF.

TPC requested to modify the SHR for existing thermal Unit 5 considering the degradation of the Unit, trial coal firing, and decreasing loading factor. In the MYT Regulations, 2015, degradation of 0.35% per year was considered based on the CPRI study, which has to be

considered for Unit 5. The guidelines given by Tariff Policy for deciding the operating norms need to be followed as norms should not be actuals. The Commission's methodology of deciding the future norms based on the actuals is deviating from the very purpose of operating norms, i.e., to increase the efficiency of the Utility and not to punish for performing better. The receding sea level and siltation issues have increased over last two years, which has significantly impacted cooling water flow to the condenser, which impacts the vacuum affecting the SHR. Also, over last 3 years, the loading factor of the Unit has reduced by 8%, which has impacted SHR, equipment performance and deterioration factor.

TPC also suggested that the reduction in PLF due to the low dispatch schedule or shutdown instructions given by SLDC results in degradation of performance parameters. Hence, fixed amount of degradation as per the guidelines of CEA or Standard Bidding Document should be allowed for compensating the Utility.

MSEDCL suggested that operational norms should be progressive in nature.

Dhariwal Infrastructure Limited requested to consider margin of 1.065 times the design heat rate instead of 1.05 times, because frequent ramp ups and ramp downs will adversely affect the SHR. Dhariwal requested for incorporation of the CEA recommendations (CEA/TETD-TT/2018/N-15/1451 dated 10.12.2018) on degradation of SHR and Auxiliary Power Consumption with Plant Load Factor.

5.7.3 Analysis and Commission's Decision

The Commission had proposed the norms for SHR for existing Generating Stations based on actual performance for past period and the same has been detailed in Explanatory Memorandum. For Units that have achieved COD after August 2005 and new Stations, the CERC norms for new Stations have been adopted. The submissions regarding ADTPS are theoretical and not applicable for ADTPS, which has consistently achieved SHR of below 2300 kcal/kWh, and still has scope for significant efficiency gains vis-à-vis the SHR norm of 2430 kcal/kWh. As regards Unit 5 of TPC, the SHR norms were relaxed norms, and hence, it is incorrect to state that the Unit has performed better and hence, should not be penalized. As the norms are already relaxed, and the performance has been better than the norms, hence, the past performance has been factored in.

Also, the Commission has not considered degradation in SHR in line with the approach adopted by CERC in its Tariff Regulations, 2019 and based on past performance. The detailed rationale for the same has already been stated in Explanatory Memorandum, which has not apparently been referred by the stakeholders, while seeking degradation in the SHR. Further, the Commission approves the additional capital expenditure for each project after taking into account the factors such as vintage, size, past generating history, past maintenance practices, condition of plant, etc. Also, the present MYT framework allows sharing of loss on account of

norms of operation, unlike CERC. Hence, it would not be appropriate to further relax norms for operation on such grounds for which capital expenditure has been allowed. The Commission decides to continue with the SHR norms proposed in draft MYT Regulations.

The Commission has specified the SHR norm for Super-critical Units (660 MW) as 2230 kcal/kWh based on design heat rate of existing Units and the margin of 1.05 times. The margin over Design Heat Rate has been considered as 1.05 times for all new plants, in accordance with CERC Tariff Regulations, 2019.

The Commission may consider the issue of relaxation of SHR on account of backing down due to grid conditions, in line with the approach adopted by CERC in the IEGC, at the time of amendment of the State Grid Code.

5.8 Regulation 45: Operational Norms for Thermal Generating Stations

5.8.1 Proposed in draft MYT Regulations, 2019

"45.11 Secondary fuel oil consumption norm for all thermal Generating Stations, except……"

5.8.2 Comments Received

MSPGCL requested to retain the norms for Secondary Fuel Oil Consumption (SFOC) of existing thermal power stations under Regulation 45.12 at present level as per MYT Regulations, 2015. If the norms are to be reduced, then it will be appropriate to set it at the highest actual number below the earlier norm. SFOC is predominantly affected by external factors such as wet coal problems in monsoon season, RSD/Backing down, etc. Oil consumption on account of wet coal problems varies from year to year depending on severity of the monsoon. Also, critical coal shortage / poor coal receipt scenario had resulted in lower wet coal problems. The Units are vintage and in the age group of 30-40 years. Thus, the SFOC achieved is not directly linked to implementation of CPRI schemes.

MSEDCL submitted that SFOC norm specified for MSPGCL's Units in Regulation 45.12 should be lower than 1.5 ml/kWh. The norms should be based not only on the Unit capacity but also on the technology of the Unit. The gain/savings on account of improvement in efficiency should be shared with the beneficiaries.

TPC suggested that the SFOC norm for coal based generating stations may be considered at 1 ml/kWh.

Dhariwal Infrastructure Limited requested to increase the SFOC norms from 1 ml/kWh, as Generators are forced to back down their generation due to various uncontrollable factors, which increases the SFOC. Further, new generating stations undergo various outages in the stabilization period post COD and require secondary fuel oil support for synchronisation.

5.8.3 Analysis and Commission's Decision

The Commission had proposed the SFOC norms for existing Generating Stations based on actual performance for past period and the same has been detailed in the Explanatory Memorandum. For the new Stations, the SFOC norms have been retained at 0.5 ml/kWh, as specified in the MYT Regulations, 2015. The norms specified for MSPGCL's Generating Stations are already relaxed norms and any further relaxation is not justifiable. In view of this, the Commission has retained the norms proposed in the draft MYT Regulations.

5.9 Regulation 45: Auxiliary Energy Consumption

5.9.1 Proposed in draft MYT Regulations, 2019

"45.13 Auxiliary Energy Consumption for new coal-based thermal Generating Stations shall…"

5.9.2 Comments Received

MSPGCL and VIPL requested modification of Regulation 45.15 for existing coal based generating stations by incorporating first and last provisos of 45.13, which are applicable for new generating stations to provide for additional normative Auxiliary Energy Consumption (AEC). MSPGCL added that it would be appropriate to finalize additional AEC norms for WLFGD, after stabilization of the FGD Units and collecting data thereof. In the meantime, AEC may be allowed at actuals to newly commissioned /retrofitted Units with FGD and SCR. WLFGD technology is suitable to handle large flue gas volumes (TPS of capacity more than 500 MW). AEC for Sea water based FGD and WLFGD are different due to variation in auxiliaries involved in these technologies. There is no existing data available for finalizing the AEC norms for new TPS inclusive of FGD and SCR.

AEML submitted to specify AEC norm for FGD in terms of MU, as against percentage, which has varied between 1.18% and 1.47%, because of different PLFs in different years. Till FY 2016-17, ADTPS has achieved PLF more than 85%, which has lowered thereafter in FY 2017-18 and FY 2018-19. As the consumption of FGD auxiliaries stays fairly same irrespective of Unit load, the AEC of FGD in terms of percentage of gross generation will be lower at higher PLF and higher at lower PLF.

TPC requested to allow AEC up to 3% for combined cycle Units like Unit 7 and 1% for open cycle units. Unit 7 is more than 26 years old, causing higher degradation of the equipment. With reduced gas availability, the Unit will not operate at full load, which will further increase the AEC as a percentage of generation.

VIPL requested for Additional AEC on account of additional equipment that has been mandated by Statutory Authorities.

Dhariwal Infrastructure Limited stated as per CEA reference letter (CEA/TETD-TT/2018/N-15/1451 dated 10.12.2018), thermal generating stations with tube and ball mills are allowed additional AEC of 0.7%.

5.9.3 Analysis and Commission's Decision

The Commission has accepted the suggestion regarding providing for additional AEC for certain auxiliaries for existing Generating Stations, in line with the approach followed for new Generating Stations.

Regarding the AEC norms for FGD, the Commission notes that FGD is installed and functioning only in ADTPS presently, and the WLFGD are yet to be installed by MSPGCL. Hence, the norms for WLFGD may be determined at a later stage, based on design considerations and actual AEC under prudent operational conditions. Further, the Commission does not agree with the request to specify the AEC norms for FGD in terms of MU, as original AEC norms are also specified in terms of percentage. The AEC norms were proposed in the draft MYT Regulations based on actual past data for ADTPS and Unit 7 of TPC, and there is no ground for revision in the same.

The Commission has accepted the submission regarding additional AEC for thermal Generating Stations with any additional equipment that has been mandated by Statutory Authorities, to be allowed on case to case basis after prudence check.

Hence, the Commission has modified the AEC norms for existing Units as under:

"Provided that for thermal Generating Stations with induced draft cooling towers and where tube type coal mill is used, the norms shall be further increased by 0.5% and 0.8%, respectively:

Provided further that additional Auxiliary Energy Consumption as follows may be allowed for plants with Dry Cooling Systems:

Type of Dry Cooling System	***(% of gross generation)***
Direct cooling air cooled condensers with mechanical draft fans	*1.0%*
Indirect cooling system employing jet condensers with pressure recovery turbine and natural draft tower	*0.5%*

Provided also that for thermal Generating Stations with Flue Gas De-sulphuriser (FGD), additional Auxiliary Energy Consumption shall be allowed as follows:

200/250 MW series: *1.2%*

300/330/350/500 MW & above: *1.0%*

Provided also that for thermal Generating Stations with any additional equipment that has been mandated by Statutory Authorities, additional Auxiliary Energy Consumption shall be allowed on case to case basis after prudence check."

5.10 Regulation 45: Transit Loss

5.10.1 Proposed in draft MYT Regulations, 2019

"45.18 Normative transit and handling losses for coal/lignite based Generating Stations, as a…"

5.10.2 Comments Received

Dhariwal Infrastructure Limited requested to allow transit losses based on distance of travel of coal from mine to site, usage of washed coal, inland travel for imported coal and transit loss on various case to case basis. Transit loss also depends upon surface moisture content of coal and varies depending upon the source. The surface moisture of washed coal gets evaporated in transit and results in weight loss. In case of imported coal, transit loss of 0.2% is not adequate considering the number of modes of travel for non-coastal power plants.

5.10.3 Analysis and Commission's Decision

The Commission has considered the norms of transit loss in line with norms specified in CERC Tariff Regulations, 2019, which are also the same as that specified in the MYT Regulations, 2015. It is acknowledged that there is quantity loss on account of unavoidable factors. Hence, the norms are specified for Transit loss. It is the primary responsibility of the Generator to control the quantity variation in coal as it has paid for the quantity at loading end. Deciding the transit loss based on distance would not be appropriate, as each plant is located at different distance from its source, and the transit loss would then have to be allowed on case to case basis. Hence, the segregation of norms for Pit head and non-pit head stations is appropriate, and there is no modification in the Regulations.

5.11 Regulation 46: O&M Norms

5.11.1 Proposed in draft MYT Regulations, 2019

"46.2 New Generating Stations and Generating Stations that achieved COD on or after…"

5.11.2 Comments Received

MSPGCL requested to allow O&M cost where the employee costs are approved at actual, subject to prudence check, and the (A&G + R& M) component is allowed at normative level. The employee expenses constitute around 50% to 60% of total O&M expenses and are uncontrollable expenses, in general, and particularly so is case of Government Utilities, due to various socio-economic constraints. Also, in case the same principles are continued, the WPI and CPI weightage could be in the ratio of 40:60 for computation of escalation factor. Further, the actual pay out for terminal benefits same needs to be approved over and above the normative O&M expenses.

Further, MSPGCL requested to specify normative O&M expenses for Generation Stations that have achieved COD after 2005, in line with CERC Tariff Regulations, 2019. Only Paras Units 3 & 4 were in service for complete period, and Parli Units 6 & 7 were not in service for substantial period in FY 2015-16 and half year in FY 2016-17. The Parli Unit 8 was in service only for 5 days in FY 2016-17. The same is reflected in the actual costs during the period. The same is evident from the vide variation in the averages. MSPGCL suggested to consider actual expenses for computation of normative O&M Expenses for Control Period.

AEML requested to modify the first proviso of Regulation 46.1 (c) and suggested to do away with the efficiency factor for the fourth Control Period. In case efficiency factor of 1% is considered in future years, it will amount to a further cumulative efficiency reduction of 5% till FY 2024-25, which will be unachievable. Further, the efficiency factor of 1% specified in the Regulations is on ad-hoc basis. When inflation in the economy is already at a considerably low level, the same level of efficiency at 1% each year should not be expected. When there is no study to support the correctness of 1% efficiency factor, imposing the same on utilities is unjust. Further, it is submitted that the Commission has clarified that it shall not allow any wage revision on the basis of provisioning and shall only allow actual expenses at the time of Truing-up. However, in the draft Regulations, "provisioning of expenses" has been used in general and does not seem to relate to only wage revision. Therefore, it is suggested that the Regulations may kindly clarify that sub-point (f) regarding provisioning relates to sub-point (e) which is regarding wage revision. Also, AEML requested to allow capital spares not forming part of the capital cost on actual subject to prudence check.

VIPL submitted that the proposed O&M norms for 300/330/350 MW sets for FY 2020-21 onwards are significantly lower than the actual O&M expenses incurred for FY 2016-17 as well as FY 2017-18. The escalation of 3.55% needs to be revised by considering Insurance impact and GST impact in previous year's data. Hence, if past expenses are to be used to develop the Base O&M expenses for next Control Period, then the GST/Service tax liability is required to be normalized across the various years of the past.

Dhariwal Infrastructure Limited requested to align O&M expenses in line with CERC Tariff Regulations, 2019 with annual escalation of 3.50% year on year basis. Further, ash disposal expenses should also be covered on case to case basis considering the ash content in coal, level of generation, ash utilization option available and technology employed for ash disposal. Further, security expenses and capital spares is requested to be considered after prudence check.

5.11.3 Analysis and Commission's Decision

The Commission is of the view that employee cost is controllable in nature and therefore, cannot be allowed on actual basis. Employee cost forms significant portion of the O&M expenses and hence, there is no rationale for allowing employee expenses on the basis of actual and the balance R&M expenses and A&G expenses on normative basis. The Commission has retained the weightage of WPI/CPI in 50:50 ratio for computation of escalation factor from MYT Regulations, 2015, which were amended in November 2017 based on inputs received from the stakeholders. There is no justification provided for changing the ratio to 40:60. The norms have slightly changed after consideration of WPI and CPI indices for March 2019.

Terminal benefits are part of normative O&M expense and have already been considered in the norms provided for O&M expenses for FY 2020-21 to FY 2024-25. Hence, no further provision towards wage revision needs to be allowed for these stations.

Norms specified by the Commission in this Regulation are based on past performance and actual O&M expenses. The base O&M expenses hence takes care of the possible actual cost incurred by the Generator in the past and accordingly have projected for future expenses. Also, the CERC norms for O&M expenses have been historically higher and therefore, cannot be compared with the norms specified in this Regulation.

The efficiency factor is applicable to Generating stations which have achieved CoD before August 26, 2005. The efficiency factor was introduced by the Commission in MYT Regulations, 2015, so that the Generators work towards achieving more efficient operations. However, considering the submission made by the stakeholders with regard to difficulties on achieving year on year improvement in efficiency factor, the Commission has added the following proviso in Regulation 47.1 (e)

"Provided further that the efficiency factor shall be considered as zero, in case the Availability Factor of all Generating Units/Stations of the Generating Company is higher than NAPAF, or there is an improvement in the Availability Factor of all Generating Units/Stations of the Generating Company of at least 2 percent annually over the last 3 years, in case the Availability Factor of all Generating Units/Stations of the Generating Company is lower than NAPAF"

As per the above clause, the Commission shall not consider efficiency factor of 1% in the O&M expenses if either the actual availability of the Station is above NAPAF or in case if it is lower

than NAPAF, then there shall be at least 2% annual increase in availability over the last three years.

The intent of the Commission in Regulations 46.1(f) of the draft MYT Regulations, 2019 was to disallow provisioning related to wage revision, and allow the same on actual incurrence only. This aspect has been clarified in the final MYT Regulations by modifying the relevant Regulations for Generation Business as under:

"*f) Provisioning of wage revision expenses shall not be considered as actual expenses at the time of true-up, and only expenses as actually incurred shall be considered*"

Further, capital spares which do not form part of capital cost cannot be recovered under O&M expenses. The cost of capital spares shall be restricted as specified in these Regulations.

Further, an enabling proviso has been added for allowing O&M expenses under Opex schemes specially designed for linkage of deliverables, wherein the payments will be linked to the performance and deliverables throughout the contract period, especially for system automation, maintenance, new technology and IT implementation, etc. O&M expenses on account of such schemes shall be allowed over and above normative O&M Expenses. Instead of owning an asset, service model is being allowed to infuse latest technologies. While the Utilities would get benefit of the services for efficiency gains, the associated cost of capitalization would be saved.

The following proviso has been inserted:

"f) A Generating Company may undertake 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:

Provided that the Generating Company shall submit detailed justification, cost benefit analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."

5.12 Clause 47.3: AEC Norms for Hydro Generating Stations

5.12.1 Proposed in draft MYT Regulations, 2019

"47.3. The following Normative Auxiliary Energy Consumption shall apply to hydel…."

5.12.2 Comments Received

TPC requested to allow AEC up to 1.5% (+ additional head works) for surface hydro generating stations with static excitation system. The AEC should include operational activities at reservoirs called Head Works as these are generally located at remote locations or norms should

be higher for lower sized plants, as AEC is totally dependent upon the size of sets. The smaller size sets installed in the past will need higher norms. Further, it is requested to specify AEC for pump storage hydro generating plant at 1.55% as no AEC has been proposed in the draft MYT Regulations for pumped storage hydro plant.

5.12.3 Analysis and Commission's Decision

The Commission has retained the norms for hydro generating stations as specified in the MYT Regulations, 2015, which are also in line with the CERC Tariff Regulations, 2019. There is no need to relax the norms further as no proper justification in this regard has been submitted by the stakeholder. For pumped storage hydro plants, the CERC as well as this Commission have adopted the approach of energy equivalent to 75% of the energy utilized in pumping the water from the lower elevation reservoir to the higher elevation reservoir being available during peak hours, which addresses the AEC as well.

5.13 Regulation 49.1: Computation for Recovery of Capacity Charge

5.13.1 Proposed in Draft MYT Regulations, 2019

"49.1 The fixed cost of a thermal generating station shall be computed on annual basis based on the norms specified under these Regulations and recovered on monthly basis under Capacity Charge. The total Capacity Charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share or allocation in the capacity of the generating station. The Capacity Charge shall be recovered under two segments of the year, i.e., High Demand Season (period of three months) and Low Demand Season (period of remaining nine months), and within each season in two parts, viz., Capacity Charge for Peak Hours of the month and Capacity Charge for Off-Peak Hours of the month as follows:

Capacity Charge for the Year (CC_y) = Sum of Capacity Charge for three months of High Demand Season + Sum of Capacity Charge for nine months of Low Demand Season

….."

5.13.2 Comments Received

Prayas Energy Group has proposed an alternative methodology to effectively achieve the objective of ensuring accountability of generators by ensuring availability during peak demand periods, while also incentivizing generation beyond the monthly normative target plant load factor.

MSEDCL proposed that SLDC should clearly define the procedure/mechanism for fixation of "peak" and "off peak" hours and "high demand" and "low demand" seasons.

TPC requested to extend the implementation of Regulation 49(1) to 49(4) w.e.f April 1, 2021, till which date the relevant provisions of MERC Regulations, 2015 shall prevail. Sufficient time is needed to understand the implementation issues of a new mechanism and CERC has also provided additional one-year time to the CGS to shift to the new mechanism for billing of capacity charges. Further, the MERC DSM Regulations, 2019 have also been notified recently, which has also impact on energy accounting. Therefore, it is requested to modify the provisions appropriately.

Dhariwal Infrastructure Limited suggested to retain the mechanism of computing capacity charges same as in existing MYT Regulations, 2015, which is simpler and easy to operate. Though the proposal for introduction of segregation of availability and generation based on peak and off-peak period is welcome, it is submitted that it is equally important to deliberate on the mechanism so as to avoid any implementation issues. The main concern is the peak and off-peak periods of DISCOMs are always relevant from the perspective of DISCOMs, the chances are likely that peak period and off-peak period of different beneficiaries would be different depending on season, geography and several other factors.

5.13.3 Analysis and Commission's Decision

The Commission has adopted the approach specified by CERC in its MYT Regulations, 2019, with the objective of ensuring availability of the Generators when they are needed by the Distribution Licensees. The Commission has specified that the hours of Peak and Off-Peak periods during a day shall be declared by the SLDC at least a week in advance. Further, the 'high demand season' and 'low demand season' in the State shall be declared by the SLDC at least 6 months in advance, i.e., latest by 30 September, 2019. Hence, no modifications have been made in this Regulation.

5.14 Regulation 49.6: Computation of Energy Charge

5.14.1 Proposed in Draft MYT Regulations, 2019

"…..

49.6 Energy Charge Rate (ECR) in Rs/kWh shall be computed up to three decimal places and shall be the sum of the cost of normative quantities of primary and secondary fuel for delivering ex-bus one kWh of electricity, and shall be computed as per the following formula:

$$ECR = \frac{[P_p x\ (Q_p)_n + P_s x\ (Q_s)_n]}{[1-(AUXn)]}\ Rs/kWh$$

Where, P_p = landed cost of primary fuel, namely coal or lignite or gas or liquid fuel and limestone, if applicable, in Rs/kg or Rs/cum or Rs/litre, as the case may be;

$(Q_p)_n$ = Quantity of primary fuel required for generation of one kWh of electricity at generator terminals in kg or litre or standard cubic metre, as the case may be, and shall be computed on the basis of normative Gross Station Heat Rate (less heat contributed by secondary fuel oil for coal/lignite based Generating Stations) and gross calorific value of coal/lignite or gas or liquid fuel as billed by supplier less actual stacking loss subject to the maximum stacking loss of 85 kcal/kg;

P_s = landed cost of Secondary fuel oil in Rs./ml,

$(Q_s)_n$ = Normative Quantity of Secondary fuel oil in ml/kWh as per Regulations 45.11 and 45.12, and

AUX_n= Normative Auxiliary Energy Consumption as % of gross generation as per Regulations 45.13 to 45.18:

….”

5.14.2 Comments Received

MSPGCL, AEML and VIPL requested to amend Regulation 49.6 and retain the existing method of “GCV as received less stacking loss” during the next Control Period. The actual coal consumed by the generating station would depend on real-world conditions, which are reflected in the heat content measured through As-Received Basis (ARB) method. The analysis of coal is done at the loading end by an agency appointed by SECL by equilibrated method. The ARB method considers Total Moisture, while the equilibrated method analyses moisture in equilibrated condition. While firing the coal, adjustments needs to be done corresponding to total moisture and inherent moisture, as coal is fired at very high temperature, based on the standard formula given by the World Coal Council. By considering the parameters of coal, i.e., Total Moisture, Inherent Moisture and equilibrated moisture and converting the results by using above formulae, it is generally seen that GCV measured on ARB is around 300 to 350 kcal/kg lower than GCV on Equilibrated Basis (EB).

MSPGCL and AEML requested to amend Regulation 49.6 by continuing the said ceiling of 150 kcal/kg (between GCV as received and GCV as fired) for the next Control Period. Stacking loss is operating like a ceiling, where if it is lower than the ceiling, the gain is entirely passed on to beneficiaries and if it is higher, the loss is entirely borne by the generator. Also, CEA recommended considering the margin of 85-100 kcal/kg for pit head plants and 105-120 kcal/kg for non-pit head plants and that too between GCV as received (wagon-top) and that as fired. However, the draft MYT Regulations have proposed a uniform margin of 85 kcal/kg without differentiating between pithead and non-pithead stations. The proposed GCV margin of 85 kcal/kg would be inadequate for non-pithead stations.

TPC submitted to retain the definition of $(Qp)_n$ as in the MYT Regulations, 2015 and also to retain the present stacking loss of 150 kcal/kg. The stacking loss proposed in the draft MYT Regulations considers stacking loss of Indian coal having very low volatile matter (20 to 25%) and not for Indonesian coal (with volatile matter of 42 to 43%). The high volatile coal has the tendency of smouldering and burning during storage, resulting in higher stacking loss.

Dhariwal Infrastructure Limited suggested to align the CEA recommendations for the finalization of computation of GCV and retain the existing provision of GCV as received at unloading point less actual stacking loss subject to the maximum stacking loss of 150 kcal/kg. The difference in GCV 'as billed' to GCV 'as fired' occur because of factors, which are beyond the control of generators, viz., grade slippage losses, transit losses, addition of moisture, addition of impurities, handling and stacking losses, etc.

5.14.3 Analysis and Commission's Decision

The Commission had proposed to consider the GCV as billed, for the purpose of computation of Energy Charges, in line with the philosophy outlined in the Explanatory Memorandum as under:

> *"It is the responsibility of the Generator to ensure quantity as well as quality of coal from loading point till the unloading point and further to firing of coal. Since the Generator is paying price of coal for a particular range of GCV, the Generator should ensure all quality checks in procurement of coal. The GCV of coal for which the price is being paid by the Generator should not be less than the minimum of the range of GCV specified in the standard. The Consumers are paying the price of coal at loading point and hence, in the interest of consumers, it is proposed to consider the quality of Coal for which the Generator pays.*
>
> *Accordingly, the "GCV as billed basis" is proposed to be considered for computation of Energy Charges."*

While the above rationale still holds good, the Commission accepts that the ground reality of coal supplies is different and there is a definite slippage of grades adversely affecting the Generating Companies. The Generating Companies may not be able to sustain the financial losses that they may incur, if they have to bear the loss on account of the entire difference between GCV as Billed and GCV as Received even when credit note is issued by the Coal company for the proven grade slippage. The submissions indicate that the difference in GCV as billed and as received even after correction based on the credit note, may range between 300 to 350 kcal/kg. Hence, while the Commission has retained the approach of considering GCV as billed, it has allowed a normative GCV loss of 300 kcal/kg, so that over time, all stakeholders move towards achieving the objective of minimizing this GCV loss, and the Generating Companies as well as their Beneficiaries pay only for what they are getting.

Further, the Commission has considered the submissions as regards to stacking loss for non-pithead stations, and has allowed a higher stacking loss of 120 kcal/kg for non-pit-head stations, with stacking loss being retained as 85 kcal/kg for pithead stations.

The Commission has hence, modified the following clause with regards to allowance of GCV in the energy charge computation:

"$(Q_p)_n$ = Quantity of primary fuel required for generation of one kWh of electricity at generator terminals in kg or litre or standard cubic metre, as the case may be, and shall be computed on the basis of normative Gross Station Heat Rate (less heat contributed by secondary fuel oil for coal/lignite based Generating Stations) and gross calorific value of coal/lignite or gas or liquid fuel as billed by supplier less:

(a) Actual loss in calorific value of coal between "as billed by supplier" and "as received at generating station", subject to the maximum loss in calorific value of 300 kcal/kg; and

(b) actual stacking loss subject to the maximum stacking loss of 85 kcal/kg for pithead stations and 120 kcal/kg for non-pithead stations;…"

5.15 Regulation 49.7: Alternative Source of Fuel

5.15.1 Proposed in Draft MYT Regulations, 2019

" ….

49.7 Adjustment of ECR [Fuel Surcharge Adjustment] on account of variation in price or heat value of fuels

…

Provided also that where the Energy Charge Rate based on weighted average price of fuel upon use of alternative source of fuel supply exceeds 10% of base Energy Charge Rate as approved by the Commission for that year, prior consultation with beneficiary/ies shall be made at least three days in advance:…"

5.15.2 Comments Received

Prayas Energy Group submitted that the sixth proviso of Regulation 49.7 should be amended by not allowing alternate fuel sources to the extent of 10% of base energy charge without prior consultation with beneficiaries, as already cushion in this regard is provided by NCDP Policy. The proposed proviso will lead to dilution of the commercial responsibility of the coal suppliers to ensure coal availability as per their contract terms and conditions.

MSEDCL requested to amend fifth and sixth Proviso of Regulation 49.7 such that the threshold limit for price of alternative source of fuel should not exceed 5% and shall be allowed only after consent of the beneficiary. Considering the variable charges in MOD stack, there is hardly 10% difference between variable cost of the lowest and the highest ranked station. Hence, provision of 10% is very high.

Dhariwal Infrastructure Limited suggested to allow procurement of alternative source of fuel subject to the ceiling norms of 30% as specified in the CERC Tariff Regulations, 2019.

5.15.3 Analysis and Commission's Decision

The Commission has considered the submissions and has modified the fifth and sixth provisos of the Regulation whereby the Generator has to take the consent of the beneficiary in case the weighted average energy charge of alternate fuel exceeds the weighted average energy charge rate approved by the Commission by 5%. The relevant clause is as below.

"Provided also that the weighted average price of alternative source of fuel shall not exceed 5% of base price of primary and secondary fuel approved by the Commission:

Provided also that where the Energy Charge Rate based on weighted average price of fuel upon use of alternative source of fuel supply exceeds 5% of base Energy Charge Rate as approved by the Commission for that year, prior consent with beneficiary/ies shall be obtained at least three days in advance"

5.16 Regulation 49.8: PLF Incentive

5.16.1 Proposed in Draft MYT Regulations, 2019

*"…. **C. Incentive***

49.8 Incentive shall be payable at a flat rate of 50.0 paise/kWh for actual energy generation in excess of ex-bus energy corresponding to target Plant Load Factor during peak hours and at a flat rate of 25.0 paise/kWh for actual energy generation in excess of ex-bus energy corresponding to target Plant Load Factor during off-peak hours, on a cumulative basis within each Season (High Demand Season or Low Demand Season, as the case may be), as specified in Regulation 45.3 of these Regulations."

5.16.2 Comments Received

TPC requested that PLF incentive for peak hours should be 65 paise/kWh and PLF incentive for non-peak hours should be 50 paise/kWh. It is observed that the reduction in PLF due to backing down by MSLDC is beyond the control of the generation utility. Even when the generation utility maintains its generation availability much higher than the norm still their PLF

remains lower due to unavailability of generation schedule from MSLDC. This was considered in MYT Regulations, 2011 but was removed in the MYT Regulations, 2015. The Utility loses its incentive due to reasons beyond its control.

AEML submitted that Regulation 2 (66) of the draft MYT Regulations provides for definition of PLF based on 'scheduled energy' whereas incentive in this Regulation is based on actual energy generation. This is due to the DSM Regulations. Incentive should be payable for ex-bus scheduled energy in excess of ex-bus energy corresponding to normative PLF. CERC also provides incentives in the above manner, but does not relate the same to actual energy generation. It is requested to amend Regulation 49.8 by allowing the Incentive to be payable to the generator considering scheduled energy only.

Further, power plants in Maharashtra may operate at Technical Minimum of 55% and it will be difficult to achieve the target of 85%. Increase in RE will result in lower PLF for Thermal. Thus, average utilization will go down and PLF would reduce. It is therefore suggested that the target PLF for incentive may be set at 80%. Further, the rate of incentive is suggested to be revised to 65 paise per unit for peak and 50 paise per unit for off-peak as per CERC Tariff Regulations, 2019.

MSEDCL suggested that as per the existing provision, 25 paise/kWh should be continued for peak hours and incentive of 15 paise/kWh may be provided for off peak hours.

Dhariwal Infrastructure Limited and Prayas suggested to provide incentive payable at a flat rate of 50.0 paise/kWh for actual energy generation in excess of ex-bus energy corresponding to target Plant Load Factor, irrespective of peak and off-peak period.

5.16.3 Analysis and Commission's Decision

The incentive provided in the MYT Regulations, 2015 was at a flat rate of 25.0 paise/kWh irrespective of the time of availability of the generating station. The Commission has introduced the concept of 'peak' and 'off-peak' periods in the MYT Regulations, 2019. The Commission has already provided the incentive for 'peak period' on the higher side as compared to the flat rate provided in the previous Regulations.

Further, the objective of the Commission is to incentivize actual generation in excess of the targets, and not merely scheduled energy. Also, the objective is not to ensure that the Generating Companies somehow get incentive, by reducing the target levels for receiving incentive, but to ensure that the Generating Companies exceed the target levels, for earning the incentive.

The Commission has therefore, not modified the incentive for peak and off-peak period.

5.17 Clause 50.8: Energy Charge for Hydro Stations

5.17.1 Proposed in draft MYT Regulations, 2019

"50.8. In case the Energy Charge Rate (ECR) for a Hydro Generating Station, as computed in…."

5.17.2 Comments Received

TPC requested that the energy charges for incentive consideration shall be 120 paise/kWh instead of 90 paise/kWh, in line with the CERC Tariff Regulations, 2019.

5.17.3 Analysis and Commission's Decision

The Commission has considered the submission and modified the energy charge for incentive consideration to 120 paise/kWh, in line with CERC Tariff Regulations, 2019.

5.18 Clause 51: Capacity Charge for Pumped Storage Hydro Generating Stations

5.18.1 Proposed in draft MYT Regulations, 2019

"51. The mechanism for billing for existing pumped storage hydel stations shall be in…."

5.18.2 Comments Received

MSEDCL requested that Annual Fixed Charges including lease rentals for Ghatghar pumped storage should be linked to normative plant availability factor. MSEDCL submitted that Regulation 51.8 should also be made applicable such that, if Ghatghar PSS fails to achieve the normative availability, capacity charges and lease rent should be adjusted on pro rata basis. The availability of Ghatghar plant is 32% in FY 2017-18 and 41% in FY 2018-19 due to major breakdown, which compelled MSEDCL to procure costly power from other sources. MSPGCL claimed full fixed charges and 100% lease rentals as there is no provision for pro-rata reduction.

5.18.3 Analysis and Commission's Decision

The framework provided in this Regulation for recovery of charges of pumped storage hydro station is in line with the CERC Tariff Regulations, 2019, and the MYT Regulations, 2015. The lease rent payable by MSPGCL to the GoM-WRD for Ghatghar as well as other hydro stations operated by MSPGCL, have been determined by the Commission through separate Orders, and has to be reimbursed by MSEDCL, without any linkage to Availability. Therefore, no modification has been done in this Regulation.

5.19 Clause 51: Pumped Storage Hydro Stations

5.19.1 Proposed in draft MYT Regulations, 2019

"51.4 The Capacity Charge payable to a pumped storage hydel generating Station for a calendar month shall be:

(AFC x NDM / NDY) (in Rupees), if actual Generation during the month is greater than or equal to 75 % of the Pumping Energy consumed by the Station during the month, and

{(AFC x NDM / NDY) x (Actual Generation during the month during peak hours/ 75% of the Pumping Energy consumed by the Station during the month) (in Rupees)}, if actual Generation during the month is lower than 75 % of the Pumping Energy consumed by the Station during the month ....

51.5 The energy charge shall be payable by every Beneficiary for the total energy scheduled to be supplied to the Beneficiary in excess of the design energy plus 75% of the energy utilized in pumping the water from the lower elevation reservoir to the higher elevation reservoir, at a flat rate equal to the average Energy Charge Rate of 20 paise per kWh on ex power plant basis."

5.19.2 Comments Received

TPC submitted that after considering the system efficiencies in generation, pumping cycle and auxiliary consumption in both the cycles for specifically old turbines commissioned before 2011, beneficiaries should be entitled to energy equivalent to 70% of the energy utilized in pumping the water from the lower elevation reservoir to the higher elevation reservoir. Efficiency is dependent on plant specific water conductor system.

TPC added that rate for energy generated above 70% (as suggested above) should be at a rate equivalent to tariff instead of 20 paise/unit, in order to encourage more utilization of pumped storage units, especially when the share of RE in grid is increasing multi fold.

5.19.3 Analysis and Commission's Decision

The framework adopted by the Commission is in line with CERC Tariff Regulations, 2019 and the MYT Regulations, 2015 for pumped storage hydro generating stations. Hence, there is no need for any modification in this regard.

5.20 Clause 54: Deviation Charges

5.20.1 Proposed in draft MYT Regulations, 2019

"54.1 Variations between actual net injection and scheduled net injection for the generating….

...Provided also that the Additional Charges for Deviation paid or earned by the Distribution Licensees in accordance with Regulation 10 of the Maharashtra Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2019, shall not be recoverable from the Beneficiary/ies through Tariff."

5.20.2 Comments Received

AEML submitted that controllability of the Distribution Licensee is limited, as low demand period may be lower than the sum of RE and Technical Minimum of thermal stations. Hence, it is not possible to restrict under injection at Distribution Licensee level. SLDC may take appropriate decision like Reserve Shut Down to manage over drawal. Sudden changes in weather/temperature causes drastic changes in demand even with best forecasting techniques. One-degree temperature change in AEML area causes 45 MW variation in demand. AEML deso not carry out demand forecast based on weather. Even though there is facility to revise schedules, it will not be possible to arrange the revised power requirement at the granularity of 15 minutes as currently a minimum of 3 hours is required to arrange any power on Power Exchanges. Hence, considering the high variability in demand, the Commission could fix a limit, say, 3% for MAPE (Mean Average Percentage Error) in forecast, within which the Additional Charges would be borne by beneficiaries.

TPC submitted that actual net drawal by the Distribution Licensee is uncontrollable as the sales has been included under uncontrollable parameter in these Regulations. Additionally, deviations by generators of the captive consumers and/or part Open Access consumers may lead to deviations in the actual drawal by the Licensees beyond the allocated Volume Limits thereby incurring the Additional Deviation Charges liability. Such deviations are beyond the reasonable control of the Licensees. Therefore, additional charges / revenue paid / received by the Distribution Licensees should also be allowed to be recoverable from the beneficiaries and the same provision may be deleted from Regulation 54.1. Even other States like Gujarat and existing MYT Regulations have no provision related to additional deviation charges. Hence, it is proposed to delete the third proviso.

5.20.3 Analysis and Commission's Decision

The Commission is of the view that the submission of the stakeholders as regards to recovery of additional deviation charges from beneficiaries, goes against the intent and spirit of the DSM Regulations, 2019. Hence, no modification is needed in the said Regulation.

5.21 Separate Tariff for energy from Pumped Water

5.21.1 Comments received

TPC requested separate tariff for energy generated from Pumped Water. If this suggestion is accepted, then suggested norms of returning 70% power (Regulation 51.4-51.6) may not be required. The tariff increases due to suggestions on Regulations 51.4 to 51.6 shall be recovered from Renewable Generators who will be the biggest beneficiaries of the Pumped Storage Plants. It is requested to appropriately include suitable provision in MYT Regulations.

5.21.2 Analysis and Commission's Decision

The model for Pumped Storage has been retained as per MYT Regulations, 2015, and is also in line with CERC Tariff Regulations, 2019. Hence, there is no need to modify the same.

6 Norms and Principles of determination of Transmission Revenue Requirement and Transmission Tariff

6.1 Regulation 56.10: Treatment of Prior Period Income/Expenses

6.1.1 Proposed in Draft MYT Regulations, 2019

"…

56.10 The Annual Transmission Charges for each Year of the Control Period shall provide for the recovery of the Aggregate Revenue Requirement of the Transmission Licensee for the respective Year of the Control Period, as approved by the Commission and comprising the following components:

…

Provided also that prior period income/expenses shall be allowed by the Commission at the time of truing up based on audited accounts, on a case to case basis, if the income/expenses in that prior period have been allowed on actual basis, subject to prudence check:

…"

6.1.2 Comments Received

MSETCL suggested that the prior period income/expenses should be allowed as per applicable Accounting Standards for a particular financial year (FY). As per IND AS (Indian Accounting Standards) requirement, in case prior period expenses are to be booked then the accounts of the respective FY shall be re-opened and the adjustment shall be made in that particular FY for the period where the expenses relates.

6.1.3 Analysis and Commission's Decision

The Commission notes that the proviso has already been implemented for allowance of prior period expenses or income at the time of truing up, on case to case basis. Further, it is clarified that Regulations do not specify how accounting of prior period expenses or income shall be done. The truing up undertaken by the Commission shall not be re-opened. The Commission has retained the provisions of the draft Regulations.

6.2 Regulation 56: Components of Tariff

6.2.1 Proposed in Draft MYT Regulations, 2019

"……

56.11 The Annual Transmission Charges of the Transmission Licensee shall be determined by the Commission on the basis of a Petition for determination of Aggregate Revenue Requirement or Petition for adoption of Annual Transmission Charges in case of competitively awarded transmission system Project, as the case may be, filed by the Transmission Licensee in accordance with ***Part B*** *of these Regulations."*

6.2.2 Comments Received

Sterlite Power Transmission Limited submitted that the detailed procedure for determination of Tariff, as per Part B of the MYT Regulations, is not applicable for adoption of tariff in case of competitively awarded transmission projects, or the projects developed under Tariff Based Competitive Bidding mode.

6.2.3 Analysis and Commission's Decision

The Commission has reworded Regulation 56.11, to remove the ambiguity, as under:

"56.11 The Annual Transmission Charges of the Transmission Licensee shall be determined by the Commission on the basis of a Petition for determination of Aggregate Revenue Requirement, filed by the Transmission Licensee in accordance with ***Part B*** *of these Regulations, or Petition for adoption of Annual Transmission Charges in case of competitively awarded transmission system Project, as the case may be."*

6.3 Regulation 58.4: Capital Investment Plan

6.3.1 Proposed in Draft MYT Regulations, 2019

"…..

58.4 The Capital Investment Plan of the Transmission Licensee shall be consistent with the transmission system plan for the intra-State transmission system developed by the State Transmission Utility bearing in mind the transmission system plan for the inter-State transmission system developed by the Central Transmission Utility:

Provided that any capital expenditure incurred by the Transmission Licensee based on the specific requirement of a Generating Company or Distribution Licensee shall be substantiated with necessary documentary evidence in the form of request for the same and undertaking given as appropriate.

…."

6.3.2 Comments Received

MSETCL submitted that there is no five-year plan for Inter-State Transmission System developed by Central Transmission Utility in line with State Transmission Utility plan. The ISTS projects are considered/accepted at Standing Committee Meetings as per LTA demand by applicant or in line with perspective plan of CTU and are implemented by CTU.

TPC submitted that the Transmission Licensee normally does not execute any project without approval of the Commission and STU and hence, the first proviso of Regulation 58.4 of the draft Regulations should be deleted. Further, the list of documents to be considered as documentary evidence and the format of undertaking should be made part of the MYT Regulations.

6.3.3 Analysis and Commission's Decision

The Commission is of the view that the Transmission Licensee plans its capital expenditure for improving the availability and reliability of power and for meeting increase in demand based on the input received either from Distribution Licensee or for generation evacuation based on input received from Generation. Hence, the requisite documents would be available and are required to be submitted, to justify the proposed capital expenditure. Further, the capital expenditure proposal of the Transmission Licensee is required to be consistent with the intra-State transmission system plan developed by the STU, which in turn needs to consider the transmission system plan for the inter-State transmission system developed by the CTU.

Hence, the Commission has retained the draft Regulation 58.4.

6.4 Regulations 59.1 and 59.2: Operational Norms for Transmission and Incentive

6.4.1 Proposed in Draft MYT Regulations, 2019

"59.1 Target availability for the Transmission Licensee shall be as under:

(a) For full recovery of Annual Transmission Charges:

(a) AC system: 98 per cent

(b) HVDC bi-pole links and HVDC back-to-back stations: 95 per cent

(b) For Incentive consideration:

(c) AC system: 99 per cent;

(d) HVDC bi-pole links and HVDC back-to-back stations: 96 per cent;

…

59.2 The Transmission Licensee shall be entitled to incentive on achieving annual availability beyond the target availability, in accordance with the following formula:

Incentive = Annual Transmission Charges x [Annual availability achieved – Target Availability] / Target Availability;

Where,

Annual Transmission Charges shall correspond to Aggregate Revenue Requirement for each year of the Control Period for the particular Transmission Licensee within the State, excluding the component of Income Tax:

… …. ….

Provided further that for AC system, two trippings per element per year shall be allowed, and after two trippings in a year, additional 12 hours outage for that particular element for each such tripping shall be considered in addition to the actual outage:

Provided also that in case of outage of a transmission element affecting evacuation of power from a generating Station, outage hours shall be multiplied by a factor of 2:

Provided also that the computation of incentive/disincentive shall be undertaken during Mid-Term Review and at the end of Control Period."

6.4.2 Comments Received

MEGPTCL, AEML and TPC submitted that the basic principle for providing incentive to a Transmission Licensee is to encourage the Licensee to maintain availability of its system above the normative level at which it is allowed to recover the approved ARR. Stakeholders suggested to amend Regulation 59.1(b) such that incentive consideration for AC system shall be applicable as per norms notified by CERC in its Tariff Regulations, i.e., 98.50% instead of 99%. Regulation 65 of the AERC MYT Regulations, 2018 and UERC MYT Regulations, 2018 also specifies the norms for target transmission availability for AC system for availing incentive @ 98.50%.

TPC further submitted that line tripping and penalty hours should not be considered in the formulae for calculation of availability of each transmission element in Annexure II. Further, considering the complexity of transmission network operation in densely populated area of metropolitan city like Mumbai, tripping limit for charging penalty should be increased to six (6) hours per annum and outages availed in night time for transmission lines should be excluded. TPC added that six trippings should be allowed instead of two trippings, as overhead

transmission lines located in public premises trip due to many reasons beyond the control of the Transmission Licensee.

MSETCL and TPC submitted that CERC Tariff Regulations, 2019, MERC MYT Regulations, 2015, and MYT Regulations issued by GERC and UERC do not exclude the component of Income Tax for incentive computation of Transmission Licensees, and should be considered for incentive calculation, as Income Tax on regulated business is an expense. MEGPTCL submitted that incentive allowable to Transmission Licensee should be recovered on monthly basis directly billed in the next month bill as allowed by CERC on annual cumulative availability basis, so that there is no delay in recovery of incentive as the Licensee has to incur higher expenses for maintaining higher availability.

6.4.3 Analysis and Commission's Decision

The draft Regulations specified the normative Transmission Availability of 98% for full recovery of Annual Transmission Charges and 99% for Incentive consideration. There is no change in operational norms from existing MYT Regulations, 2015. Hence, the Commission has retained the existing norms.

However, as discussed in the Chapter on Financial Principles, the Commission has replaced the Transmission Incentive being allowed for Transmission Licensees with Additional RoE linked to the Transmission Availability. Hence, the submissions regarding computation of Transmission Incentive are no longer relevant. Further, there is no change in the number of trippings and penalty hours for computation of Availability, from existing MYT Regulations, 2015, hence, the Commission has retained the existing provisos.

6.5 Regulation 60.1: Operation and Maintenance expenses

6.5.1 Proposed in Draft MYT Regulations, 2019

60.1 The norms for O&M expenses for existing and new Transmission Licensees have been specified on the basis of circuit kilometre of transmission lines and number of Bays in the substation of the Transmission Licensee, as given below:

Explanation*: ...*

Provided that along with other equipment, Bay shall compulsorily include the Circuit Breaker and Current Transformers:

...

Provided also that at the time of Truing up along with the Mid-term Review or at the end of the Control Period, the allowable O&M expenses for any Year shall be based on the norms for O&M expenses specified by the Commission in this Regulation and documentary evidence of assets capitalised by the Petitioner, subject to the prudence check of the Commission:

Provided also that the number of Bays considered for allowing O&M expenses shall exclude the unutilised Bays….”

6.5.2 Comments Received

TPC, AEML and MEGPTCL suggested to retain the existing provision related to consideration of Bay in Regulation 60.1 of draft MYT Regulations, by not insisting on installation of Circuit Breaker and Current Transformers. They also proposed that the unutilised bays should not be excluded for allowing O&M expenses, as these Bays have been installed after due approval of the Commission, and need maintenance irrespective of their utilisation. They added that if O&M expenses is not allowed on the unutilised bays, the Transmission Licensees would not carry out any maintenance of stand-by assets in their transmission system in order to save costs and avoid efficiency loss and this would greatly risk the quality and reliability of electricity supply in the City of Mumbai and expose the system to faults leading to loss of supply hours. Further, development of downstream system falls under the purview of other Licensees in terms of load management, which is beyond the control of the Transmission Licensees. Hence impact of non-readiness of other Utilities shall not be passed on to the Transmission Licensees.

AEML also added that if the norms are computed by considering Bays as defined under MYT Regulations, 2015 and applied to the number of Bays as defined under the proposed MYT Regulations, 2019, there will be an under-recovery of O&M expenses for the Transmission Licensee, as the number of Bays on which the norm is applied would be lower than the number of Bays considered for deriving the norm.

MSETCL also submitted that the spare bays and temporary bays should not be considered as unutilized bays, as the project is initiated on the behest of Distribution Licensee or as per STU plan, and certain un-avoidable events cannot be ruled out. Hence, penalizing the Transmission Licensee after the completion of the project is not justified.

6.5.3 Analysis and Commission's Decision

Regarding the definition of bays, the Commission finds merit in the submissions of the stakeholders and decides to retain the definition provided in existing MYT Regulations, 2015, and has therefore, deleted the proposed proviso requiring compulsory installation of Circuit Breaker and Current Transformers for being considered as a Bay.

As regards the issue of unutilised Bays, the dispensation of excluding unutilised Bays for the purpose of allowing O&M expenses was incorporated in the MYT Regulations, 2015, and is

not a new proviso introduced in the draft MYT Regulations, 2019. The Commission is of the view that the responsibility for commissioning of transmission asset in coordination with either Generating Company or Distribution Licensee lies with Transmission Licensee. Also, the Transmission Licensee has already given the opportunity to prove its case and take approval of the Commission for date of commercial operation of such assets, on account of the delay in commissioning of the concerned generating Station or the upstream or downstream transmission system or distribution system. Further, as a corollary to the issue of definition of Bay, if the norms are computed by excluding unutilised Bays as defined under MYT Regulations, 2015 and allowed on the unutilised Bays, there will be an over-recovery of O&M expenses for the Transmission Licensee, as the number of Bays on which the norm is applied would be higher than the number of Bays considered for deriving the norm. In view of this, the Commission has retained the proviso specifying that O&M expenses shall not be allowed for unutilised bays.

6.6 Regulation 60.2: Normative Operation and Maintenance expenses

6.6.1 Proposed in Draft MYT Regulations, 2019

The Commission had specified norms for O&M Expenses separately for MSETCL, AEML-T, TPC-T, JPTL and Other existing Transmission Licensees (viz., ATIL, APTCL, MEGPTCL, VIPL-T) and New Transmission Licensees.

6.6.2 Comments Received

MSETCL submitted that the reduction of O&M Norms in Regulation 60.2 may be reviewed in line with the norms applicable to other Transmission Licensees like TPC-T and AEML-T, and in case the actual expenses is more than the specified norms, then the excess expenses should be allowed as total pass through. The assets created by MSETCL are quite old and have either completed their useful life or are on the verge of completion of useful life and in order to maintain such assets, more O&M expenses would be required in future.

TPC requested that the base year O&M expenses for FY 2019-20 should be considered on the basis of trued up O&M expenses for FY 2019-20 for Transmission Licensees as has been considered for the O&M expenses to be allowed for Generation Business (Regulation 48.1).

AEML submitted that the actual O&M expenses of FY 2015-16 should be considered as Rs. 54.55 Crore instead of Rs. 43.15 Crore, which excludes the additional expenses on SCADA, Land usage, electricity charges and Corporate Allocation, which were allowed separately by the Commission for that year. Further, the actual O&M expenses for FY 2017-18 should be considered as Rs. 60.71 Crore, or the said correction could be made in the MYT Order, when the actual audited data for FY 2017-18 is submitted. Further, AEML submitted to amend Clause 60.4 by revising the escalation rates for FY 2019-20 to FY 2024-25 to 3.85% instead of 3.78%.

JPTL proposed to amend Regulation 60.5, which specifies the norms for 400 kV transmission line for JPTL, and allow the norm of Rs. 1.21 Lakh per ckt-km for FY 2020-21 and onwards. The O&M expenses of JPTL Transmission Line excluding terminal bays calculated based on the norms proposed in the draft Regulations works out much lower than the historical actual O&M expenses. The major expenses such as employee, manpower, etc., are subject to annual increase due to escalation. JPTL transmission line passes through coastal region leading to high pollution/saline atmosphere and corrosion effect on Transmission Line. Hence, R&M expenses also increases with the ageing of transmission line. However, the O&M norms per ckt.km for JPTL have been reduced from previous year even after the historical actual expenses are much higher and are subject to increase year on year. The norms of JPTL have been reduced by 10% for 400 kV per ckt.km while for other Licensees it has been increased by 75%. Also, larger Utilities would benefit from economies of scale. JPTL requested the Commission to consider O&M expenses for lines of JPTL for MYT Control Period based on the historical data. The O&M norms for Terminal Bays should be considered similar to that of other Licensees.

MEGPTCL, ATIL, and APTCL submitted that Regulation 60.6 should be amended and separate norms should be specified for all Licensees based on the actuals submitted to the Commission, and the escalation rates should be kept same as that specified in the MYT Regulations, 2015. The normative O&M expenses for 765 kV sub-station bay specified for FY 2020-21 is 21% lower than that of FY 2019-20, which is not sufficient to meet the O&M expenses of bays, and will hamper the O&M activities adversely. Further, actual O&M expenses incurred on commercial principles should be allowed for recovery. For 400 kV bay system, the O&M expense norms are prescribed as Rs. 143.07 Lakh/Bay, which is only 1% higher than the prescribed norms of FY 2019-20, and will lead to huge under recovery of the O&M expenses incurred by the Licensees. The norms should be increased to correspond to 5% escalation over the norms for FY 2019-20, i.e., to Rs. 148.9 Lakh/Bay.

MEGPTCL suggested to amend Regulation 60 and allow security expenses, capital spares and self-insurance reserves for Transmission system and associated communication system separately, in line with CERC Tariff Regulations, 2019. Further, MEGPTCL suggested to provide separate O&M norms for Transformers, Communication System, bus reactor, switchable line reactor and FSC, in line with the approach adopted by CERC.

6.6.3 Analysis and Commission's Decision

The methodology adopted for specifying the O&M norms for Transmission Licensees is same as that followed at the time of MYT Regulations, 2015 and detailed in the Explanatory Memorandum published along with the draft MYT Regulations, 2019. The norms have been derived based on actual expenses of the Licensees, which is reflected in the variation in estimated O&M Expenses for Licensees. Hence, the request to allow security expenses, capital spares and self-insurance reserves for Transmission system and associated communication

system separately, in line with CERC Tariff Regulations, 2019, as well as the request to provide separate O&M norms for Transformers, Communication System, bus reactor, switchable line reactor and FSC, is not relevant, as the entire actual O&M expenses of the Licensees have been allocated to Bays and Lines, for specifying the O&M norms.

The request to consider the base year O&M expenses for FY 2019-20 on the basis of trued up O&M expenses for FY 2019-20 as being considered for allowing O&M expenses for the Generation Business, cannot be considered, as the O&M norms are being specified for the Transmission Licensees based on the past actual data available at this point of time and due escalation, whereas, principles have been specified for allowing O&M expenses for the Generation Business. As a result, the actual trued-up O&M expenses for FY 2019-20 shall be available at the time of true-up of the O&M expenses for the initial years of the next Control Period.

Considering the updated data available for CPI and WPI indices, the Commission has revised the escalation factor to 3.85% instead of 3.78%, and the O&M norms for Transmission Licensees have been revised to that extent.

As regards AEML-T, the error in consideration of actual O&M Expenses for FY 2015-16 has been corrected, and the O&M norms for AEML-T have been revised by considering the actual expenses for FY 2015-16 as Rs. 54.55 Crore.

As regards O&M norms for MEGPTCL, in the Explanatory Memorandum, the Commission has observed that actual O&M expenses of MEGPTCL are much higher than that of MSETCL as well as PGCIL. Hence, allowing norms based on such higher actual expenses would not be justified. Further, MEGPTCL has not justified such higher O&M expenses compared to other licensees having same network configuration. Hence, the Commission decides to continue with the approach adopted in draft Regulations.

Further, the norms have been computed based on actual O&M expenses of the Licensee itself. Hence, applying norms of other Licensee, in case bays are located in the premises of Other Licensee, is not appropriate, and the O&M norms of the parent Licensee shall be applicable, even if the Bays are located in the premises of the other Licensee. Hence, the Commission has deleted the proviso regarding the same.

The norms for the new Transmission Licensees have been derived in line with the same philosophy elaborated in the Explanatory Memorandum.

In view of the above, the norms specified for O&M Expenses for Transmission Licensees have been revised as under:

"61.2 The norms for O&M expenses for the Maharashtra State Electricity Transmission Company Limited shall be:

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
HVDC (Rs Lakh)	2,146	2,221	2,299	2,380	2,464
Rs Lakh/ckt km					
765 kV	0.86	0.89	0.93	0.96	1.00
400 kV	0.61	0.63	0.66	0.68	0.71
>66 kV&<400 kV	0.24	0.25	0.26	0.27	0.28
66 kV and less	0.15	0.15	0.16	0.16	0.17
Rs Lakh/Bay					
765 kV	156.40	162.42	168.67	175.17	181.91
400 kV	111.73	116.03	120.49	125.13	129.95
>66kV&<400 kV	16.19	16.81	17.46	18.13	18.83
66 kV and less	3.38	3.51	3.65	3.79	3.94

61.3 The norms for O&M expenses for The Tata Power Company Ltd. - Transmission (TPC-T) shall be:

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Rs Lakh/ckt km					
>66kV&<400 kV	1.24	1.29	1.33	1.39	1.44
Rs Lakh/Bay					
>66kV&<400 kV	32.38	33.63	34.92	36.26	37.66
66 kV and less	6.77	7.03	7.30	7.58	7.87

61.4 The norms for O&M expenses for Adani Electricity Mumbai Ltd. - Transmission (AEML-T) shall be:

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Rs Lakh/ckt km					

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
>66 kV&<400 kV	0.71	0.74	0.76	0.79	0.82
Rs Lakh/Bay					
>66 kV&<400 kV	33.28	34.56	35.89	37.27	38.70
66kV and less	6.96	7.22	7.50	7.79	8.09

61.5 The norms for O&M expenses for Jaigad Power Transmission Company Limited (JPTL) shall be:

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Rs Lakh/ckt km					
400 kV	0.44	0.45	0.47	0.49	0.51
Rs Lakh/bay					
400 kV	77.04	80.01	83.09	86.29	89.61

61.6 The norms for O&M expenses for New Transmission Licensees, Other Existing Transmission Licensees, and additional voltages for TPC-T and AEML-T shall be:

Voltage Level	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
HVDC (Rs Lakh)	2,146	2,221	2,299	2,380	2,464
Rs Lakh/ckt km					
765 kV	1.46	1.51	1.57	1.63	1.69
400 kV	0.84	0.88	0.91	0.94	0.98
>66 kV&<400 kV	0.22	0.23	0.24	0.25	0.25
66 kV and less	0.15	0.15	0.16	0.16	0.17
Rs Lakh/Bay					
765 kV	156.40	162.42	168.67	175.17	181.91
400 kV	143.25	148.77	154.49	160.44	166.62

Voltage Level	*FY 2020-21*	*FY 2021-22*	*FY 2022-23*	*FY 2023-24*	*FY 2024-25*
>66kV&<400 kV	*14.07*	*14.62*	*15.18*	*15.76*	*16.37*
66 kV and less	*3.38*	*3.51*	*3.65*	*3.79*	*3.94*

***Explanation**: The term "New Transmission Licensee" shall mean the transmission Licensee(s) for which Transmission Licence is granted by the Commission prior to or after the date of coming into effect of these Regulations, and for whom the O&M norms have not been specified in Regulations 61.2 to 61.5."*

Further, an enabling proviso has been added for allowing O&M expenses under Opex schemes specially designed for linkage of deliverables, wherein the payments will be linked to the performance and deliverables throughout the contract period, especially for system automation, maintenance, new technology and IT implementation, etc. O&M expenses on account of such schemes shall be allowed over and above normative O&M Expenses. Instead of owning an asset, service model is being allowed to infuse latest technologies. While the Utilities would get benefit of the services for efficiency gains, the associated cost of capitalization would be saved.

The following proviso has been inserted:

"61.8 A Transmission Licensee may undertake 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:

Provided that the Transmission Licensee shall submit detailed justification, cost benefit analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."

6.7 Regulation 60.7: O&M expenses for GIS Bays

6.7.1 Proposed in Draft MYT Regulations, 2019

"60.7 The O&M expenses for the GIS bays shall be allowed as worked out by multiplying 0.70 to the normative O&M expenses for bays as allowed in Regulation 60.2 to 60.5."

6.7.2 Comments Received

MEGPTCL and AEML proposed to amend Clause 60.7, which discriminates in O&M expenses between GIS and AIS bays. AEML submitted that, if the reduction factor in O&M expenses for GIS Bays is considered, it should be worked out after considering the likely reduction only in the R&M costs. However, there is no effect of the same on Employee and A&G costs, because

the common in-house manpower undertakes O&M of the EHV station (inclusive of Transformers, AIS/ GIS bays, etc., within the station). Also, there is no segregation of the man-hours for the activities being undertaken in the Transmission system and the associated man-power cost thereon. Similarly, A&G expenses are mainly the security charges, water charges, electricity charges, etc., which do not vary based on the type of Bays.

MEGPTCL submitted that transformers at GIS are similar to AIS and hence, there should not be any discrimination in O&M norms between GIS and AIS.

6.7.3 Analysis and Commission's Decision

The Commission has considered lower O&M Expenses for GIS bays in line with CERC Tariff Regulations, 2019. Also, Transmission Licensees, while seeking approval for installation of GIS Sub-stations, which have high capital cost compared to regular AIS Substation, justify the capital expenditure by stating that reduction in O&M Expenses would be one of the benefits accruing after implementation of such scheme. After anticipating such benefits, the same has been approved. Hence, it is appropriate to consider the reduction in O&M Expenses for GIS bays. Hence, the Commission has retained Regulation 61.7.

6.8 Regulation 61: Non-Tariff Income

6.8.1 Proposed in Draft MYT Regulations, 2019

"61.1 The amount of non-Tariff income relating to the Transmission Business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining the Annual Transmission Charges of the Transmission Licensee:

...

61.2 The Non-Tariff Income shall include:

...

b) Income from sale of scrap;

c) Income from investments;…."

6.8.2 Comments Received

AEML submitted that CERC Tariff Regulations, 2019 specified that the net Non-Tariff Income from rent of land or buildings, sale of scrap and advertisements shall be shared between the beneficiaries or the long-term customers and the Generating Company or the Transmission

Licensee, as the case may be, in the ratio of 50:50. Hence, on similar lines, sharing of net Non-Tariff Income may be done in ratio of 50:50 with the consumers.

The Commission has already settled the principle in the Order dated 27 March, 2015, in Case No. 39 of 2013, that only profit from sale of scrap shall be considered as part of Non-Tariff Income, as reproduced below:

"*the Commission opines that in case of sale of scrap of capitalised asset, only profit from sale of scrap should be considered as non-tariff income, instead of considering total revenue proceeds.".*

MEGPTCL proposed to delete Regulation 61.2 (c), which considers income from investments as Non-Tariff Income, as any investments that a Company makes is for its own sustenance and to make best use of its idle funds if any. Free funds are available either due to RoE or due to better performance of the Utility than the approved norms or due to mismatch between norms and actual cash flow. Further, it is necessary to invest the idle funds in good instruments for better returns with manageable risk. If it is decided to deduct any income from such investments, then any situation leading to loss of any investments may also be allowed additionally in Tariff.

6.8.3 Analysis and Commission's Decision

The Commission is of the view that Non-Tariff Income is an additional income generated from better utilization of assets created by the Generator/Licensee on the basis of recovery made through tariff charges approved by the Commission from the beneficiaries. The Commission has always considered the entire Non-Tariff Income for reduction of the ARR of the Utilities, since the MYT Regulations, 2011. The Commission has hence, not modified this Regulation.

As regards the income from sale of scrap, the approach adopted by the Commission is consistent with the recent Orders of the Commission. Hence, no modification is required in the Regulations on this account.

Regarding the income from Investment being considered as Non-Tariff Income, the same approach has been adopted by the Commission from the beginning. The Transmission business is a regulated business and IoWC and O&M Expenses are being allowed on normative basis. Hence, the interest income has to be considered under Non-Tariff Income, as it has been generated from the business/assets/resources that have been funded by the consumers. Hence, no modification is required in the Regulations on this account.

6.9 Regulation 62: Income from Other Business

6.9.1 Proposed in Draft MYT Regulations, 2019

"*Where the Transmission Licensee has engaged in any Other Business under Section 41 of the Act for optimum utilisation of its assets, an amount equal to two-thirds of the revenues from such Other Business after deduction of all direct and indirect costs attributed to such Other Business shall be deducted from the Aggregate Revenue Requirement in calculating the Annual Transmission Charges of the Transmission Licensee:*

…"

6.9.2 Comments Received

TPC submitted that 1/3rd of the income from Other Business should be deducted from the ARR instead of 2/3rd as proposed in the draft Regulations. TPC added that DERC considers the sharing of income from Other Business in the ratio of 40:60 to Utility:Beneficiaries, and in case the Licensee does not utilise the assets of licensed business, the sharing of other business income shall be 60:40 to Utility:Beneficiaries. PSERC specifies the sharing of Other Business income in the ratio of 90:10 to Utility:Beneficiaries.

6.9.3 Analysis and Commission's Decision

This aspect was discussed at length while framing the MYT Regulations, 2015, also and the Commission has not modified the approach in MYT Regulations, 2019. Hence, the proviso specified in draft Regulations is retained.

6.10 Regulation 63: Determination of Intra-State Transmission Tariff

6.10.1 Proposed in Draft MYT Regulations, 2019

"63.2 The Commission shall approve yearly 'Base Transmission Capacity Rights' as average of Coincident Peak Demand and Non-Coincident Peak Demand for TSUs as projected for 12 monthly period of each year (t) of the Control Period, representing the 'Capacity Utilisation' of Intra-State transmission system and accordingly determine yearly 'Base Transmission Tariff', in accordance with the following formula:

….

Provided also that in case of a new Distribution Licensee whose monthly CPD and NCPD data is not available at the time of determination of Base TCR, the quantum of power approved by the Commission in the approved Power Procurement Plan or Power Purchase Agreement shall

be considered in lieu of the average monthly CPD and NCPD for calculating the Base Transmission Capacity Rights:….”

6.10.2 Comments Received

AEML, TPC, and NUPLLP requested to amend the third proviso of Regulation 63.2 and provide that the Contracted OA Capacity of partial OA users shall be excluded from the Distribution Licensees' CPD/NCPD and will be considered separately for allocation of TTSC, to determine the Transmission Charges. If Distribution Licensees' CPD/NCPD continues to include the demand from these consumers and it continues to remit the charges collected from these consumers to the STU, it would mean that their charges are borne by the Distribution Licensee's non-open-access consumers. Further, as this aspect has not been addressed in the Distribution Open Access Regulations by the Commission, the same may be addressed in the MYT Regulations, 2019.

NUPLLP submitted that for a new Distribution Licensee whose monthly CPD and NCPD data for at least 12 months is not available at the time of determination of Base TCR, the Base TCR should not be determined on the basis of the PPA. NUPLLP submitted that the PPA reflects the peak capacity requirement, and if such rationale were to be adopted for MSEDCL, then its Base TCR would have to be based on contracted peak capacity of around 34,000 MW instead of the CPD and NCPD of around 17,000 MW. Hence, in such a case, transmission charges should be payable by the New Distribution Licensee based on the quantum of the STOA/MTOA applied for.

MBPPL requested that for calculation of Base TCR, the CPD and NCPD data of the preceding year or part thereof should be considered. In case of a new Distribution Licensee, whose monthly CPD and NCPD data is not available at the time of determination of Base TCR, the Commission may ask for the data from MSLDC/Deemed Licensee.

6.10.3 Analysis and Commission's Decision

Regarding the remittance of the Transmission Charges collected from the partial OA consumers to the STU, the Commission is of the view that the Distribution Licensees are not entitled to charge and retain Transmission Charges from the OA consumers as Transmission Charge is applicable for use of transmission network provided by the Transmission Licensee. Distribution Licensees in their role as nodal agency for OA should only collect the same, for and on behalf of Transmission Licensees.

As regards the comment on additional burden on non-OA consumers, it should be noted that Revenue from Transmission Charges collected from short-term/partial OA is anyway deducted from overall TTSC while determining Transmission Tariff, which in turn benefits DISCOMs/Long-Term TSUs including full TOAUs. Further, no Transmission Charges are

applicable for Distribution Licensees for their short-term OA transactions up to their Base TCR, as per provisions of the MYT Regulations. Thus, non-eligible OA users of DISCOMs are benefitted and there is no additional burden on them.

As regards the alternative suggestion of the Distribution Licensees that their CPD and NCPD should be reduced upfront to the extent of short-term OA capacity. If this suggestion is accepted, then the balance TTSC has to be loaded on to the STOA. However, STOA users may not avail OA throughout the year and may shift from OA to grid supply. In such situations, Transmission Charges may not be payable by them, which may lead to under-recovery of TTSC. Hence, this suggestion is not accepted.

As regards the consideration of CPD and NCPD for Deemed Distribution Licensees, the Commission feels that in the absence of actual data, the appropriate reference/base needs to be considered for determination of CPD and NCPD. Accordingly, the Commission has decided to consider CPD and NCPD for Deemed Distribution Licensees, based on the monthly CPD and NCPD data if available for at least 4 months, or the quantum of Short-term/Medium-Term Open Access applied for by the Deemed Distribution Licensee for the available period, for calculating the Base TCR. Accordingly, the corresponding proviso in Regulations 64.2, 64.5 and 65.2 has been modified as under:

"Provided further that in case of a Deemed Distribution Licensee whose monthly CPD and NCPD data is not available for 12 months at the time of determination of Base TCR, the monthly CPD *and NCPD data if available for at least 4 months, or the quantum of Short-term/Medium-Term Open Access applied for by the Deemed Distribution Licensee for the available period, shall be considered in lieu of the average monthly CPD and NCPD for calculating the Base Transmission Capacity Rights."*

6.11 Regulation 63: Determination of Intra-State Transmission Tariff

6.11.1 Proposed in Draft MYT Regulations, 2019

"….

63.5 The State Transmission Utility shall file the Petition for determination of Intra-State Transmission Tariff for the MYT Control Period latest by November 30, 2019, and latest by November 30, 2022 at the time of Mid-term Review, on the basis of Base Transmission Capacity Rights of each TSU, and the summation of the Aggregate Revenue Requirement projected by the Transmission Licensees for each Year of the Control Period."

6.11.2 Comments Received

MSETCL suggested to continue the earlier practice, with STU providing the necessary support to the Commission for determination of Intra-State Transmission Tariff, as it will help in timely

passing of the Tariff Order. MSETCL submitted that STU working on all ARR Orders post their issue and preparing a separate InSTS Tariff Petition may delay the process.

TPC submitted that, in case of new TSU, a proviso may be added for Petition to be filed by STU for determination of revised InSTS tariff from the date of addition of new TSU into the intra-State transmission system.

6.11.3 Analysis and Commission's Decision

As already mentioned in Explanatory Memorandum, the Commission has been determining the Intra-State Transmission Tariff on a suo-motu basis, based on the ratio of CPD and NCPD of the Distribution Licensees and the approved ARR of all the Transmission Licensees. In this method, the Transmission Licensees as well as TSUs do not get an opportunity to present their case before the Commission regarding the recovery of Intra-State Transmission Tariff. Hence, the Commission specified that the STU shall file the Petition for determination of InSTS Tariff one month after the last date of filing of MYT/MTR Petitions by Transmission Licensees, based on the CPD and NCPD and the ARR sought by the Transmission Licensees in their respective Petitions.

The Commission clarifies that STU has to consider the ARR of respective Transmission Licensee based on their Petition filed before the Commission, without any scrutiny at its end. Hence, Petition filed by STU shall be only limited to determination of InSTS Tariff, its recovery, billing and any related issues, if any.

Further, the InSTS tariff is determined based on estimated CPD and NCPD. However, the actual CPD and NCPD shall be different during the year, which may change the share of transmission charges of TSUs. Hence, the Commission has specified in the MYT Regulations, 2019 that it shall undertake Truing up for such InSTS Tariff and the same shall be part of Petition to be filed by STU. Any over-recovery or under-recovery by TSUs shall be adjusted in subsequent years. Accordingly, the following proviso has been inserted:

"Provided that the State Transmission Utility shall file the Petition for true-up of share of intra-State transmission tariff for FY 2020-21 and FY 2021-22 along with the Petition for Mid-term Review, on the basis of the actual CPD and NCPD of Transmission System Users in the respective years, or the quantum of Short-term/Medium-Term Open Access applied for by the Deemed Distribution Licensee for the available period, as applicable:"

6.12 Regulation 65: Usage of Intra-State Transmission System

6.12.1 Proposed in Draft MYT Regulations, 2019

"65 The charges for intra-State transmission usage shall be shared among various TSUs in the following manner:

....

b) Long-term TSU with recorded demand greater than Base TCR but lower than Contracted Capacity shall make payment of short-term Transmission charges for the recorded demand in excess of Base TCR.

c) Where the recorded demand of long-term TSU is greater than Contracted Capacity, the TSU shall bear additional transmission charges as specified in the Regulations of the Commission governing Transmission Open Access:

..."

6.12.2 Comments Received

AEML requested to amend Regulation 65 (b) and (c) such that instead of taking average of monthly values, maximum of monthly values should be considered to arrive at Base TCR. The draft Regulation states that in case utilization is more than Base TCR but lower than Contracted Capacity, short-term transmission charges shall be payable. This means that in all the months wherever the Base TCR is exceeded, the Licensee will end up bearing the short-term open access charges, even though that month's capacity itself has been considered to arrive at Base TCR. This amounts to double charging for the same capacity usage. However, if maximum of monthly values is considered to arrive at Base TCR, it would protect the Licensees from exceeding the Base TCR and link the Transmission Charges on the maximum usage of TSUs, rather than average usage. Irrespective of the sharing ratio, the Transmission Licensee always recovers its full ARR, however, the TSU ends up paying higher un-necessarily, when it is actually within its usage right. Though the STOA charges so paid by TSUs reduce the TTSC and thus reduce the Transmission Charges for all TSUs for next year, however, the benefit and cost is not one to one, as the benefit of reduction is shared in the pool and gets passed on to all TSUs in the ratio of their CPD/NCPD.

6.12.3 Analysis and Commission's Decision

The approach adopted by the Commission is same as that specified in MYT Regulations, 2015, and is working satisfactorily. It is also not certain as to how the suggestion would affect different TSUs, as it would depend on the difference between the average and maximum of monthly values of CPD and NCPD for each TSU. Hence, no modification has been made in these clauses of Regulation 66.

6.13 Regulation 67.2: Billing and Payment of Charges

6.13.1 Proposed in Draft MYT Regulations, 2019

"…

67.2 The monthly bill for transmission Tariff shall be payable within thirty days of receipt of bill by the TSUs.

…"

6.13.2 Comments Received

AEML requested to amend Regulation 67.2 by specifying the due date as 30 days from date of billing, as receipt of bill is generally on the same day, to make it consistent with Regulation 37.1, which specifies that DPC will be levied on the bill amount where payment is delayed beyond a period of 30 days from the date of billing.

6.13.3 Analysis and Commission's Decision

The Commission finds merit in the submission, and has accordingly, modified Regulation 68.2 of the MYT Regulations, 2019, as under:

"*68.2 The monthly bill for transmission Tariff shall be payable within thirty days of date of bill by the STU.*"

6.14 Regulation 68: Transmission Losses

6.14.1 Proposed in Draft MYT Regulations, 2019

"The energy losses in the intra-State transmission system, as determined by the State Load Despatch Centre and approved by the Commission, shall be considered as Transmission Losses and borne by the Transmission System Users in proportion to their usage of the intra-State transmission system:

Provided that the quantum of energy consumed by the auxiliary equipment of a transmission sub-station and the transformer losses within the sub-station shall not be accounted for under the Transmission Losses:

…"

6.14.2 Comments Received

TPC sought clarity on the accounting of transformer losses within a transmission substation, as any one transmission substation may be supplying to multiple Distribution Licensees and feeder meters of the Distribution Licensee will be at the HT level.

6.14.3 Analysis and Commission's Decision

The Commission clarifies that quantum of energy consumed by auxiliary equipment of a transmission sub-station and the station transformer losses within the sub-station shall have to be accounted under Auxiliary Consumption of the sub-station. Further, for clarity, the Regulation has been modified slightly, for greater clarity as under:

"Provided that the quantum of energy consumed by the auxiliary equipment of a transmission sub-station and the station *transformer losses within the sub-station shall not be accounted for under the Transmission Losses"*

6.15 Regulation 69: Reactive Energy Charges

6.15.1 Proposed in Draft MYT Regulations, 2019

No modification was proposed to the mechanism of charging Incentive/Disincentive for maintaining the reactive energy balance in the system.

6.15.2 Comments Received

No comments or suggestions were received on the issue.

6.15.3 Analysis and Commission's Decision

The Commission is separately specifying the mechanism of charging Incentive/Disincentive for maintaining the reactive energy balance in the system, under the proposed amendments to the State Grid Code Regulations, based on inputs received from MSLDC. Hence, the Commission has modified the relevant Regulations accordingly, as under:

"*70.2 Reactive energy exchange, only if made as per the directions of MSLDC, for the applicable duration (injection or absorption) shall be compensated/levied by the MSLDC to the Generating Station, as specified in the applicable Maharashtra Electricity Regulatory Commission (State Grid Code) Regulations, 2006.*

70.3 The Transmission System Users shall be subjected to Incentive/Disincentive to be compensated/levied by the MSLDC for maintaining the reactive energy balance in the transmission system, as specified in the applicable Maharashtra Electricity Regulatory Commission (State Grid Code) Regulations, 2006."

7 Norms and Principles for determination of Revenue Requirement and Wheeling Charges for Distribution Wires and Retail Supply Business

7.1 Regulation 70: Separation of Accounts of Distribution Licensee

7.1.1 Proposed in draft MYT Regulations, 2019

"Every Distribution Licensee shall maintain separate accounting records for the Distribution Wires Business and Retail Supply Business and shall prepare an Allocation Statement to enable the Commission to determine the Tariff separately for:

(a) Distribution Wires Business;
(b) Retail Supply of electricity:
Provided that in case complete accounting segregation has not been done between the Distribution Wires Business and Retail Supply Business of the Distribution Licensee, the Aggregate Revenue Requirement of the Distribution Licensee shall be apportioned between the Distribution Wires Business and Retail Supply Business in accordance with the following Allocation Matrix…."

7.1.2 Comments received

Prayas Energy Group submitted that Regulation 70 should be modified on the following grounds:

1. Delete the Allocation Matrix;
2. Mandate that separate ARRs for Wires and Supply have to be submitted based on separation of Accounts;
3. Specify intermediate milestones;
4. Ensure that separation of Accounts and reporting take place before the commencement of the Control Period.

Prayas submitted that despite several directions to the Utilities to ensure separate Accounting records, Distribution Licensees in Maharashtra have made very limited efforts to achieve this by DISCOMs. In fact, privately owned Distribution Companies do not even maintain separate accounts for their generation, transmission and distribution business. DISCOMs should initiate a process of reporting the ARRs of the wires and supply business based on separate accounting records rather than the allocation matrix.

7.1.3 Analysis and Commission's Decision

The Allocation Matrix was specifically incorporated in the MYT Regulations, 2015 and retained in the draft MYT Regulations, 2019, to overcome the difficulty of non-maintenance of separate Accounts by Distribution Licensees for the Wires Business and Retail Supply Business. As per the Act, the Distribution Licence is an integrated licence for Wires and Supply, hence, the maintenance and submission of separate Accounts for Wires and Supply cannot be enforced. Inspite of this, the Commission has been insisting on submission of separate Accounts for Wires and Supply business, so as to analyse the costs of these functions of the Distribution Licensee. Hence, the Allocation Matrix has to be retained till the time the Distribution Licensees are able to submit separate/segregated Accounts for each Business.

Hence, no change has been made in this Regulation.

7.2 Regulation 72.2: Determination of Wheeling Charges

7.2.1 Proposed in draft MYT Regulations, 2019

"72.2 The Wheeling Charges of the Distribution Licensee shall be determined by the Commission on the basis of a Petition for determination of Tariff filed by the Distribution Licensee in accordance with Part B of these Regulations:

Provided that the Wheeling Charges may be denominated in terms of Rupees/kWh or Rupees/kVAh or Rupees/kW/month or Rupees/kVA/month, for the purpose of recovery from the Distribution System User, or any such denomination, as may be stipulated by the Commission:

Provided further that the Wheeling Charges shall be determined separately for LT voltage, HT voltage, and EHT voltage, as applicable:..."

7.2.2 Comments received

TPC submitted that the principles for determination of Wheeling Charges may be specified in the Regulations, by taking into account the asset base at respective voltage levels.

AEML requested that the same philosophy should be followed for all Distribution Licensees and Wheeling Charges should be determined for different voltage levels separately for EHT, 33 kV, 22 kV, 11 kV and LT, as is being done for MSEDCL.

7.2.3 Analysis and Commission's Decision

The Commission is of the view that the Wheeling Charges are not dependent only on the asset base at the respective voltage level, and also depends on factors like feeding voltage level, demand and energy handled, therefore, it would not be appropriate to specify the same in the Regulations.

The Commission intends to determine separate Wheeling Charges for EHT, HT and LT voltages, uniformly for all the Distribution Licensees, and has accordingly specified the same in the draft MYT Regulations, in order to ensure consistent approach in determining Wheeling Charges for all Distribution Licensees.

Hence, no change has been made in this Regulation.

7.3 Regulation 73.2: Capital Investment Plan

7.3.1 Proposed in draft MYT Regulations, 2019

"73.2 The Capital Investment Plan shall be a least cost plan for undertaking investments and shall cover all capital expenditure projects of a value exceeding Rs. Ten Crore or such other amount as may be stipulated by the Commission from time to time and shall be in such form as may be stipulated by the Commission from time to time:"

7.3.2 Comments received

MBPPL requested that the above Regulation may be amended to specify that all capital expenditure projects exceeding Rs. 2 crore shall be required to be submitted in the form of Detailed Project Report, for deemed Distribution Licensees, considering the size of their capital investments.

7.3.3 Analysis and Commission's Decision

The Commission has considered the submission and added a proviso to the said Regulation, as under:

"*Provided that the limit shall be Rs. One crore for Deemed Distribution Licensees*."

7.4 Regulations 74 & 83: Operation and Maintenance Expenses for Wires and Supply

7.4.1 Proposed in draft MYT Regulations, 2019

"74.2 The Operation and Maintenance expenses shall be derived on the basis of the average of the Trued-up Operation and Maintenance expenses after adding/deducting the share of efficiency gains/losses, for the three Years ending March 31, 2019, excluding abnormal Operation and Maintenance expenses, if any, subject to prudence check by the Commission:

Provided that the average of such Operation and Maintenance expenses shall be considered as Operation and Maintenance expenses for the Year ended March 31, 2018, and shall be

escalated at the respective escalation rate for FY 2018-19 and FY 2019-20, to arrive at the Operation and Maintenance expenses for the base year ending March 31, 2020:

Provided further that the escalation rate for FY 2018-19 and FY 2019-20 shall be computed by considering 30% weightage to the average yearly inflation derived based on the monthly Wholesale Price Index [2011-12 series] of the respective past five financial years as per the Office of Economic Advisor of Government of India and 70% weightage to the average yearly inflation derived based on the monthly Consumer Price Index [2011-12 series] for Industrial Workers (all-India) of the respective past five financial years as per the Labour Bureau, Government of India:

Provided also that at the time of true-up for each Year of this Control Period, the Operation and Maintenance expenses shall be derived on the basis of the Final Trued-up Operation and Maintenance expenses after adding/deducting the sharing of efficiency gains/losses, for the base year ending March 31, 2020, excluding abnormal expenses, if any, subject to prudence check by the Commission, and shall be considered as the Base Year Operation and Maintenance expenses"

74.3 The Operation and Maintenance expenses for each subsequent year shall be determined by escalating these Base Year expenses of FY 2019-20 by an inflation factor with 30% weightage to the average yearly inflation derived based on the monthly Wholesale Price Index [2011-12 series] of the respective past five financial years as per the Office of Economic Advisor of Government of India and 70% weightage to the average yearly inflation derived based on the monthly Consumer Price Index [2011-12 series] for Industrial Workers (all-India) of the past five financial years as per the Labour Bureau, Government of India, as reduced by an efficiency factor of 1% or as may be stipulated by the Commission from time to time, to arrive at the permissible Operation and Maintenance expenses for each year of the Control Period:

…

74.4 The impact of Wage Revision, if any, may be considered at the time of true-up for any Year, based on documentary evidence and justification to be submitted by the Petitioner:

…"

Similar provisions were specified for Retail Supply Business in Regulation 83.2 to 83.4.

7.4.2 Comments received

MSEDCL proposed to amend Clause 74.2 and 83.2 on the following grounds:

1. Average of normative O&M expenses rather than actual O&M expenses for three years ending 31 March 2019 should be considered as base year expenses, and be escalated at

the respective escalation rate to arrive at O&M expenses for base year ending March 31, 2020, as real O&M expenses were suppressed due to historical disallowances and insufficient cash for spending.

2. WPI/CPI methodology has lacuna since it does not cover escalation in DA, increase in infrastructure, coverage area and consumer base.

3. MYT Regulations, 2011 permitted recovery on the basis of wheeled energy, consumer base and GFA, which addressed this issue to a certain extent.

4. Provisioning may be allowed as and when made for wage revision, and if provisioning is not allowed, arrears paid in the year may be allowed without any sharing.

MSEDCL further proposed that sharing of gains/losses due to variation in O&M expenses should be done at the end of the Control Period, as excess/shortfall may be adjusted during the subsequent year.

AEML requested to amend Regulation 74 by incorporating this factor in O&M expenses to permit growth in expenses on account of growth in number of customers.

AEML submitted that the draft MYT Regulations specify that 2011-12 series will be considered for both CPI Industrial Workers and for WPI, however, while WPI of 2011-12 series is available in the Office of the Economic Adviser website, CPI of 2011-12 series is not available in Labour Bureau website, and pertains to 2001 series only. Hence, the Regulations should be corrected accordingly. AEML suggested that the Commission may do away with the efficiency factor for the fourth Control Period.

MBPPL requested to amend the first proviso of Regulation 74.2 and allow the actual incurred O&M expenses for deemed Distribution Licensee.

TPC requested to amend the second proviso by increasing O&M expenses based on inflationary indices of the concerned year rather than that of the past 5 years.

NUPLLP suggested that the O&M norms need to be derived based on principles specified in the MYT Regulations, 2011 and for allowing O&M Expenses for each year of the Control Period, the average GFA for the year should be considered. The Commission may do away with efficiency factor of 1% or implement the earlier approach of MYT Regulations, 2011 for determining the O&M cost considering average GFA for the year and exclude the number of the consumers served for O&M norms for SEZ Distribution Licensees. NUPLLP added that if the efficiency factor of 1% is considered for future years, it will amount to cumulative efficiency reduction of 5% till FY 2024-25, which would not be achievable for such a small area of operation. Further, the wage revision should also be allowed as per actuals.

7.4.3 Analysis and Commission's Decision

The Commission has retained the methodology proposed in the Draft MYT Regulations, 2019 for determination of O&M expenses for Distribution Licensee, by continuing with the established principle of escalating the O&M expenses based on past trued-up numbers. The rationale for shifting to specifying principles for normative O&M expenses rather than O&M norms linked to GFA, number of consumers and energy handled adopted in the MYT Regulations, 2019, has already been detailed in the Explanatory Memorandum published along with the draft MYT Regulations, 2019. Also, the Commission does not find any merit in the hybrid approach of combining principles and norms, proposed by the stakeholder.

The method of escalating the O&M expenses for future years based on WPI and CPI of the last three-years is a tried and tested method, implemented based on the suggestions of the stakeholders, while amending the MYT Regulations, 2015, hence, there is no need to deviate from the same. However, the CPI data under 2011-12 series is not available on the website of the Labour Bureau, hence, the Commission has deleted the reference to the Series in all the Regulations specifying the principles for allowing normative O&M expenses for Generation Business, Distribution Wires Business, Retail Supply Business, and MSLDC. The Commission shall consider the CPI and WPI data from the series that is available at the time of tariff determination and true-up.

The Commission introduced the efficiency factor of 1% in the MYT Regulations, 2015, with the objective that the Utilities show efficiency every year over and above the increase in inflation factor. However, the Commission has considered the submission of the stakeholders that there cannot be a 1% improvement every year on continuous basis, which results in lower O&M expenses being allowed on account of efficiency factor, and has therefore, introduced a proviso stating that efficiency factor shall be considered 0% for a Distribution Licensee in case the increase in number of consumers including open access consumers is above 2 % in the last 3 years. Further, in case such increase in the number of consumers is lower than 2 percent annually over the last 3 years, then the reduction in efficiency factor shall be considered proportionately.

The Commission is of the view that wage revision cannot be allowed on the basis of provisioning, and has hence, specified that the same may be allowed at the time of true-up based on documentary evidence and justification to be submitted by the Petitioner.

The Commission cannot accept the submission to allow O&M expenses at actuals for deemed Distribution Licensees, as O&M expenses have to be allowed based on trued-up actuals of previous years, subject to prudence check. However, Regulations 75.8 and 83.8 specify that in the case of a Deemed Distribution Licensee whose tariff is yet to be determined by the Commission, the Commission may determine the O&M expenses on a case to case basis.

Further, the sharing of gains/losses due to variation in O&M expenses have to be done for each year at the time of true-up for that year, and cannot be done at the end of the Control Period.

An enabling proviso has been added for allowing O&M expenses under Opex schemes specially designed for linkage of deliverables, wherein the payments will be linked to the performance and deliverables throughout the contract period, especially for system automation, maintenance, new technology and IT implementation, etc. O&M expenses on account of such schemes shall be allowed over and above normative O&M Expenses. Instead of owning an asset, service model is being allowed to infuse latest technologies. While the Utilities would get benefit of the services for efficiency gains, the associated cost of capitalization would be saved.

The relevant provisos incorporated in the Regulations is as under:

"Provided further that the efficiency factor shall be considered as zero, in case there is an increase in the number of consumers including Open Access consumers connected to the Distribution Wires of at least 2 percent annually over the last 3 years:

Provided also that in case such increase in the number of consumers is lower than 2 percent annually over the last 3 years, then the reduction in efficiency factor shall be considered in proportion to the percentage growth in the number of consumers."

"75.7 A Distribution Licensee may undertake 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:

Provided that the Distribution Licensee shall submit detailed justification, cost benefit analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."

7.5 Regulations 74.5 & 95.5: Provisioning of Expenses

7.5.1 Proposed in draft MYT Regulations, 2019

"74.5 Provisioning of expenses shall not be considered as actual expenses at the time of true-up, and only expenses as actually incurred shall be considered"

"95.5 Provisioning of expenses shall not be considered as actual expenses at the time of true-up, and only expenses as actually incurred shall be considered"

7.5.2 Comments received

TPC proposed to delete Regulation 74.5 and approve expenses on accrual basis and not on actual basis, as Generating Companies and Licensees are maintaining their books of account on accrual basis as per the provisions of Companies Act and Income Tax Act. Under accrual basis of accounting, provisioning is compulsory as all the expenditure incurred during last

month of the year cannot be paid in the same month. Normally the bills of last month's consumption of any year is received and paid during first month of the subsequent year. Therefore, provisioning is necessary to follow matching principle as all the expenditure and income incurred or earned should be accounted for during the same month.

AEML requested modification in Regulation 74.5 and 95.5, to clarify that provisioning relates to provisioning as regards wage revision only.

7.5.3 Analysis and Commission's Decision

The intent of the Commission in Regulations 74.5 and 95.5 of the draft MYT Regulations, 2019 was to disallow provisioning related to wage revision, and allow the same on actual incurrence only. This aspect has been clarified in the final MYT Regulations by modifying the relevant Regulations for Generation Business, Transmission Business, Wires Business, Retail Supply Business, and MSLDC, as under:

"*75.5 Provisioning of wage revision expenses shall not be considered as actual expenses at the time of true-up, and only expenses as actually incurred shall be considered*"

7.6 Regulations 74.6 and 83.6: Repairs and Maintenance Expenses

7.6.1 Proposed in draft MYT Regulations, 2019

"74.6 In case the expenditure on Repairs & Maintenance falls below 20% of total O&M expenses allowed under these Regulations, then such savings in Repairs & Maintenance shall not be set off against other heads of O&M expenses"

7.6.2 Comments received

NUPLLP suggested to do away with Regulation 74.6 specifying mandatory 20% of R&M expenses out of the total O&M expenses for the new Distribution Licensees for a period of 5 to 7 years of operations. NUPLLP submitted that restricting the R&M Expenses to minimum of 20% would not be appropriate, as the requirement of R&M expenses is much lower in the initial years of operation since all the equipment is new.

7.6.3 Analysis and Commission's Decision

The Commission has considered the submission and has added a provision in the said Regulation as under:

"Provided that this limitation shall not be applicable for Deemed Distribution Licensees for the first five years after commencement of operations as a Distribution Licensee."

7.7 Regulations 75 & 84: Provision for Bad and Doubtful Debts

7.7.1 Proposed in draft MYT Regulations, 2019

"75 In the MYT Order, for each Year of the Control Period, the Commission may allow a provision for writing off of bad and doubtful debts up to 1% of the amount shown as Trade Receivables or Receivables from Wheeling Charges in the latest Audited Accounts of the Distribution Licensee in accordance with the procedure laid down by the Licensee, subject to prudence check:

Provided that the Commission shall true up the bad debts written off in the Aggregate Revenue Requirement, based on the actual write off of bad debts during the year, subject to the above ceiling of 1% of the amount shown as Trade Receivables or Receivables from Wheeling Charges in the audited accounts of the Distribution Licensee for that Year, after prudence check:

Provided further that if subsequent to the write off of a particular bad debt, revenue is realised from such bad debt, the same shall be included as an uncontrollable item under the Non-Tariff Income of the year in which such revenue is realised:

Provided also that in the Year when the cumulative provisioning for write-off of bad and doubtful debts allowed by the Commission, duly allocated for the Distribution Wires Business, exceeds five per cent of the amount shown as Trade Receivables or Receivables from Wheeling Charges in the audited accounts of the Distribution Licensee, no such appropriation shall be allowed, which would have the effect of increasing the cumulative provisioning beyond the said maximum:

Similar provisions were specified for Retail Supply Business in Regulation 84.

7.7.2 Comments received

MSEDCL requested to amend Regulations 75 and 84 as follows:

1. Cumulative ceiling for provision of bad debts may be increased to 7.5% considering the significant amount of Agricultural consumers in MSEDCL licence area and the low collection efficiency, similar to the Income Tax Act allowing higher provisioning for rural branches of banks.

2. Bad debts need to be increased and should be linked to revenue considering the challenges of the distribution business. MSEDCL hence, requested for separate provision for bad debts for Agricultural and non-Agricultural categories.

AEML submitted that it has more than 10 lakh consumers residing in slum areas, where collection efficiency is low. In addition, AEML also adds about 60,000 consumers per annum

to its supply business, a large number of which are slum consumers. Though AEML attempts to follow the Act's provisions regarding disconnection in case of bill defaults, large-scale disconnections require more manpower cost as compared to the benefits realized from the same in terms of payments. Moreover, in most cases of disconnection, there is local political interference, which ultimately leads to partial settlement of arrears, rather than realizing the full outstanding amount. Hence, the limit for provisioning for bad and doubtful debts may be increased to 2% of receivables.

BEST and NUPLLP suggested to continue with the existing provision of allowing bad debt at the rate of 1.5% of the amount of trade receivables.

7.7.3 Analysis and Commission's Decision

The Commission has taken into consideration the submissions of the stakeholders and revised the provisioning for write-off of bad and doubtful debts up to 1.5% of the trade receivables. The Commission also finds merit in the submission that the Licensee with higher agriculture consumption may need to be provided higher cumulative limit for bad debts. The Commission has hence, added the following provisos in the final MYT Regulations, 2019 for Wires and Supply Business:

"Provided also that for Distribution Licensees having agricultural sales in excess of 20 percent of their total sales, the ceiling of cumulative provisioning in the above proviso shall be 7.5 per cent of the amount shown as Trade Receivables or Receivables from Wheeling Charges in the audited accounts of the Distribution Licensee".

"Provided also that for Distribution Licensees having agricultural sales in excess of 20 percent of their total sales, the ceiling of cumulative provisioning in the above proviso shall be 7.5 per cent of the amount shown as Trade Receivables or Receivables from Sale of Electricity in the audited accounts of the Distribution Licensee".

7.8 Regulations 76 & 85: Non-Tariff Income

7.8.1 Proposed in draft MYT Regulations, 2019

"76.1 The amount of Non-Tariff Income relating to the Distribution Wires Business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in determining the Wheeling Charges of the Distribution Wires Business:

Provided that the Distribution Licensee shall submit full details of its forecast of Non-Tariff Income to the Commission in such form as may be stipulated by the Commission…."

... Provided that the interest earned from investments made out of Return on Equity corresponding to the regulated Business of the Distribution Wires Business shall not be included in Non-Tariff Income

Similar provisions were specified for Retail Supply Business in Regulation 85.

7.8.2 Comments received

AEML submitted that CERC in its Tariff Regulations, 2019 has shared the net Non-Tariff Income from rent of land or buildings, sale of scrap and advertisements between the beneficiaries or the long-term customers and the Generating Company or the Transmission Licensee, in the ratio of 50:50. Hence, it is requested that on similar lines, sharing of net Non-Tariff Income may be done in ratio of 50:50 with consumers and appropriate provisions may be incorporated in this regard.

Further, with regard to income from sale of scrap, the Commission in its Order dated 27 March 2015, in Case No. 39 of 2013 stated that

'the Commission opines that in case of sale of scrap of capitalized asset, only profit from sale of scrap should be considered as non-tariff income, instead of considering total revenue proceeds.'

The Commission has already settled this principle that only profit of sale of scrap shall be considered as part of Non-Tariff Income. Hence, the wordings of MYT Regulations for the new Control Period may be revised accordingly.

7.8.3 Analysis and Commission's Decision

The Commission is of the view that Non-Tariff Income is an additional income generated from better utilization of assets created by the Generator/Licensee on the basis of recovery made through tariff charges approved by the Commission from the beneficiaries. The Commission has always considered the entire Non-Tariff Income for reduction of the ARR of the Utilities, since the MYT Regulations, 2011. The Commission has hence, not modified this Regulation.

As regards the income from sale of scrap, the approach adopted by the Commission is consistent with the recent Orders of the Commission. Hence, no modification is required in the Regulations on this account.

7.9 Regulation 80.2: Recovery of Fixed Charges

7.9.1 Proposed in draft MYT Regulations, 2019

"80.2 The Tariff for retail supply by the Distribution Licensee shall be determined by the Commission on the basis of a Petition for determination of Tariff filed by the Distribution Licensee in accordance with Part B of these Regulations:

Provided that the Aggregate Revenue Requirement of the Distribution Licensee shall be allocated or apportioned between the Distribution Wires Business and Retail Supply Business in accordance with the provisions of Regulation 70:

Provided further that the Tariff for retail supply may comprise any combination of fixed/demand charges, energy charges, and any other charges, for the purpose of recovery from the consumers, as may be stipulated by the Commission:

Provided also that the Commission may determine the area-wise Tariff for Distribution Licensee based on the performance parameters as may be stipulated by the Commission:

Provided also that in case of a Deemed Distribution Licensee whose tariff is yet to be determined by the Commission till the date of coming into effect of these Regulations, the Commission may determine the ceiling Tariff for retail supply that may be charged by such Distribution Licensee till such time as considered appropriate by the Commission."

7.9.2 Comments received

TPC submitted that the fixed costs should be fully recovered through the demand charges levied to the consumers, and requested to appropriately include suitable provision with defined timelines in the MYT Regulations, 2019, with at least 50% recovery for FY 2020-21.

7.9.3 Analysis and Commission's Decision

The Commission is of the view that this suggestion cannot be incorporated in the MYT Regulations, and has to be addressed appropriately in the Tariff Orders.

7.10 Regulation 80.4: Rebate for Consumers

7.10.1 Proposed in draft MYT Regulations, 2019

"80.4 The Distribution Licensee may offer a rebate to the consumers on the Tariff and charges determined by the Commission:

Provided that the Distribution Licensee shall submit details of such rebates to the Commission every quarter, in the manner and format, as stipulated by the Commission:

Provided further that the impact of such rebates on the Distribution Licensee shall be borne entirely by the Distribution Licensee and the impact of such rebate shall not be passed on to the consumers, in any form:

Provided also that such rebates shall not be offered selectively to any consumer/s and shall have to be offered to the entire consumer category/sub-category/consumption slab in a non-discriminatory manner."

7.10.2 Comments received

MSEDCL submitted that in power surplus scenario, additional sales to subsidizing category consumer can be encouraged by offering certain conditional incentives. The benefit of increase in sales to subsidizing category will be passed on to the consumers by way of tariff. Thus, such rebates will act as catalyst in boosting subsidizing sales and should be allowed in ARR.

7.10.3 Analysis and Commission's Decision

The Commission is of the view that such rebates may be allowed in the ARR provided the same are proposed by the Distribution Licensee in its Petition and approved by the Commission after due regulatory process. Hence, the Commission has introduced the following clause in the MYT Regulations, 2019:

"81.4 The Distribution Licensee may propose other rebates for inter-alia, taking supply at higher voltages, bulk consumption, power factor, etc., and the revenue impact of such rebates shall be passed on through the Aggregate Revenue Requirement and tariffs, subject to the Commission's approval"

7.11 Regulation 90.1: Tariff Categorization of Retail Supply Tariff

7.11.1 Proposed in draft MYT Regulations, 2019

"90.1 The Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required"

7.11.2 Comments received

TPC requested to include appropriate provision in the MYT Regulations to enable creation of separate consumer categories for EHT Industry, EHT Commercial, EHT Public Services, EHT Water Works, etc., with separate determination of elements of tariff.

7.11.3 Analysis and Commission's Decision

The Commission is of the view that this suggestion cannot be incorporated in the MYT Regulations, and has to be addressed appropriately in the Tariff Orders

7.12 Regulation 90.2: Retail Supply Tariff

7.12.1 Proposed in draft MYT Regulations, 2019

"90.2 The retail supply tariff for different consumer categories shall be determined on the basis of the Average Cost of Supply, computed as the ratio of the Aggregate Revenue Requirement of the Distribution Licensee for the Year determined in accordance with Regulation 80, and including unrecovered revenue gaps of previous years to the extent proposed to be recovered, to the total sales of the Distribution Licensee for the respective Year"

7.12.2 Comments received

TPC submitted that retail supply tariff should be determined on the basis of ARR of Retail Supply Business only.

7.12.3 Analysis and Commission's Decision

The Commission is of the view that the Regulation 90.2 of the draft MYT Regulations, 2019 refers to the ARR of the Distribution Licensee determined in accordance with Regulation 80 of the draft MYT Regulations, 2019, which specifies the components of ARR of Retail Supply Tariff only. Hence, no modification is required in this Regulation.

7.13 Regulation 90.3: Cross-Subsidy Surcharge

7.13.1 Proposed in draft MYT Regulations, 2019

"90.3 The Commission shall endeavour to gradually reduce the cross-subsidy between consumer categories with respect to the Average Cost of Supply in accordance with the provisions of the Act"

7.13.2 Comments received

TPC requested to approve the Cross-Subsidy Surcharge (CSS) such that it is consistent with the percentage of Cross Subsidy (CS), i.e., if CS is greater than 20% of ACOS, then CSS should also be in the same percentage and not be limited by 20%.

7.13.3 Analysis and Commission's Decision

The said Regulation refers to reduction of cross-subsidy and not determination of CSS. Further, the computation of Cross Subsidy Surcharge (CSS) is specified in the applicable MERC Distribution Open Access (DOA) Regulations and is not covered under the MYT Regulations, 2019. The limit of 20% for CSS is as per the Tariff Regulations, 2016. Moreover, the direct correlation between category-wise CS and category-wise CSS, being sought by the stakeholder is not supported by any legal provisions. Hence, no modification is required in this Regulation.

7.14 Regulation 91.2: Area Specific Tariff

7.14.1 *Analysis and Commission's Decision*

Regulation 91.1 of the MYT Regulations specifies that the Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

In addition to the above provision, the Commission is of the view that there are situations where differential area-specific tariff may need to be determined, to reflect the typical circumstances of that area and ensure that such area-specific costs are not socialized over the entire consumer base of the Distribution Licensee. The area peculiarity could be in terms of high/low distribution losses, high/low reliability of power supply, high reinstatement charges levied by the local body, capital expenditure incurred for purposes beyond Universal Service Obligation and safety measures, etc. Hence, depending on the local requirements, additional or reduced tariff could be imposed in certain areas, as appropriate.

Hence, the Commission has introduced new Regulation 91.2 as under:

"91.2 The Commission may determine additional or reduced area-specific charges to reflect instances of area peculiarity in terms of high/low distribution losses, high/low reliability of power supply, high reinstatement charges levied by the local body, capital expenditure incurred for purposes beyond Universal Service Obligation and safety measures, etc.:

Provided that depending on the local requirements, additional or reduced tariff could be imposed in certain areas, as appropriate."

8 Norms and Principles for determination of Fees and Charges for the Maharashtra State Load Despatch Centre (MSLDC)

8.1 Regulation 93: LDC Development Fund

8.1.1 Proposed in draft MYT Regulations, 2019

"93 The Commission may permit MSLDC to create and maintain a separate development fund for such purposes and from such sources of income, as the Commission may consider appropriate, on a Petition filed by MSLDC"

8.1.2 Comments received

MSLDC submitted that as per the Commission's Order in Case No. 171 of 2019, MSLDC will not be eligible to claim depreciation, RoE or interest on loans on asset addition envisaged in FY 2018-19 and FY 2019-20, which is proposed to be funded through LDC Development fund. However, as per RLDC Fees and Charges Regulations, 2019, CERC has allowed claiming depreciation on assets created by POSOCO out of the money deposited into the LDCD Fund. On similar lines, MSLDC may be allowed to claim depreciation on the assets created by MSLDC out of LDC Development fund.

8.1.3 Analysis and Commission's Decision

The LDC Development Fund is created out of the capex related expenses that have been paid by the beneficiaries. The Regulation does not provide for depreciation, RoE and interest to be claimed on such Funds as these Funds do not belong to MSLDC, and these expenses are allowed only in case the assets are funded either through debt or equity. Further, the said Regulation is only an enabling clause for creation and maintenance of the LDC Development Fund, and the sources of the Fund are prescribed through the relevant Orders. Hence, no modification is required in this Regulation.

8.2 Regulation 94 (g): Reactive Energy Charges

8.2.1 Proposed in draft MYT Regulations, 2019

"94 The Annual Fixed Charges to be levied by the MSLDC shall provide for the recovery of the Aggregate Revenue Requirement of the MSLDC for the respective Year of the Control Period, as reduced by the amount of Non-Tariff Income as approved by the Commission and comprising the following:

...

(g) Reactive Energy Charges paid to Generators/TSUs;…

"

8.2.2 Comments received

MSLDC submitted that as per directives of the Commission in the Order in Case No. 171 of 2017, MSLDC has formulated the Reactive Energy Charge mechanism by Committee setup under the Chairmanship of the Director (Operations) MSETCL in consultation with all GCC members. As mentioned in the Committee report, MSLDC shall operate and maintain Reactive Charge Pool account similar to DSM and RE-DSM pool account. Hence, the Reactive Energy Charge to be paid to Generators or to be received from Utilities may not form part of MSLDC ARR.

8.2.3 Analysis and Commission's Decision

The Commission has considered the submission, and excluded the Reactive Energy Charges paid to Generators/TSUs and the Income from Reactive Charges received from Utilities, from the ARR of MSLDC, as shown below:

"95 The Annual Fixed Charges to be levied by the MSLDC shall provide for the recovery of the Aggregate Revenue Requirement of the MSLDC for the respective Year of the Control Period, as reduced by the amount of Non-Tariff Income as approved by the Commission and comprising the following:

(a) Operation and Maintenance expenses;

(b) Regional Load Despatch Centre (RLDC) Fees and Western Region Power Committee (WRPC) Charges;

(c) Depreciation;

(d) Interest on Loan Capital;

(e) Interest on working capital

(f) Return on Equity Capital;

(g) Income Tax;

***minus**:*

(h) Income from Open Access charges;

(i) Non-Tariff income:…"

8.3 Regulation 95: Operation and Maintenance Expenses for MSLDC

8.3.1 Proposed in draft MYT Regulations, 2019

"95.2 The Operation and Maintenance expenses shall be derived on the basis of the average of the Trued-up Operation and Maintenance expenses after adding/deducting the share of efficiency gains/losses, for the three Years ending March 31, 2019, excluding abnormal Operation and Maintenance expenses, if any, subject to prudence check by the Commission:"

………..

"95.5 Provisioning of expenses shall not be considered as actual expenses at the time of true-up, and only expenses as actually incurred shall be considered"

8.3.2 Comments received

MSLDC submitted that its O&M expenses should be approved as per actuals. MSLDC is in the process of implementing DSM and the database hosting on cloud, whose cost is significant and will form part of O&M expenses. Also, commissioning of various new hardware and software is under implementation, and the AMC charges for the same shall also form part of O&M expenses. These expenses were not part of O&M expenses for FY 2019-20 and computing O&M expense on yearly inflation based on 20% of WPI and 80% of CPI may not be adequate while approving O&M expenses for MSLDC.

8.3.3 Analysis and Commission's Decision

The Commission is of the view that the O&M expenses cannot be allowed at actuals for any entity, and have to be allowed in accordance with the principles specified in the MYT Regulations, 2019. However, an enabling proviso has been added for allowing O&M expenses under Opex schemes specially designed for system automation, new technology and IT implementation, etc. O&M expenses on account of such schemes shall be allowed over and above normative O&M Expenses. The following proviso has been inserted:

"*96.6 The MSLDC may undertake 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:*

Provided that the MSLDC shall submit detailed justification, cost benefit analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."

8.4 Regulation 96.2: WRPC Charges

8.4.1 Proposed in draft MYT Regulations, 2019

"96.2 The WRPC Charges payable to the WRPC's Secretariat shall be allowed to be recovered by the MSLDC through the Fees and Charges as approved by the Commission."

8.4.2 Comments received

MSLDC requested that the above Regulation may be deleted as it is exempted from paying WRPC Secretariat charges.

8.4.3 Analysis and Commission's Decision

The Commission has considered the submission and deleted Regulation 96.2 as SLDC is not contributing to the establishment charges of WRPC Secretariat.

8.5 Regulation 101: Manner of Grant of Subsidy by State Government

8.5.1 Proposed in draft MYT Regulations, 2019

"101.1 If the State Government requires the grant of any subsidy to any consumer or class of consumers in the Tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the Distribution Licensee/person affected by the grant of subsidy in the manner specified in this Regulation, with prior intimation to the Commission.

101.2 The amount of subsidy agreed to by the State Government shall be provided in the form of grant by the State Government.

101.3 The subsidy shall be passed on to eligible consumers through credit in their electricity bills only in proportion to the extent to which the total requirement of the Distribution Licensee is paid by the State Government:

Provided that in case of shortfall in actual release of subsidy, either because of errors in estimation or for any other reason, such shortfall, shall be shown clearly in the consumers' bills and shall be distributed proportionately between the concerned eligible consumers until such time as it is reduced or eliminated.

101.4 The Distribution Licensee shall clearly indicate the following details in the consumers' bills:

a) the Tariff determined by the Commission;
b) the amount of State Government subsidy and the rate and period thereof;
c) the net amount payable.

8.5.2 Comments received

Prayas Energy Group requested to consider the following submission with regards to subsidy payments:

1. The interest cost accrued by the DISCOMs due to delay in subsidy payments should not be passed through to consumers;
2. Ensure quarterly reporting of subsidy payments.

To ensure greater accountability for delayed payments, the final MYT Regulations should incorporate provisions in this regard.

8.5.3 Analysis and Commission's Decision

The MYT Regulations, 2019 specify the principles for approval of ARR and Tariff, wherein, the State Government subsidy may be given on the tariff determined by the Commission. Thus, the State Government subsidy is not factored into the tariff determination exercise by the Commission.

The Commission is of the view that the present provisions relating to grant of subsidy by the State Government are adequate, and no further provisions need to be incorporated. The issue of monitoring the payment of subsidy may be taken up along with the processing of respective Tariff Order.

8.6 Applicability of Order

8.6.1 Comments received

TPC requested that the implementation of Tariff Order, after its issuance, should not be retrospective as it involves the change in billing mechanism in ERP and it also burdens the consumer, which results into consumer dissatisfaction. It is requested to appropriately include suitable provision in the MYT Regulations.

8.6.2 Analysis and Commission's Decision

The Applicability of the Tariff Order is not specified in the MYT Regulations, and the date of applicability of revised tariffs is clearly stipulated in the Tariff Order. Hence, additional provisions are not required on this issue.

9 Additional Points

9.1 Recovery of Fly Ash Disposal Expenses

9.1.1 Comments received

VIPL requested to allow the recovery of fly ash transportation cost separately, consequent to the MoEF&CC Notification dated 25 January, 2016, which requires the Generating Company to transport fly ash to the beneficiary, with the cost of fly ash transportation being shared with the beneficiary in the following manner:

(i) Cost of transportation of ash within the radius of 100 km of any coal-based power plant shall be borne by such coal based thermal power plant

(ii) Cost of transportation beyond the radius of 100 km and up to 300 km shall be shared equally between the beneficiary and the coal based thermal power plant.

VIPL requested to allow recovery of fly ash transportation cost separately consequent to the aforesaid MoEF&CC Notification.

9.1.2 Analysis and Commission's Decision

The Commission is of the view that the Generating Company has to seek pass through of all legitimate expenses in its Tariff Petition, and substantiate the same along with necessary justification. No modification is required in the MYT Regulations on this account.

9.2 Energy import in case of Plant Shutdown

9.2.1 Comments received

VIPL requested to add a provision in the Regulation for netting off the energy imported from the grid at its previously billed Energy Charge Rate, in case the plant is under shutdown for prolonged period and has been drawing power for running auxiliaries.

9.2.2 Analysis and Commission's Decision

The Commission is of the view that the treatment of energy drawn by the Generator during periods of shutdown, has to be in accordance with either the PPA between the Generator and Distribution Licensee or the tariff for start-up power approved by the Commission for that Licensee. Hence, no modification is required in the Regulations on this account.

9.3 Fuel Mix

9.3.1 Comments received

VIPL suggested to add definition of Fuel Mix in the Regulations.

9.3.2 Analysis and Commission's Decision

The Commission has approved different fuel mix for different Generators based on the FSA with the fuel supplier and PPA with the Distribution Licensee in the respective Tariff Orders for Generating Companies. Hence, Fuel Mix being a case specific aspect, there is no requirement for defining the same in the Regulations. However, as stated earlier, the Commission has added a new Regulation on Fuel Utilisation Plan, which addresses the relevant issues.

9.4 Need for Public Consultation Process and Public Hearing

9.4.1 Comments received

Prayas Energy Group and Sajag Nagrik Manch (represented by Shri Jugal S. Rathi, Shri Vishwas Sahastrabudhe, and Shri Vivek Velankar) urged the Commission to conduct Public Hearing for finalising the MYT Regulations. They submitted that it is necessary to have wide-spread stakeholder consultation, considering the importance of the Regulations, which would help reduce ambiguity, address implementation and operational issues, and adapt regulatory provisions to suit realities and considerations specific to Maharashtra. The Commission should maintain its tradition of having Public Hearings before finalizing important Regulations. CERC also conducted Public Hearing as part of the stakeholder consultation process, while finalising the Tariff Regulations, 2019.

9.4.2 Analysis and Commission's Decision

It is clarified that a Public Hearing is not required to be held for framing of Regulations. Prior publication of the draft Regulations is mandatory, which has been done, and an Explanatory Memorandum was also published along with the draft MYT Regulations, 2019, to invite comments and suggestions from interested stakeholders. Sufficient time of three weeks was given for submission of comments and suggestions, which was extended by two weeks. In all, stakeholders were given 5 weeks' time to submit their comments and suggestions on the draft MYT Regulations, 2019. The Commission after consideration of the suggestions/comments/objections of each stakeholder, has finalized the MYT Regulations, 2019. Thus, the necessary public process required to be undertaken for framing the MYT Regulations, 2019 has been undertaken in letter and in spirit.

9.5 Need for publishing of Base Line Historical Data

9.5.1 Comments received

Prayas Energy Group and Sajag Nagrik Manch requested that all Utilities should be asked to submit historical performance vis-à-vis the performance norms specified in the MYT Regulations for the second and third Control Periods along with time series analysis of this data. Past performance trajectories that can help in finalizing future performance norms, especially those which have financial implications, should also be published. Details of compliance with various directives issued under the MYT Orders and MTR Orders should be published. All data should be published in MS Excel sheets as per formats prescribed by the Commission, within the time period stipulated by the Commission. The Commission should publish all the information submitted by the Utilities prior to the Public Hearing so that the public comments and the consultation process can be on informed basis. It is important to highlight that the CERC directed all Generating Companies and Licensees to submit such information before finalising the Regulations and the operational data was published by CERC prior to the public process. Such a practice should also be adopted by the Commission.

9.5.2 Analysis and Commission's Decision

All the operational information is already available in the Petitions filed by the Utilities and the Orders issued by the Commission. The process followed by CERC before finalizing the Regulations has no bearing on the process decided by the Commission.

The Commission before issuing the Draft MYT Regulations collected the actual data on past performance of Generating Company/Licensee and had compared the same with the approved numbers. The Commission after analyzing the actual and approved performance norms and trajectories, had specified the performance norms proposed in the draft MYT Regulations, 2019. The Commission has already covered the analysis of performance norms in the Explanatory Memorandum issued along with the draft MYT Regulations. The compliance of directives by the Generating Company/Licensee shall be taken up in the respective Tariff Order.

9.6 Statement of Reasons and Transparent Sharing of Public Comments

9.6.1 Comments received

Prayas Energy Group and Sajag Nagrik Manch requested to publish the submissions of all stakeholders in response to the Public Notice. They also requested to publish a Statement of Reasons along with the final Regulations. Publication of submissions of all stakeholders is a process followed by CERC. Such detailed documentation in the public domain helps stakeholders understand the perspective and constraints of all concerned Parties. The

Commission has been publishing a detailed Statement of Reasons along with the finally notified Regulations, which provides the rationale for the approach in the final Regulations and comments on the submissions and concerns raised by stakeholders. CERC has also published a detailed Statement of Reasons as a part of its recent MYT Regulations. Publication of all stakeholder comments as well as the Statement of Reasons would also serve to clarify the position of the Commission and reduce ambiguity in the interpretation and implementation of the Regulations. It could also potentially reduce future litigation due to lack of clarity.

9.6.2 Analysis and Commission's Decision

The Commission is issuing this SOR along with the MYT Regulations, 2019.

9.7 Progressive Suggestions in Draft to be retained in final Regulation

9.7.1 Comments received

Prayas Energy Group and Sajag Nagrik Manch requested to retain certain Regulations of the draft MYT Regulations in the final MYT Regulations, as they provide much needed clarity and some of them also would ensure more efficient operations in the sector.

9.7.2 Analysis and Commission's Decision

The Commission appreciates the submission of the stakeholders. The Commission has considered the comments and suggestions of all stakeholders, before finalizing the MYT Regulations. The Commission's rationale and justification for each modification made to the draft MYT Regulations, 2019 has been elaborated in this SOR.

9.8 Capitalize on the Opportunity to Initiate Important Steps in the Sector

9.8.1 Comments received

Prayas Energy Group submitted that with increasing cost of supply of power, rising competitiveness of alternate supply options for large consumers and increasing financial losses of Utilities in the State, there is a need for urgent action in the sector to enable efficient operation of the Generation Companies and Distribution Licensees in the future. The Commission should initiate processes towards tariff reforms to ensure that Utilities, especially the Distribution Licensees, are able to cope with the major sectoral shifts initiated by the inevitable shifts in market and technological developments. These substantial but necessary changes in operations should be done through extensive stakeholder consultation in coming years. The following measures to improve planning and efficiency are suggested to be taken:

1. Mandating all 1 MW+ consumers to arrange for supply options via individual contracts to meet all their demand such that they are not subject to regulated tariffs.
2. Ensuring that small consumers are protected from tariff shocks by linking their tariff increase to inflation.
3. Conducting studies to analyse O&M activities that should not be classified as non-DPR capital expenditure by Utilities before the onset of the MYT Control Period.

9.8.2 Analysis and Commission's Decision

The Commission is of the view that Open Access above 1 MW is the right of the consumer and hence, every consumer with load of 1 MW and above may exercise this right. However, Open Access is not a compulsion, and the Commission cannot mandate that all consumers above 1 MW should opt for Open Access and prohibit them from taking supply from the Distribution Licensee. The eligible consumer cannot be compelled to take Open Access or source directly from Licensee under unregulated regime.

The overall tariff increase as well as the category-wise tariff increase are a function of several variables, inter-alia, the approved ARR for a particular year, the Revenue Gap/Surplus of previous years, the Average Cost of Supply, the consumer mix, consumption mix, share of subsidizing vs. subsidized consumers, average tariff increase required to meet the revenue gap, tariff shock considerations, etc. Therefore, the Commission cannot specify in the MYT Regulations that the tariff increase for any segment of consumers shall be linked to the inflation or any other parameter.

The suggestion regarding analysis of O&M activities is under consideration at the Commission's end.

9.9 Sale of Un-Requisitioned Power

9.9.1 Comments received

Prayas Energy Group submitted that DISCOMs and Generators in the State have significant surplus un-requisitioned power, which can be sold on the DEEP platform via bilateral contracts or through Power Exchanges, such that the power can be utilised instead of being backed down. The Tariff Policy stipulates that Distribution Licensees should declare un-requisitioned generating capacity to the Generators at least 24 hours before 00:00 hours of the day of dispatch, enabling generators to sell the power. The Tariff Policy provides for equal sharing of gains from sale of un-requisitioned power. However, the same is not implemented due to the fact that Distribution Licensees retain their right to recall till 4 time blocks ahead of actual dispatch. Retaining the right to recall so close to the actual dispatch increases the risk of sale of such power for generators and leads to sub-optimal utilisation of generation resources and reduces

the need to ensure better scheduling practices. In order to ensure better utilisation of surplus capacity, the State Grid Code can be modified to ensure gate closure such that DISCOMs forgo their right to recall three hours before dispatch. This would provide Generators the space to explore avenues for sale of power. Implementation of gate closure has also been proposed by CERC Staff in a Discussion Paper earlier this year

9.9.2 Analysis and Commission's Decision

The suggestion made by the stakeholder relates to procedural issues to be addressed in the State Grid Code.

9.10 Compliance with Environmental Norms and Regulations

9.10.1 Comments received

Prayas Energy Group made the following suggestions for incorporation in the MYT Regulations:

1. Referring the norms notified as per Environment (Protection) Amendment Rules, 2015 as "Revised Environmental Regulations / Standards / Norms"
2. Power plants to submit detailed information that would enable to undertake due scrutiny of proposed capex for such compliance
3. Establishment of web based transparent system for tracking progress and milestones
4. IDC should not be allowed in case of delay of commissioning of Pollution Control Equipment beyond final milestone.
5. Regulations to expressly specify that any cost disallowance and/or delay in terms of securing cost approval cannot be the ground for non-compliance with the revised emission standards. The said emission standards being a statutory requirement, compliance with the same cannot be subject to any cost approval
6. Regulations should include a proviso that explicitly disallows any expenditure on water charges that is over and above the norm prescribed under the revised emissions standards.

9.10.2 Analysis and Commission's Decision

The Commission is of the view that compliance with Environmental Standards is mandatory for the Generator and does not need to be specified in the Regulations. The treatment of capital expenditure on such equipment is already addressed adequately in the MYT Regulations.

9.11 Measures to optimize uncontrollable costs

9.11.1 Comments received

Prayas Energy Group requested the Commission to take the following measures to optimize uncontrollable costs:

1. Specify caps on the costs, which can be recovered as uncontrollable from consumers due to variations in fuel price, sales, power purchase cost and Transmission Charges.
2. The caps can be high in the initial Control Period and can be reduced over time. For example, in the upcoming Control Period up to 20% variation can be passed on with a 5 % point reduction in the subsequent Control Period.
3. The Utility would require regulatory approval for pass through of any cost above this specified cap for the stipulated period.

9.11.2 Analysis and Commission's Decision

The Commission is of the view that it is neither appropriate not practical to implement a cap on the uncontrollable items like sales, power purchase, Transmission Charges, etc. The Commission has already specified a cap on the Fuel Adjustment Cost, which is to be passed on to the consumers. Further, the allowance of such uncontrollable cost is subject to prudence check by the Commission in the respective Tariff Order. The Commission ensures that any unwarranted uncontrollable cost is not passed on to the consumers in tariff.

The Commission in its final Regulation has excluded operational performance norms and trajectories of the Generator/Licensee from the scope of Mid-Term Review. The Generator/Licensee will have to comply with the performance norms determined in the MYT Order for the entire Control Period.

9.12 Competitive framework for Parallel Licensing in Mumbai

9.12.1 Comments received

Prayas Energy Group submitted that presence of a parallel Distribution Licensee offers an opportunity to bring down costs and increase efficiency, though neither of these expectations has been met so far. Cost plus mechanism sets poor incentives for the Licensees to be efficient. Regulatory certainty for recovery of expenditures leads to continued need for Cross-Subsidy Surcharge and Regulatory Asset Charge and resultant tariff uncertainty for consumers. While cost plus is inherently inefficient, the existence of Parallel Licensees makes it particularly worse. Therefore, the present MYT process should be used as an opportunity to develop a separate regulatory framework for regulating the parallel licensees in Mumbai. Such framework should be conducive for competition and should create possibilities for reducing costs. The

Commission should separately undertake a public process to deliberate on the contours of such framework.

9.12.2 Analysis and Commission's Decision

The Commission appreciates the concerns of the stakeholder with regard to parallel licensing in Mumbai. However, at this time it is not prudent to deliberate on this issue within the scope of the current MYT Regulations.

9.13 Variation in Capital Expenditure and Capitalization due to Time and Cost Overrun

9.13.1 Comments received

Prayas Energy Group suggested that capital expenses are significant for Generation, Transmission and Distribution Companies and there can be substantial improvements in project planning and management to reduce time and cost overruns. Any costs incurred due to Force Majeure events and Change in Law events are considered to be uncontrollable costs as per Regulation 9.1. All of the reasons for time and cost overruns, which cannot be attributed to the inefficiency of the Company or Licensee can be due to these uncontrollable factors. Hence, it is suggested that the final Regulations specify that:

1. All variation in capital costs due to factors other than those stated in Regulation 9.1 shall be disallowed by the Commission after prudence check.

2. These costs can be attributed to inefficiency and/or poor planning practices of the regulated Company or Licensee and thus the burden of such costs should not be shared with consumers.

Such a provision would force Companies to adopt better planning and management practices and reduce the burden of inefficiency on consumers.

9.13.2 Analysis and Commission's Decision

The Commission has provided a specific list of uncontrollable factors in Regulation 9.1, and an indicative list of controllable factors in Regulation 9.2 of the MYT Regulations. Thus, all the claims made by the Generator/Licensee under uncontrollable factors are subject to prudence check of the Commission.

9.14 Additional Terms to be defined

9.14.1 Comments received

Prayas Energy Group requested that the final Regulations may also include definitions for billing efficiency, collection efficiency, payment efficiency and fuel supply agreement.

Additionally, Wheeling Charges can also be defined as the term is used to refer to a component of tariffs for regulated consumers as well as a charge for open access consumers.

9.14.2 Analysis and Commission's Decision

The Commission is of the view that the terms and method of calculations of these components have been explained in the respective Regulations, wherever such terms are used. There is no need to define them separately under definitions.

9.15 Tariff based Competitive Bidding

9.15.1 Comments received

Sterlite submitted that the Commission should notify clearly that all Transmission projects in the future will be awarded based on Tariff Based Competitive Bidding (TBCB) process. Clause 5.3 of the Tariff Policy envisages development of Intra-State Transmission projects through tariff based competitive bidding for projects costing above a threshold limit. The Tariff Policy rests the responsibility of deciding the "threshold limit" on respective SERCs.

9.15.2 Analysis and Commission's Decision

Notification of the threshold limit beyond which competitive bidding shall be mandatory, is not within the scope of the MYT Regulations, 2019.

9.16 Accountability for expenditure incurred

9.16.1 Comments received

Shri Mahaveer Jain submitted that there is a need to make all major purchase/contract above Rs 3,00,000/-through public tender and full information must be made available online on the website forever. The private entities, which are not PSU or under the requirement of RTI Act, do not share the information essential for good governance, as compared to the PSUs or RTI Act governed entities. This will bring efficiency in the operation and the total cost under assessment will be under check. Public scrutiny is to ensure no wrong doing or no concentration of private interest, which will ultimately help reduce the cost of Utility on long term basis.

9.16.2 Analysis and Commission's Decision

The Commission is of the view that the suggestion is not within the scope of the MYT Regulations. The Commission conducts prudence check of all capex schemes before approval. While granting approval for capital expenditure schemes, the Commission directs mandatory procurement of all material through competitive bidding.

9.17 Better Monitoring and Review of Supply/Service Quality

9.17.1 Comments received

Sajag Nagrik Manch submitted that there has been no independent evaluation or analysis by the Commission regarding Utility's compliance with the load shedding protocol and/or reconciliation of load management with agriculture sales and load shedding. To overcome this, the Commission should institutionalize process and data formats for supply quality monitoring and reporting done under this should be reviewed during the Mid-Term Review process. Based on such public review, the Commission should initiate appropriate actions.

9.17.2 Analysis and Commission's Decision

The suggestion regarding monitoring of load shedding is not within the scope of the MYT Regulations, 2019.

9.18 Consideration of FOR Regulations and Separate Regulation for SLDC

9.18.1 Comments received

MSLDC stated that while drafting Regulations, the Commission shall take into consideration, the Model (Fees & Charges Regulations) for LDCs (published by FOR in October 2018). The Commission should also consider the recommendations of the CABIL Report. Further, the MSLDC's ARR is miniscule as compared to other Utilities, hence, it requested that a separate Regulation should be issued along similar lines of CERC (Fees & Charges of Regional Load Despatch Centre and other related matters) Regulations, 2019

9.18.2 Analysis and Commission's Decision

The Commission has retained the separate Chapter detailing the principles for determination of Fees and Charges for MSLDC in the MYT Regulations, 2019.

9.19 Application Fee, Publication Expenses, Security Expenses and Capital Spares

9.19.1 Comments received

MSPGCL requested for addition of new provision regarding reimbursement of Application Fee and Publication Expenses subject to prudence check, in line with Regulation 70 of CERC Tariff Regulations, 2019. Along similar lines, MSPGCL requested to allow the Security Expenses and capital spares separately from O&M expenses, at actuals subject to prudence check, in line with Regulation 31 (6) of CERC Tariff Regulations, 2019.

9.19.2 Analysis and Commission's Decision

The O&M norms for Generators/Licensee specified in the MYT Regulations, 2019 for future years are based on the past actual O&M expenses incurred by these Generators/Utilities, which include the Application Fee, Publication Expenses, and Security Expenses. These expenses have always been part of O&M expenses, and there is no need to allow separate recovery of these expenses. The capital spares are specified separately in the MYT Regulations.

9.20 Trial Run

9.20.1 Comments received

MSEDCL requested to add a new definition for 'Trial Run' as per the CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations 2016 to bring more clarity.

9.20.2 Analysis and Commission's Decision

The Commission may consider this aspect while amending the State Grid Code Regulations.

9.21 Technical Minimum

9.21.1 Comments received

MSEDCL requested to add a new definition for 'Technical Minimum' to bring more clarity.

9.21.2 Analysis and Commission's Decision

The Commission may consider this aspect while amending the State Grid Code Regulations.

9.22 Rebate for EHV consumers

9.22.1 Comments received

M/s Om Sai Ram Steel & Alloys Pvt. Ltd, M/s SRJ Petty Steel Pvt. Ltd., M/s Bhagyalaxmi Rolling Mills Pvt. Ltd., M/s Kalika Steel Alloys Pvt. Ltd., and M/s Meta Rolls and Commodities Pvt. Ltd., submitted that in the past, through respective Tariff Orders, the Commission has encouraged MSEDCL's consumers to shift to EHV by granting rebate up to the extent of 3% of total consumption. Looking upon the incentive of 3%, EHV consumers spend huge amounts of money for setting up EHV infrastructure in order to avail special rebate being granted in tariff. However, the Commission withdrew the above subsidy in Tariff Order dated 3rd November 2016.

The Commission will balance the Multi-Year Tariff for the next 5 years by taking into considerations all the parameters and levy Wheeling Charges, and recover line losses depending

on the voltage of supply. Hence, rebate should be granted to those consumers where line losses are negligible and have been benefitting MSEDCL by creating special infrastructure.

However, after going through MYT Regulations, it is observed that nothing has been proposed for subsidy of consumers availing power at EHV level. It is requested to kindly consider all parameters of those consumers who create their own EHV infrastructure and bear the transformer losses and impose negligible cost on MSEDCL. The Commission should encourage the consumers to shift to EHV by granting rebate of at least 5% to 10% on entire consumption as savings of the line loss will be far more to MSEDCL from those consumers who are availing power at EHV level as compared to those at lower voltages.

9.22.2 Analysis and Commission's Decision

The Commission is of the view that the issue raised by the stakeholders has to be addressed during the processing of MYT Petition of respective Distribution Licensee, and cannot be specified in the MYT Regulations, 2019.

9.23 Environmental Conservation

9.23.1 Comments received

Shri Ulhas Chaudhari requested to amend the Supply Code by not allowing any connection to be given to buildings not complying with ECBC code. Also, RPO to be made 70% for all electricity consumers and non-compliance of the same may lead to penalty. The stakeholder submitted that Transportation sector is witnessing revolutionary changes by introduction of BS-VI emission norms and promotion of Electric Vehicles. The Commission may take such progressive steps to bring about changes in the power sector by including the same in MYT Regulations, 2019.

9.23.2 Analysis and Commission's Decision

The Commission may consider these aspects as appropriate in the Supply Code and RPO Regulations.

9.24 Claiming Relief under Change in Law and Force Majeure

9.24.1 Comments received

MSEDCL suggested that the process for claiming relief in respect of an event of Force Majeure or Change in Law should be clearly specified in the MYT Regulations.

9.24.2 Analysis and Commission's Decision

The Commission has specified the list of events covered under Change in Law and Force Majeure in the MYT Regulations, 2019. The Utilities have been approaching the Commission

for necessary relief through separate Petitions in the past. There is no requirement to specify any process for claiming the relief under Change in Law and Force Majeure.

9.25 Regulation 91.2: Area Specific Tariff

9.25.1 Analysis and Commission's Decision

Regulation 91.1 of the MYT Regulations specifies that the Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

In addition to the above provision, the Commission is of the view that there are situations where differential area-specific tariff may need to be determined, to reflect the typical circumstances of that area and ensure that such area-specific costs are not socialized over the entire consumer base of the Distribution Licensee. The area peculiarity could be in terms of high/low distribution losses, high/low reliability of power supply, high reinstatement charges levied by the local body, capital expenditure incurred for purposes beyond Universal Service Obligation and safety measures, etc. Hence, depending on the local requirements, additional or reduced tariff could be imposed in certain areas, as appropriate.

Hence, the Commission has introduced new Regulation 91.2 as under:

"91.2 The Commission may determine additional or reduced area-specific charges to reflect instances of area peculiarity in terms of high/low distribution losses, high/low reliability of power supply, high reinstatement charges levied by the local body, capital expenditure incurred for purposes beyond Universal Service Obligation and safety measures, etc.:

Provided that depending on the local requirements, additional or reduced tariff could be imposed in certain areas, as appropriate."

Sd/-	Sd/-	Sd/-
(Mukesh Khullar)	**(I.M. Bohari)**	**(Anand Kulkarni)**
Member	**Member**	**Chairperson**

Annexure I

Sl. No.	Name of Stakeholders
1	Maharashtra Easter Grid Power Transmission Company Ltd. (MEGPTCL)
2	Vidarbha Industries Power Ltd. (VIPL)
3	Jaigad Power Transco Ltd. (JPTL)
4	Rattan India Power Ltd.
5	Prayas Energy Group
6	Sajag Nagrik Manch (Shri Jugal S. Rathi, Shri Vishwas Sahastrabudhe, Shri Vivek Velankar)
7	Shri Mahaveer Jain
8	Sterlite Power Transmission Ltd.
9	Maharashtra State Load Despatch Centre (MSLDC)
10	Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)
11	Tata Power Company Ltd. (TPC)
12	Maharashtra State Power Generation Company Ltd. (MSPGCL)
13	Nidar Utilities Panvel LLP (NUPLLP)
14	Maharashtra State Electricity Transmission Company Ltd. (MSETCL)
15	Amravati Power Transmission Company Ltd. (APTCL)
16	Mindspace Business Parks Private Ltd. (MBPPL)
17	Adani Electricity Mumbai Limited (AEML)
18	SBI Capital Markets (SBI Caps)
19	Om Sai Ram Steel and Alloys Private Ltd.
20	SRJ Petty Steel Private Ltd.
21	Bhagyalaxmi Rolling Mills Private Ltd.
22	Kalika Steel Alloys Private Ltd.
23	Meta Rolls & Commodities Private Ltd.
24	Shri Ulhas Chaudhari
25	Brihanmumbai Electric Supply & Transport Undertaking (BEST)
26	Dhariwal Infrastructure Limited