

# MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th Floor,

Cuffe Parade, Mumbai 400 005

Tel. No. 022 22163964/65/69

E-mail: [mercindia@merc.gov.in](mailto:mercindia@merc.gov.in)

Website: [www.merc.gov.in](http://www.merc.gov.in)

## Maharashtra Electricity Regulatory Commission (Transaction of Business and Fees and Charges) (First Amendment) Regulations, 2024

### STATEMENT OF REASONS

Dated: 13 September 2024

#### Introduction

- 1.1 On 3 December 2004, the Commission notified the MERC (Fees and Charges) Regulations, 2004 in exercise of powers conferred on it under clause (g) of sub-section (1) of Section 86 read with Section 181 of the Electricity Act, 2003 (**EA**). These Regulations were reviewed and new MERC (Fees and Charges) Regulations, 2017 were notified on 3 April 2017. After review of these Regulations, the MERC (Transaction of Business and Fees and Charges) Regulations, 2022 (**Principal Regulations, 2022**) were notified by the Commission on 18 October 2022. Schedule of Fees and Charges annexed to these Principal Regulations 2022 specify the Fees to be paid by the Licensees/Generating Companies/Consumers etc. while filing a Petition before the Commission. This schedule also specifies the Annual Licence Fees to be paid by the Distribution Licensees, Trading Licensees and Transmission Licensees.
- 1.2 Considering the evolution of the electricity sector at both the National level and State levels, it is expected that there will be increased challenges and workload, in terms of framing various Regulations, implementation and studies, in future to deal with future complex issues. Considering the existing workload, future workload and various digital initiatives taken post Covid-19 pandemic, the Commission proposed to revise the Annual Licence Fees payable by the Distribution Licensees from existing 0.05% of their revenues, excluding taxes and duties, from the wheeling and sale of electricity to 0.1% of the corresponding revenues through the draft Maharashtra Electricity Regulatory Commission (Transaction of Business and Fees and Charges) (First Amendment) Regulations, 2024 ("**Proposed Amendment**"). The said Draft Amendment also proposed to revise the minimum Annual Licence Fees payable by the Distribution Licensees from existing Rs. 2 Lakh to Rs. 5 Lakh. The rationale for the

proposed amendment were elaborated in the Explanatory Memorandum (EM) of the Draft Amendment.

- 1.3 Accordingly, the comments/suggestions/objections were sought from the stakeholders (Distribution Licensees) on the Proposed Amendment on 5 August 2024. The suggestions and/or objections were to be submitted to the Commission within 21 days i.e. on or before 26 August 2024.
- 1.4 Four stakeholders have submitted their comments/suggestions/objections on the proposed Amendment to the Regulations. The list of stakeholders who submitted their comments/suggestions/ objections on the Draft Amendment, which have been considered by the Commission while finalising the Regulations, is placed at **Annexure-I**.
- 1.5 The various issues raised by the Stakeholders and the Commission's analysis and decisions on them which underlie the Regulations as finally notified are set out below.

## **2 Issue 1:- Impact on the Licensees and the consumers due to proposed amendment**

### **Proposed in the Draft Amendment:**

***“2.1 Sr. No. 3 (ii) of the Schedule of Fees and Charges of the principle Regulations shall be amended as under:-***

<i>S. No.</i> <i>(1)</i>	<i>Description</i> <i>(2)</i>	<i>Fees (in Rupees)</i> <i>(3)</i>
<b>3</b>	<i>Annual Licence Fee</i>	
	<i>(ii) Distribution Licence Fee</i>	<b><i>0.1 per cent of revenues, excluding taxes and duties, from the wheeling and sale of electricity (rounded off to the nearest one hundred rupees), subject to a minimum of Rs. 5,00,000/-.</i></b>

”

### ***Comments received***

#### **AEML-D's submission**

- 2.1 Adani Electricity Mumbai Ltd.-Distribution (**AEML-D**) stated that vide the Principal Regulations 2022, the Commission had already raised the Distribution Licence Fees from 0.02% (as per MERC Fees and Charges Regulations, 2017) to 0.05% of the revenue, which was a substantial 150% increase. As a result of which, AEML-D's License fee increased to Rs. 3.50 Cr. for FY 2023-24, from Rs. 1.23 Cr. for FY 2022-

23. Further, AEML-D has paid Rs. 4.39 Cr. as licence fee for FY 2024-25. Due to the increase proposed in the draft amendment (from 0.05% to 0.1% of revenue), there will be a substantial increase in licence fees of AEML-D (increase to Rs. 8.79 crore from existing Rs. 4.39 crore.) AEML-D requested the Commission not to increase the Licence fee significantly or soften the proposed increase, considering the fact it has already seen a significant upward revision in FY 2023-24 and the Licence fees, in any case, increases year on year due to increase in revenues.

#### **EON's submission**

- 2.2 EON Kharadi Infrastructure Pvt Ltd. (**EON**) stated that the high charges associated with distribution licence fees place an unnecessary financial burden on consumers. These excessive fees can lead to increased operational costs, which ultimately get passed on to the consumers in the form of higher Tariff. EON requested the Commission to set the licence fee for distribution licenses at a minimum of Rs. 2,00,000/-. EON stated that the reduced fee structure will help support distribution licensees in maintaining reasonable pricing, fostering a more competitive market, and protecting consumers from undue financial strain.

#### **MSEDCL's submission**

- 2.3 Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) also raised a similar issue highlighting that the Licence Fees for Distribution Licensees had been recently revised from 0.02% to 0.05% and further stated that increasing the same again to 0.1% of the revenue within the span of two years could be unjustifiable for an organization of MSEDCL's scale. Before issuance of the Principal Regulation 2022, MSEDCL has paid approximately Rs. 14.70 Crores (@0.02% of the revenue) as licence fee for FY 2022-23. For current year, MSEDCL has paid more than Rs. 45 Cr. which, under the proposed amendment, could rise to approximately Rs. 100 Cr. There would be more than 80% CAGR increase in the distribution licence fee for next year from FY 2022-23. This will burden the distribution licensee as well as increase the consumer Tariff. MSEDCL's revenue has grown at an approx. CAGR of 9% over the past five years and hence the annual licence fee, which is linked to revenue, has also seen a corresponding increase. MSEDCL requested the Commission to retain the Annual Licence Fees for Distribution Licensees at 0.05% of revenue. Alternatively, MSEDCL suggested that the distribution licence fee may be increased to 0.1% of revenue subject to a maximum of Rs. 50 Cr. MSEDCL stated that this adjustment would help balance the financial impact on MSEDCL while ensuring that the fee structure remains fair and manageable.

#### **TPC-D's submission**

- 2.4 TPC-D also stated that there had been recent increase in the Licence Fees and as a result of increase in revenues of the Distribution Licensees from FY 2019-20 to FY 2024-25 and revision of licence fees from 0.02% to 0.05%, the CAGR of the Licence Fees over the last five years is about 31%. Further, the annual licence fee in case of other States is in the range of 0.03% to 0.05%. TPC-D requested the Commission to consider the

gradual increase in the annual Licence fees for the Distribution Licensees. TPC-D further stated that since the Transmission and Distribution Licensees are paying the Annual Licence Fees, they may be exempted from paying any Petition filing fees.

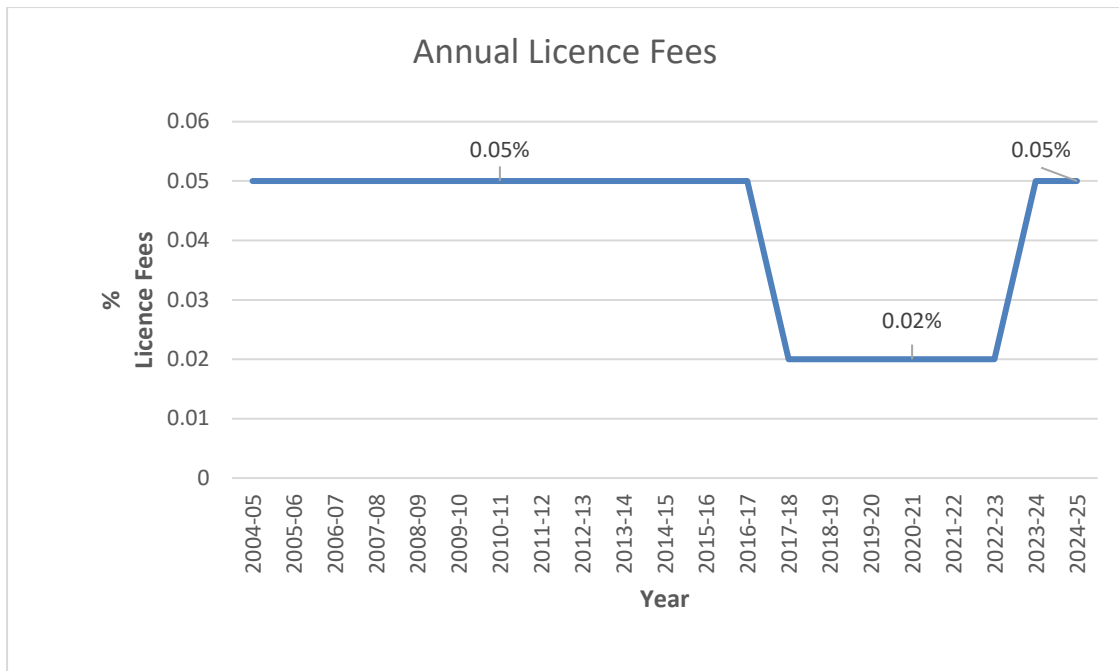
### ***Analysis and Commission's Decision***

- 2.5 The Commission notes that the Distribution Licensees are essentially stating that there would be significantly steep increase in Licence Fees payable by the Distribution Licensees and it will burden them and increase the Tariff payable by the consumers. Hence, the Distribution Licensees have requested to soften the proposed increase in Licence Fees, or to put some ceiling on the Licence Fees.
- 2.6 In this context, the Commission notes that the State Electricity Regulatory Commissions (**SERCs**) are required to perform different functions which includes quasi-legislative, quasi-judicial and executive functions. SERCs make Regulations for efficient and effective functioning of electricity sector and electricity markets. They have the authority to implement the Regulations made by them. The SERCs are also required to adjudicate the disputes and issue Orders on the various Petitions filed before them. SERC's key functions include Tariff determination, promotion of co-generation and generation of electricity from renewable sources of energy, issuance of licences, regulating electricity purchase and procurement process of Distribution Licensees, specifying the standards of performance for the Licensees, specifying the Grid Code, providing advice to the Governments etc. In nutshell, the SERCs are supposed to guide the development of electricity sector in the State. They are required to oversee the functioning of the different entities engaged in generation, transmission, distribution, trading of electricity along with the State Load Dispatch Centre and State Transmission Utility.
- 2.7 While the individual entity such as a Distribution Licensee is required to focus on its core function of distribution of electricity and incidental functions, the SERCs are required to have understanding and acquaintance of different functions such as distribution, generation, transmission, load dispatch, trading in order to be able to effectively regulate entities engaged in these functions. It has to decide complex legal issues while carrying out dispute adjudication function and also needs to have understanding of commercial and financial aspects of the electricity sector.
- 2.8 While undertaking all these functions, the SERCs are required to take into consideration the key mandate given to it under the Electricity Act, 2003 (**EA**) i.e. to protect the interest of the consumers. While individual entities may function keeping in mind the interests of their own organizations, responsibility of protecting the interests of the consumers lies with the SERCs only. In view of the above, if the support obtained by SERCs and capabilities engaged by SERCs to get assistance in its functioning, are strengthened, it would be always in the interest of the consumers.

- 2.9 Further, as mentioned in the Explanatory Memorandum for the Draft Amendment, considering the evolution of the electricity sector at both the National level and State levels, it is expected that there will be increased challenges and workload, in terms of framing various Regulations, implementation and studies, in future to deal with future complex issues. The legal cases being filed before the Commission as well as in higher Courts where the Commission is made the party, have increased over last few years. The increased litigations have resulted in higher expenses.
- 2.10 The number of Tariff Orders issued by the Commission has increased which is mainly on account of the increase in the number of Licensees in the State leading to increase in the consultancy expenses. To address future complexities in the sector, the existing regulatory framework would also require to be evolved to address the complexities, ensuring cost recovery, stipulating performance norms, cost-effective implementations etc. and therefore there would be an increased expenditure on professional services engaged by the Commission and also on capacity-building measures such as training, seminars, workshops etc. The Commission is also exploring increasing its sanctioned strength. Accordingly, the Commission is also in the process of finalizing the MERC (Recruitment and Conditions of Service of Employees) Regulations, 2024 which, apart from the increase in sanctioned strength, have specified various measures to address human resource-related issues in the Commission. Various digital initiatives taken by the Commission would also have a corresponding increase in expenditure.
- 2.11 Further, in view of the amendment in the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020, the number of CGRF in MSEDCL's area of supply would increase substantially. As per Regulation 4.9 of these Regulations, the salaries of the Chairperson and independent Member of the CGRF are being reimbursed by the Commission. Accordingly, this will also add to the expenses of the Commission.
- 2.12 Further, in order to reduce the financial burden on the Distribution Licensees on account of deviations of conventional and RE generators, the Commission has notified the Regulations regarding Deviation Settlement Mechanism (DSM) Framework in the State wherein conventional and RE generators are made accountable to their respective deviations thereby protecting the Distribution Licensees to that extent. In order to ensure smooth implementation of these Regulations, the Commission constituted the DSM Working Group which includes regulatory experts/consultants. This has fairly increased the profession/ consultancy Fees being incurred by the Commission which is recurring in nature.
- 2.13 Further, the MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 have been challenged by few RE generators before the Hon'ble Bombay High Court. The proceedings of these Writ Petitions are still going on increasing the legal expenditure.
- 2.14 Further, the Commission has filed Civil Appeal before the Hon'ble Supreme Court against the Order passed by the Hon'ble Appellant Tribunal for Electricity in the matter

of Tariff determination of Vidarbha Industries Power Ltd. to ensure that consumers in Mumbai Suburban area are protected from the significant Tariff impact. The proceeding before the Apex Court is under progress since year 2017 and the Commission is incurring significant legal costs in the interests of the common consumers.

- 2.15 Parallel Licensing regime in Mumbai Suburban area is the unique model in the entire country and an Institutional Mechanism (Mumbai Distribution Network Assessment Committee) constituted by the Commission for operationalizing the modalities of dealing with the applications of new connections. Functioning of said Institutional Mechanism (such as meetings, site visits, reports submission to the Commission as per the Commission's directions etc.) involves expenditure towards the Honorarium to the members of the Committee.
- 2.16 The Commission is of the view that the proposal to revise the Annual Licence Fees for the Distribution Licensees from existing 0.05% to 0.1% has to be seen from this factual perspective.
- 2.17 The stakeholders are also contending that an 100% increase has been proposed in the Annual Licence Fees as compared to existing Licence fees specified in the Principal Regulation 2022 and within a period of two years, the Licence Fee has been revised 0.02% to 0.05% and now being proposed from 0.05% to 0.1%. TPC-D has stated that the CAGR of the increase in licence Fees for last five years is 31%. MSEDCL also stated that with the draft amendment, there would be more than 80% CAGR increase in the distribution licence fee for next year as compared to the Licence Fees paid in FY 2022-23.
- 2.18 In this context, the Commission notes that it is true that the Licence Fees payable for FY 2022-23 was 0.02% of the revenue of the Distribution Licensees as specified in the MERC (Fees and Charges) Regulations, 2017, which was revised to 0.05% of the revenue in year 2022 (and made effective from FY 2023-24) vide the Principal Regulations 2022 and now vide the Proposed Amendment, same is being proposed to be revised to 0.1% from existing 0.05%. However, it cannot be ignored that while there was a reduction in the Annual Licence Fees as specified in the MERC (Fees and Charges) Regulations, 2017 to 0.02%, it is a matter of fact that the Annual licence Fees specified in the earlier MERC (Fees and Charges) Regulations, 2004 was 0.05% of the revenue of Distribution Licensees and said fees was effective from year 2004. The percentage Licence Fees for the Distribution Licensees for the past years is shown in the following graph:



- 2.19 As can be seen from the above graph, during the last twenty (20) years, the annual Licence fees for the Distribution Licensees have been either equal to 0.05% or below 0.05% (i.e., fixed at 0.02% in the year 2017). If the CAGR for the period since year 2004 or 20 years is considered, the CAGR of the Licence Fees would be much lower than being claimed by the stakeholders in its objection and hence, it would not be appropriate to claim that there is a sudden increase in licence fees of 100% (from 0.05% to 0.1%) in last two years.
- 2.20 Further, the Annual Licence Fees was 0.05% till FY 2016-17 (i.e. first thirteen years) and then from FY 2017-18 to FY 2022-23, it was 0.02% of the revenue. Thus, for six years, the benefits of the reduction in the Licence Fees were availed by the Distribution Licensees. However, the reduced Fees during this period resulted into constraints for initiating new regulatory studies/improvements for the State.
- 2.21 The Distribution Licensees have also stated that the annual licence fee in case of other States is in the range of 0.03% to 0.05%. In this context, the Commission notes Maharashtra apart from being one of the largest States in the country, is also facing peculiar regulatory challenges due to highest numbers of private Licensees /generating Companies. Further, the major expenditure of the Commission is on the rent being paid for its Office in Mumbai. While few other States are having their own Office Building/premises, expenditure on rent or otherwise for the Office Building in the city like Mumbai forms a major contributory factor for the expenditure thereby necessitating an increase in the Licence Fees.
- 2.22 The Commission notes that strengthening of the setup of the Commission in terms of adequate manpower, robust professional and consultancy support, proper infrastructural

facilities, adequate knowledge building capability, institutional memory, appropriate technological support etc. is necessary for effectively delivering in the regulatory framework and for ensuring that the ultimate benefits of regulatory decisions and regulatory interventions are reached to the end consumers.

- 2.23 Accordingly, the Commission is of the view that the increase in the Annual Licence Fees for the Distribution Licensees from existing 0.05% to 0.1% as proposed in the Draft Amendment is justified and does not require a reconsideration.
- 2.24 EON has requested the Commission to set the licence fee for distribution licenses at a minimum of Rs. 2,00,000/-. In this context, the Commission notes that this minimum Licence Fees of Rs. 2,00,000/- is mainly applicable for the SEZ Distribution Licensees and has been in force since year 2017. Further, accepting said suggestion of EON would mean that only the major Distribution Licensees (excluding the SEZ Distribution Licensees) would be subjected to increased Licence Fees. Hence, the Commission does not think it appropriate to consider the request of EON.
- 2.25 MSEDCL has suggested that the distribution licence fee may be increased to 0.1% of revenue subject to a maximum of Rs. 50 Cr. MSEDCL stated that this adjustment would help balance the financial impact on MSEDCL while ensuring that the fee structure remains fair and manageable.
- 2.26 In this context, the Commission notes that vide the Principal Regulations, 2022, the Commission has already rationalised Petition Fees. An upper ceiling has been provided for the Tariff Petition filing by Generating Companies and also for the Annual Licence Fees payable by the Transmission Licensees. Accordingly, the Commission is not inclined to consider MSEDCL's request for putting a ceiling of Rs. 50 Cr. on the Annual Licence fees for the Distribution Licensees at this point in time. However, the Commission may consider this aspect in future after review of the actual receipts and the expenses incurred.
- 2.27 In view of the above discussion, the Commission has decided to retain the existing provision in the Draft Amendment.

### **3. Issue:- Considering the Licence Fees as uncontrollable expenses for ARR purpose**

#### **Comments received**

##### **AEML-D's submission**

- 3.1 AEML-D stated that it has also been transitioning its business digitally while at the same time complying with the increasingly stringent Regulations (e.g. Supply Code and SoP Regulations) which has been contributing to its significantly increasing workload and associated expenses. However, despite the changes in Regulations and consequent expenses to meet the related compliances, the Commission has been allowing the escalation in O&M expenses (which is in the range of 4 to 5%) solely based on inflationary indices.



- 3.2 AEML-D stated that the MYT Regulations allow O&M cost to the Distribution Licensees on a normative basis. The norms themselves are designed based on actual cost of previous years. Under the draft MYT Regulations 2024, for the new Control Period commencing 1st April 2025, the O&M cost norms being proposed are based on the actual O&M cost till FY 2021-22. The component of License fee in AEML-D's actual O&M cost for FY 2021-22 was Rs. 1.40 Cr. only. As opposed to that, the actual License fees for FY 2025-26 would be close to Rs. 10 Cr. (considering the expected increase in sales and wheeled units during FY 2025-26), which is at least 543% higher. The O&M cost of AEML-D as provided through the norms would not be reflective of the impact of the increase in License fee being proposed.
- 3.3 AEML-D stated that the comparison of the escalation in annual licence fees due to inflationary factors versus the escalation resulting from the Transaction of Business and Fees and Charges Regulations, 2022 is provided below:

	<b>Annual Licence Fees (in Rs. Cr.)</b>		
	<b>Considering avg. 5% escalation as per inflation</b>	<b>As per Transaction of Business and Fees and Charges regulations, 2022</b>	<b>Additional amount</b>
FY 22-23	1.23	1.23	
FY 23-24	1.29	3.50 (185% hike)	2.21
FY 24-25	1.36	8.79 (151% hike)	7.43

- 3.4 AEML-D stated that the impact of the above would be that either the actual O&M cost of AEML-D would exceed the norms, causing an efficiency loss or, even if the actual cost remains lower, the extent of efficiency gains would considerably reduce.
- 3.5 AEML-D suggested that the entire Licence fee needs to be considered outside the norms (in which case, the actual O&M cost used for determining norms will be reduced by the amount of actual license fee included therein) i.e. as a separate line item in the ARR, which is to be allowed on actual payment basis.
- 3.6 AEML-D stated that there is precedence of the above treatment, as found in the Tariff Regulations of the Punjab State Electricity Regulatory Commission (**PSERC**), wherein O&M cost is allowed on normative basis, but by excluding terminal liabilities, and expenses on account of pay revision, expense on account of License fee – initial and renewal.
- 3.7 AEML-D stated that the Licence fee is an expenditure, which is entirely outside the control of the distribution licensee and hence the Licence fee should also be treated as an Uncontrollable cost and allowed on actual payment basis, as a separate line item in the ARR (outside O&M cost).
- 3.8 AEML-D requested the Commission to treat Licence fees as a separate line item in the ARR, thereby allowing it on actual payment basis, outside the normative O&M allowance.

### **MSEDCL's submission**

- 3.9 MSEDCL has also made a similar request to treat the Annual Licence Fee and any increase as uncontrollable factor during the true-up process and exclude it from the sharing of efficiency gains/losses mechanism.

### **Analysis and Commission's Decision**

- 3.10 The Commission notes that the Annual Licence Fees being paid by the Distribution Licensees is a part of the Administrative and General Expenses (**A&G Expenses**) under the O&M Expenses being claimed by the Distribution Licensees under the ARR/Tariff determination exercise.
- 3.11 O&M Expenses are the controllable parameters as per the MERC (Multi Year Tariff) Regulations, 2024 i.e. certain norms are specified under the MYT Regulations for O&M expenses and if the actual O&M expenses for a year are lower than the Normative O&M expenses, the difference is treated as gain, one-third out of which is retained by the Licensees and two-third of this gain is passed on as a rebate in Tariff . In case, when the actual O&M Expenses are more than the Normative O&M Expenses, the difference is treated as loss with one-third of the amount of such loss is passed on as an additional charge in Tariff and the balance two-third amount of such loss is absorbed by the Licensees.
- 3.12 MSEDCL and AEML-D has requested to Commission to treat Licence fees as a separate line item in the ARR, thereby allowing it on actual payment basis, outside the normative O&M allowance. The Commission notes that this request has been made in order to ensure that there is not reduction in the gain or increase in the loss to the Distribution Licensees during the ARR/Tariff determination process on account the proposed increase in the Annual Licence Fees. The Commission notes the aforesaid concern raised by the Distribution Licensees. However, it is also observed that A&G Expenses comprise of other expenses as well, apart from the Annual Licence Fees and these expenses also vary differently vis-à-vis the escalation factor allowed in the O&M Expenses (i.e. at a higher rate or a lower rate). Further, allowing any expense component outside the specified norm is a matter of Tariff determination process. Hence, the Commission is not inclined to take any view on request of the Distribution Licensees to treat the increase in the Licence Fees as uncontrollable expenses for ARR purpose and the Distribution Licensees may raise this issue during the forthcoming Multi Year Tariff proceeding along with detailed justifications.

## **4. Issue:- Applicability of amendment**

### *Comment received*

- 4.1 AEML-D has stated that the proposed amendments should come into effect only from FY 2025-26. This will also make it coincide with the new MYT Control Period

commencing 1st April 2025, wherein the impact of the increase can be appropriately factored in the impending MYT Regulations, 2024.

***Commission's Analysis***

- 4.2 The Commission accepts the submission of AEML-D as revised Licence Fees shall commence from and coincide with the new MYT control period commencing from FY 2025-26. In any case, the Distribution Licensees have already paid the Annual Licence Fees for FY 2024-25 based on the principal Regulations and next the Licence Fees shall be payable for FY 2025-26 commencing from 1 April 2025.

**Sd/-  
(Surendra J. Biyani)  
Member**

**Sd/-  
(Anand M. Limaye)  
Member**

**Sd/-  
(Sanjay Kumar)  
Chairperson**

**Annexure- I**

<b>Sr. No.</b>	<b>Name of Stakeholders</b>
1	Maharashtra State Electricity Distribution Company Ltd.
2	Adani Electricity Mumbai Ltd.
3	Tata Power Company Ltd.
4	EON Kharadi Infrastructure Pvt Ltd.