DELHI ELECTRICITY REGULATORY COMMISSION

New Delhi

Coram : Shri B.P. Singh, Member

Date: 02/03/2017

In the matter of Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017.

STATEMENT OF REASONS

1. Introduction

1.1. The Electricity Act, 2003 (hereinafter referred to as "the Act") assigns the following functions to the Delhi Electricity Regulatory Commission (hereinafter referred to as the "Commission"), among others:

a) to regulate the tariff of generating companies in the area of GoNCTD;

b) to regulate the intra-state transmission of electricity;

c) to determine tariff for inter-state transmission of electricity;

d) to regulate the distribution (Wheeling & Retail Supply) tariff;

1.2. Section 61 of the Act empowers the Commission to specify, by regulations, the terms and conditions for the determination of tariff in accordance with the provisions of the said section and the National Electricity Policy and Tariff Policy. In terms of clause (s) of sub-section (2) of Section 181(1) of the Act, the Commission has been vested with the powers to make regulations, by notification, on the terms and conditions of tariff under Section 61. As per Section 181(3) of the Act, the Commission is required to make previous publication before finalizing any regulation under the Act. Thus as per the provisions of the Act, the Commission is mandated to specify, through notification, the terms and conditions of tariff of the generating companies, intra- State transmission licensee and distribution licensees covered under clauses (a) ,(b) and (c) of sub-section (1) of Section 86 of the Act after previous publication.

1.3. In exercise of the powers vested under Sections 61 and 181 (2) (s) of the Act and all other enabling powers and in compliance of the requirement under Section 181 (3) of the Act, the Commission had uploaded the draft of DERC (Composite Tariff and Accounting) Regulations, 2015 on its website on 18/12/2015 and also invited comments/suggestions/objections from stakeholders through Public Notices dated 24/12/2015 published in leading newspapers of English, Hindi, Urdu and Punjabi. The last date for submission of comments/suggestions/objections from stakeholders on the said Regulations was 11/01/2016.

1.4. Various stakeholders requested the Commission to extend the last date for submission of comments/suggestions/objections. Based on the request of the stakeholders, the Commission had extended the last date for submission of comments/suggestions/objections from 11/01/2016 to 15/02/2016 through Public Notices dated 11/01/2016 published in leading newspapers of English, Hindi, Urdu and Punjabi. The public notice for extension of the last date for submission of comments/suggestions/objections was also uploaded on its website on 07/01/2016.

1.5. Subsequently, the Commission published Public Notices dtd. 26/04/2016 in leading newspapers of English, Hindi, Urdu and Punjabi to conduct Public Hearing. The Public Hearing on the draft Regulations was held at SCOPE Complex, New Delhi on 5th May, 2016 to facilitate oral submissions by desirous stakeholders. The list of participants in the Public Hearing held on 5th May, 2016 is enclosed at Annexure-1.

1.6. Further, based on the comments/suggestions/objections from various stakeholders, the Commission had modified the draft Regulations. Thereafter, the Commission provided another opportunity to the stakeholders to submit their comments/suggestions on the revised draft Regulations and uploaded the same on website on 5/12/2016 and informed the stakeholders vide Public Notices dtd 15/12/2016 published in leading newspapers of English, Hindi, Urdu and Punjabi. Last date for submission of comments/suggestions/objections on the revised draft Regulations was 27/12/2016.

1.7. Some of the stakeholders requested the Commission to extend the last date for submission of comments/suggestions/objections on the revised draft. Based on the request of the stakeholders, the Commission had extended the last date for submission of comments/suggestions/objections from 27/12/2016 to 10/01/2017 through Public Notices dated 01/01/2017 published in leading newspapers of English, Hindi, Urdu and Punjabi. The public notice for extension of the last date for submission of comments/suggestions/objections was also uploaded on its website on 27/12/2016. The Commission had also provided last opportunity vide communication dated 29/12/2016 to comment and make presentation, if any, on the Draft Regulations to the stakeholders other than the utilities who had submitted their comment on the revised draft.

1.8. Based on comments/suggestions/objections received during pre-Public Hearing, Public Hearing and post- Public Hearing processes, the Commission notified Delhi Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2017 (hereinafter referred to as “Tariff Regulations, 2017”), on January 31, 2017. This Statement of Reasons (SOR) has been issued with the intent of explaining the rationale and objective behind Tariff Regulations, 2017. However, in case of any deviation/discrepancy in the SOR with respect to Tariff Regulations, 2017, the provisions of Tariff Regulations, 2017 shall be applicable.

2. DEFINITIONS

REGULATIONS, VIEWS OF THE STAKEHOLDERS AND COMMISSION'S ANALYSIS

2.1 "Auditor"

"Auditor" *means an auditor empanelled with Comptroller and Auditor General (C&AG) of India and appointed by the Utility, in accordance with the provisions of the Companies Act, 2013 as amended from time to time;*

Stakeholder's Comments

Definition of 'Auditor' should be in line with CERC Regulation, 2014, which also includes Cost Auditor is also included in Auditor. The definition of auditor as provided in CERC regulations 2014-19 is reproduced as under:

"Auditor" means an auditor appointed by generating company or transmission licensee company as the case may be, in accordance with provisions of section 224, 233(b) and 619 of companies act, 1956 (1 of 1956), as amended from time to time or chapter X of the companies act, 2013 (18 of 2013) or any other law for the time being in force.

Further, CMA Vijendera Sharma (The Institute of Cost Accountants of India) has suggested for Inclusion of Cost Accountants in the definition of the Auditor.

Commission's Views

The Commission is of the view that the definition of Auditor covers all the provisions as per Companies Act, 2013 and to increase transparency in selection of auditors, the utilities shall appoint an auditor who is empanelled with Comptroller and Auditor General (C&AG) of India.

The annual auditor is being appointed by the utility under the Companies Act, 2013 and the Companies Act, 2013 mandates that only Chartered Accountants/ firm of Chartered Accountants can be appointed as an auditor for annual accounts.

2.2 Auxiliary energy consumption

*"**Auxiliary Energy Consumption**" or "**AUX**" in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, such as the equipment being used for the purpose of operating plant and machinery*

including switchyard of the generating station and the transformer losses within the generating station, 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 the auxiliary energy consumption shall not include the energy consumed for supply of power to housing colony and other facilities at the generating station and the power consumed for construction works at the generating station;

Stakeholder's Comments

The definition of Auxiliary energy consumption may be modified as "Auxiliary energy consumption" or "AUX" in relation to a period in case of generating station means the quantum of energy consumed by auxiliary equipment of the generating stations during part or full loading while generating energy as per schedule minus (-) auxiliary energy consumed during total back down / shutdown / planned maintenance, such as the equipment used for the purpose of operating plant & machinery including s/yard of the generating station and transformer losses within the generating stations, expressed as a percentage of sum of gross energy generated at the generator terminals of all the units of the generating station.

Commission's Views

The norms for Auxiliary energy consumption for generating station shall be determined in the Business Plan Regulation based on the proportion of quantum of energy consumed by auxiliary equipment of the generating stations during part or full loading while generating energy as per schedule minus (-) auxiliary energy consumed during total back down / shutdown / planned maintenance, such as the equipment used for the purpose of operating plant & machinery including s/yard of the generating station and transformer losses within the generating stations, expressed as a percentage of sum of gross energy generated at the generator terminals of all the units of the generating station. Therefore, the Commission is of the view that no modification is required in the existing definition of Auxiliary energy consumption, which is also in line with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

2.3 **Bank Rate**

"Bank Rate" *means the base rate or Marginal Cost of Fund based Lending Rate (MCLR) or* *any other Benchmark Rate as notified by the State Bank of India;*

Stakeholder's Comments

Stakeholders have suggested that the Reserve Bank of India has issued new guidelines for setting lending rate (on loans) by commercial banks under the name Marginal Cost of Funds based Lending Rate (MCLR). It has replaced the existing base rate system from April 2016 onwards for all the new loans/ working capital facilities. Based upon this MCLR, interest rate for different types of customers will be fixed in accordance with their riskiness. "Bank Rate" means the weighted average MCLR rate as notified by the major credit facility providing lenders"

Further Stakeholders have suggested the definition of Bank Rate as "Bank rate" means the weighted average MCLR of all lending institutions of the Utility during a "Financial Year".

Commission's Views

Definition of Bank Rate has been modified based on the stakeholders suggestion and MCLR has also been included in the definition. Further, the Commission is of the view that there are multiple agencies other than the scheduled banks which are extending the facility of credit/ loan to the commercial organizations including insurance companies, mutual funds etc. and State Bank of India (SBI) is one of the biggest lender in the country. The determination of weighted average MCLR for all the lending institutions other than the scheduled banks including insurance companies, mutual funds etc. for fixation of Base Rate is not feasible because the insurance and mutual fund companies are not declaring its MCLR in public domain. Therefore, the Commission is of the view that the benchmark rate for determination of rate of interest should be based on the base rate or Marginal Cost of Fund based Lending Rate (MCLR) or any other Benchmark Rate as notified by the State Bank of India.

2.4 **Base Year**

"Base Year" *means the Financial Year immediately preceding first year of the Control Period as specified in these Regulations;*

Stakeholder's Comments

Stakeholders have suggested that the proposed definition of "control" period under Regulation 2 (24) is proposed to mean a multiyear period fixed by the Commission from time to time and not stipulated in the Regulation, the base year will have to be considered as the financial year immediately preceding the determination by the Commission of what the control period is going to be. Since such determination would be by the Commission's MYT order, the base year would have to be the financial year immediately preceding the date of the MYT Order which would be passed by the Commission under these Regulations.

Stakeholders have suggestedthat "Base Year" should be redefined as follows:

"Base Year" for the first Control Period under these Regulations means the financial year immediately preceding the financial year from the date of MYT Order under these regulations and for the subsequent Control Periods, "Base Year" would mean the financial year immediately preceding the years in question.

Commission's Views

The Commission has modified the definition of Base Year based on the comments of the stakeholders.

2.5 **Beneficiary**

"Beneficiary" in relation to a generating station covered under Section 86 (1) of the Act, means a Distribution Licensee who is purchasing electricity generated at such generating station through a Power Purchase Agreement either directly or through a trading licensee on payment of fixed charges and by scheduling in accordance with the Grid Code:

Provided that the Distribution Licensee will also be a beneficiary when it is procuring power through a trading licensee, and such arrangement is secured through back to back Power Purchase Agreement and Power Sale Agreement;

Stakeholder's Comments

Stakeholders have suggested that the condition of this proviso should not apply to Short Term Trading transactions for the reason that in such cases usually there is no Power Purchase Agreement or Power Sale Agreement and the transaction is undertaken on the basis of letters or brief LOIs. The Commission may kindly amend Regulation-2(10) and may add "on long term basis" after "procuring power".

Commission's Views

The Commission has noted that Power Purchase Agreements on short-term basis are on single part tariff basis and commercial arrangement is not on the basis of declaration of availability and dispatch schedule, hence, the definition will not be applicable for purchasing electricity on short-term basis. Therefore the Commission is of the view that there is no need to specify long term in the definition.

2.6 **Carrying Cost Rate**

"Carrying Cost Rate" means the weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity in an appropriate ratio, as specified by the Commission in the relevant Orders;

Stakeholder's Comments

Stakeholders have suggested that the definition only uses the expression 'rate of interest' which suggests considering of funding only through debt. However rate of carrying cost has to be allowed by weightage average rate of funding from all sources including equity. It is pertinent to note that the Hon'ble Appellate Tribunal for Electricity, New Delhi has already decided the issue pertaining to what constitutes as 'carrying cost' and how it shall be allowed to the claimant. In Appeal 14 of 2012 and vide various other Judgements of the Hon'ble Tribunal, the carrying cost rate has to be allowed in the debt/equity ratio of 70:30 where rate of debt has to be bank rate. It is clarified that funding of Regulatory Assets is not limited to debt funding only and includes equity funding also. In fact, the amount of debt funding available for Regulatory Assets reduces with increase in regulatory gap. Therefore the words "rate of interest for funding of …" should be replaced with the words "cost of funding from all sources….". Stakeholders have suggested definition as "Carrying Cost Rate" means the weighted average rate/cost for all sources of funding of RA/Accumulated Revenue Gap"

Stakeholder has suggested that since the carrying cost is for funding of Regulatory Asset/ accumulated Revenue Gap, the rate of interest for such carrying cost perforce requires to be that applicable to short term loans since Regulatory Asset/ accumulated Revenue Gap are primarily funded by way of short term loans. In view of this, it is our considered suggestion that the definition of "Carrying cost rate" should be amended to read as follows:

"Carrying cost rate" means the Bank Rate, plus margin of short term loans as determined by the Commission in its Orders.

Commission's Views

The Commission has modified the definition based on the suggestion of the stakeholders, that the rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity in an appropriate ratio, as specified by the Commission in the relevant Orders / Regulations. Therefore the direction of the Hon'ble Tribunal is also taken into consideration that the funding of Regulatory Asset should include equity also. The rate of interest for debt funding shall also be determined in the relevant Orders / Regulations taking into consideration the rate of interest availed by the utility in the relevant year for funding of Regulatory Asset. There is no direction from the Commission that the loan shall be taken on short term basis for funding of Regulatory Asset.

2.7 **Change in law**

*"**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 by any competent authority in any condition or covenant of any consent or clearances or approval or license available or obtained for the project; or*
e. coming into force or change in any bilateral or multilateral agreement/treaty between the Government of India and any other Sovereign Government/s or international convention or protocol having implication for the generating station or the transmission system regulated under these Regulations;

Stakeholder's Comments

Stakeholders have suggested that "Change in law" should include "notification or revision of any policy made under any legislative enactment including the statutory policies made under the Electricity Act, 2003". This would take into account the recently notified revised Tariff policy. Stakeholders have suggested that "Law" means, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification, or code, rule, or any interpretation of any of them by an Indian Government (State / Central / Competent judicial authority/Local Body) Instrumentality and having force of law and shall further include all applicable rules, regulations, orders and notifications by an Indian Government Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions, and orders of the Appropriate Commission. Final authority under law as contained clause in existing draft should be clarified to mean the final authority as on that date of the occurrence of the event. Thus we propose the definition should include:

"(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 at that appropriate time for such interpretation or application; any future impact of the higher authority will be considered upon the final judgment by such authority at a future date.

(f) Change in environmental laws or incidental issues; accounting standards; statutory levies and duties; fuel prices for reasons not attributable to the licensee/utility.

(g) Any change in domestic duties, levies, cess and taxes in competitive bid projects"

Commission's Views

The Commission is of the view that the definition of "Change in law" covers all amendments of any applicable law, change in interpretation or application of any Indian law by a Competent Court, Tribunal or Indian Governmental Instrumentality, change by any competent authority in any condition or covenant of any consent or clearances or approval or license available or obtained for the project including the new law notified by the Government.

2.8 **Control Period**

"Control Period" *means a multi-year period specified by the Commission, from time to time, in the Business Plan Regulations;*

Stakeholder's Comments

Stakeholders have suggested that as per the definition, the Control Period means a Multi-year period fixed by the Commission from time to time. It is not known as to when and how the Control Period would be fixed and the Control Period must be specified in the Regulations itself. This is necessary inter-alia to provide certainty to the Licensee for preparation of comprehensive Business Plan.

Further, the Control Period ought to be from the date of issuance of the MYT Order. This is so because the Commission is supposed to specify the targets for the controllable parameters in the MYT Order itself. The Licensee would be in a position to take corrective action and limit its controllable parameters only once the targets are known. It is noteworthy that, a similar provision existed in the MYT Regulations, 2007 which is reproduced below:

"2.1 (g) "Control Period" means a multi-year period fixed by the Commission, from the date of issuing Multi Year Tariff order till 31st March 2011;" [Emphasis Added]

The Control Period under these Regulations must be fixed prospectively in the MYT Order as has been the case in the earlier Regulations. Therefore, it is our considered suggestion that the revised definition of the Control Period may be amended to read on the similar lines as in MYT Regulations, 2007.

Commission's Views

The Commission is of the view that the multi-year period shall be defined in the Business Plan Regulations.

2.9 **Date of Commercial Operation or "COD"**

*"**Date of Commercial** Operation" or "COD" means;*

Date of commercial operation in case of a generating unit or block of the combined cycle thermal generating station shall mean the date declared by the Generating Entity after demonstrating the maximum continuous rating (MCR) or the installed capacity (IC) through a successful trial run and in case of the generating station as a whole, the date of commercial operation of the last generating unit or block of the generating station:

Provided that:

(i) where the beneficiaries have been tied up for purchasing power from the generating station, the trial run shall commence after seven days notice by the Generating Entity to the

beneficiaries and scheduling shall commence from 00:00 hrs after completion of the trial run;

(ii) the Generating Entity shall certify to the effect that the generating station meets the key provisions of the technical standards of Central Electricity Authority (Technical Standards for Construction of Electrical plants and electric lines) Regulations, 2010 and Grid Code as amended from time to time;

(iii) the certificate shall be signed by the competent authority of the Generating Entity and a copy of the certificate shall be submitted to the Member Secretary, (Northern Regional Power Committee) and SLDC;

Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 00:00 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the Generating Entity and transmission licensee shall endeavour for commissioning the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement;

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system or distribution system by other licensees , the transmission licensee shall approach the Commission for approval of the revised date of commercial operation of such transmission system or an element thereof;

Date of commercial operation in relation to a communication system or element thereof shall mean the date declared by the Utility from 00:00 hour of which a communication system or element is put into service after completion of site acceptance test including *transfer of voice and data to respective control centre as certified by the respective SLDC;*

Date of commercial operation in relation to Distribution System shall mean the date declared by the Distribution Licensee after charging of electrical line or substation or equipment of a Distribution System to its declared voltage level for its intended purpose after obtaining the required and applicable clearances from Electrical Inspector, if any.

Stakeholder's Comments

Stakeholder has suggested that Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 00:00 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that an element thereof is prevented from regular service for reason not attributable to the transmission licensee such as delay in downstream network, etc. In such cases, the transmission system/element of transmission licensee may be considered commissioned.

Commission's Views

The Commission is of the view that in case an element thereof is prevented from regular service for reason not attributable to the transmission licensee such as delay in downstream network, etc. In such cases, the transmission licensee should approach the Commission for adjudication in the matter including revision in date of commercial operation in such cases. The onus for delay in downstream network shall be decided by the Commission on case to case basis. The Commission has indicated this provision in the Regulation itself.

2.10 **<u>Declared Capacity</u>**

"Declared Capacity" *or "DC" in relation to a generating station means, the capability to deliver ex-bus electricity in MW declared by such generating station in relation to any time-block of the day as defined in the Grid Code or whole of the day, duly taking into account statutory clearance, availability of fuel or water, and subject to further qualification in the relevant Regulation;*

Stakeholder's Comments

Stakeholders have suggested that the statutory clearance to the generating station should also be taken into account while considering the Declared Capacity. In case a plant cannot run due to restrictions imposed by a statutory body, the DC should be adjusted accordingly.

Commission's Views

The Commission has observed that Delhi SLDC has included scheduling of power from Badarpur Thermal Power Station (BTPS) as per its declared capacity even after the direction of closure from Delhi Pollution Control Committee (DPCC). Such declared capacity without actual availability of plant result into additional Fixed Charges' burden to the consumers. Therefore, the Commission has modified the definition based on the comment of the stakeholder and included "*duly taking into account statutory clearance"* in the modified definition.

2.11 <u>**Expenditure Incurred**</u>

*"**Expenditure Incurred**" means the amount actually expended and paid in cash or cash equivalent, for creation or acquisition of an asset through deployment of equity or debt or both, and does not include commitments or liabilities for which no payment has been released;*

Stakeholder's Comments

Stakeholders have suggested that as per the definition, the expenditure incurred means the amount actually expended and paid in cash for creation of acquisition of asset and does not include commitments for which no payment has been released.

The Licensee's business is based on a "going concern" concept. As per "going concern" concept it is assumed that during and beyond the next fiscal period a company will complete its current plans, use its existing assets and continue to meet its financial obligations. The ARR and truing-up in Regulatory regime is also undertaken based on expenses accrued and not based on expenses incurred. In case such an approach is adopted, the Utilities including GENCOs and TRANSCOs shall not be able to recover the costs accrued. This is demonstrated from example given below:

Example: Suppose a loan raised against an asset is to be repaid in equal instalments over a period of 10 years then only $1/10^{th}$ of the loan shall be considered as expenditure incurred and $9/10^{th}$ of the loan shall not be considered as the same has not been repaid in year 1. Such definition will result in allowance of lower depreciation since the asset base as per aforesaid definition becomes only $1/10^{th}$ of the total cost which has been paid for by the Licensee. Such approach is arbitrary as the amount of expenditure is the amount spent in creation or acquisition of asset and the liability is existing in balance sheet of the Utility to repay the loan.

Also the Commission itself has acknowledged this approach in Order dated July 31, 2013 as under:

"5.6 The Commission has allowed carrying cost during FY 2012-13 on the unpaid over dues to Generation & Transmission Utilities which were not considered while computing the carrying cost in Tariff Order dated July 31, 2013. The Commission has now decided to revise the earlier treatment as, by not allowing the carrying cost on such unpaid over dues, the Commission may subsequently have to allow the Late Payment Surcharge (which will be quite high) or further interest on the carrying cost withheld, thus leading to imposition of an additional unwarranted burden on the consumers."

Therefore expenditure incurred ought to include the liability incurred for creation or acquisition of the Assets.

Commission's Views

The Commission has indicated in Regulation 43 that any liability for works executed prior to the cut-off date after prudence check of the details of such un-discharged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc. shall be considered in the Capital Cost subject to the prudence check. Therefore, the Commission is of the view that the apprehension of the stakeholder regarding inclusion of the liability incurred for creation or acquisition of the Assets has already been taken care of in the Regulation itself.

Further, it is clarified that the loan raised against an asset is not forming part of the expenditure incurred by the Utilities in either the regulatory framework or accounting practice but utilisation of the amount availed from raising the loan used for payment of expenditures. Utilities are raising the loans for payment of expenditure already incurred on account of either capital or revenue expenditure. The expenditure incurred on account of availing the loan and interest accrued on the loan is allowed separately in the ARR and CAPEX of the Utilities. i.e., if any loan raised by the utilities for payment of capital expenditure incurred then the capital expenditure incurred is allowed to be capitalised in the books of accounts of the utilities and there is separate allowance of interest cost applicable on such loans raised by the utilities. Therefore, the apprehension of the stakeholders by comparing the outstanding loan with expenditure incurred is misrepresented.

2.12 **Investment Approval**

"Investment Approval" means approval by the Board or the relevant competent authority of the Utility conveying administrative approval for the project including funding of the project and the timeline for the implementation of the project:

Provided that the date of Investment Approval shall be reckoned from the date of the resolution/minutes of the Board/approval by competent authority;

Stakeholder's Comments

Stakeholders have submitted that "Investment Approval" means approval by the Board or any other competent authority of the Utility conveying administrative sanction for the subject including funding of the project and the timeline for the implementation of the project. The date of investment approval shall be reckoned from the date of the resolution / minutes of the Board/ sanction by competent authority and issue of LOI for the project.

Stakeholder has submitted to add *"any other date specified in Board Resolution/Minutes"* for investment approval.

stakeholder has submitted that "Investment Approval" means the date of approval by Board or from the date of the management approval in case of schemes where specific approval of Board is not required.

Commission's Views

The Commission is of the view that date of investment approval shall be considered as per the resolution/minutes of the Board or date of approval from any other competent authority. In case there is any specific date mentioned in resolution/minutes that the investment approval shall be dependent on any subsequent event, in that case the date of investment approval shall be reckoned from the date of occurrence of such event.

In view of the above, no modification is required in the Regulation as suggested by the stakeholders.

2.13 Non-Tariff Income

"Non-Tariff Income" *means income incidental to the Licensed business other than the income from Tariff;*

Stakeholder's Comments

Stakeholders have suggested that the said provision pretends to treat "Other Business income " as part of "Non Tariff Income", However, the same may be treated in terms of the DERC Other Business Regulations, 2005 as and when amended by the Hon'ble Commission. Therefore, it is suggested that the definition of "Non Tariff Income" should be amended as follows;

"Non -Tariff Income" means income relating to the Licensed business other than from tariff (Wheeling and Retail Supply), and excluding any income from Other Business, cross-subsidy surcharge and additional surcharge"

Commission's Views

The Commission has modified the definition of 'Non-Tariff Income' as per the suggestion of the stakeholder and has provided separate definition for other business income in the Regulation.

2.14 Prudence Check

"Prudence Check" *means scrutiny of reasonableness of revenue and capital expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for determination of tariff;*

Stakeholder's Comments

Stakeholders have suggested that the Prudence Check is undertaken to scrutinize the expenditures/costs that have already been incurred by the licensee/utility, therefore the reasonableness and efficient utilization of resources ought to be considered keeping in view of the circumstances at the time when such expenditures/costs were actually incurred.

The following guidelines may be added as Proviso to the main definition of Prudence Check:

"(1) The Prudence Check has to be completed within a reasonable time frame (say within 1 year or True-Up Order of incurring of the expenditure/income which is sought to be checked, whichever is earlier);

(2) There cannot be any Prudence Check in relation to any expenditure/income which has already been Trued Up in previous Orders;

(3) In case of Schemes that have been pre-approved by the Commission, Prudence Check would not be carried out unless the final expenditure exceeds the approved/ projected expenditure by more than 15%;

(4) The reasonableness of the expenditures has to be checked having regard to the performance standards, procedures and methodologies prescribed under various Regulations, Orders/directions issued by the Commission or by any other appropriate authority at the relevant time;

(5) No Prudence Check would be required in terms of expenditure treated as normative under the Tariff Regulations and not subject to True-Up;

(6) Prudence Check will have to be carried out on the basis of prevailing circumstances/ availability of data at the time of expenditure and subsequent developments and facts may not be considered for Prudence Check. Therefore the phrase "such other factors" is proposed to be deleted.

(7) Prudence check should be limited to the circumstances at the time when decision to incur such expenditures/costs were actually taken/ incurred."

Commission's Views

The Commission is of the view that the prudence check exercise is essential in order to verify/examine the authenticity of the expenses/ income which affects the electricity tariff of the consumers. The time limit for completion of prudence check exercise may not be required as it is dependent upon the availability of complete information required for the purpose.

As and when any additional information/new facts are brought into the notice of the Commission, which may affect the past Trued up Orders, the Commission may conduct the prudence check at that point of time. The similar provisions are also available under other Acts i.e. Companies Act, Income Tax Act etc.

In view of the above, no modification is required in the Regulation as suggested by the stakeholder.

2.15 **<u>Related Party</u>**

"Related Party" *means the persons as defined in Section 2(76) of the Companies Act, 2013 as amended from time to time;*

Stakeholder's Comments

stakeholder has submitted that there is a separate disclosure requirement in the Financial Statements as per Ind AS 24 and the Suggested Definition may be "Related Party" means the persons as defined in Indian Accounting standards Ind AS 24

Commission's Views

The Commission is of the view that all the Ind AS (Indian Accounting Standard) which are mandatory under the Companies Act has been covered under the definition of Related Party. Therefore, no modification is required in the Regulation as suggested by the stakeholder.

2.16 **<u>Salvage value</u>**

*"**Salvage value**" means the amount received for capital asset or part thereof retired, less expenses incurred in connection with the sale of such capital asset;*

Stakeholder's Comments

Stakeholdershave suggested that "Salvage value" means the amount received for capital asset or part thereof retired, less expenses incurred in connection with the sale of such capital asset minus (-) unrecovered percentage out of total 90% of depreciable amount of admitted capital cost.

Commission's Views

As per accounting definition, the salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset in line with the Tariff Regulations, 2017 unless specifically indicated for any class of assets (i.e. IT equipments and software have salvage value as Nil as specified in Appendix I of Tariff Regulations, 2017). However, the definition of salvage value in the Tariff Regulations, 2017 has been used for computation of net realisable value of the asset at the time of disposal/sale of the relevant asset. The unrecovered depreciation for any asset shall be governed by the specific Regulation applicable for de-capitalization of asset as specified in the Tariff Regulations, 2017. Therefore, no modification is required in the Regulation as suggested by the stakeholder.

2.17 **Start date or zero date**

"Start Date or Zero Date" *means the date indicated in the Investment Approval for commencement of implementation of the project and where no date has been indicated, the date of investment approval shall be deemed to be the Start Date or Zero Date;*

Stakeholder's Comments

Stakeholdershave suggested that "Start date or zero date" means the date indicated in the investment approval / sanction / LOI for commencement of implementation of the project and where dates of in principle approval, sanction and LOI are different. The LOI date shall be deemed to be start date or zero date

Stakeholders have suggestedthat the time period taken for securing Right of Way, Statutory permissions etc. should be factored in the start date or zero date should commence only after the aforesaid requirements are complied with as the existing clause in draft regulations is unreasonable and arbitrary and is against Section-61 of the Act. Accordingly necessary modification may kindly be carried out.

Commission's Views

The Commission is of the view that the apprehension of stakeholders in start date or Zero date has already been addressed in the definition of Investment Approval.

2.18 **<u>"Useful Life"</u>**

"Useful life" *means number of years from the CODin relation to a unit of a Generating Station, Transmission System and Distribution system or part thereof as provided in Appendix-1 of these Regulations;*

Stakeholder's Comments

CMA Vijendera Sharma has suggested the following:

(a) Coal/lignite based thermal generating stations : 25 years

(b) Gas/Liquid fuel based thermal generating Stations : 25 years

(c) AC and DC sub stations : 25 years

(d) Gas insulated sub stations : 25 years

(e) Hydro generating stations including pumped storage hydro generating stations: 35 years

(f) Transmission line (including HVAC & HVDC) : 35 years

(g) Communication Systems: 15 years

Commission's Views

The Commission is of the view that, to bring uniformity across the country, the useful life for Generation and Transmission Assets should be in line with CERC Tariff Regulations 2014-19. Therefore, no modification is required in the Regulation as suggested by the stakeholder.

2.19 **<u>Utility</u>**

"Utility" *means any Generating Entity, Transmission Licensee, Distribution Licensee, System Operator or any other company/Licensee whose business is required to be governed and/or tariff is to be determined by the Commission**;***

Stakeholder's Comments

Stakeholder has submitted that the definition of Utility as defined in the Act is as under:

"Utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;"

Commission's Views

The Commission is of the view that specific definition of any term as specified in the Regulation has the meaning as defined in the Tariff Regulations, 2017. Further, as per Tariff Regulations, 2017 – "*Words and expressions used in these Regulations and not defined herein but defined in the Act or any of the Regulations notified by the Commission shall have meaning assigned to them there-under*. "

2.20 **<u>Wheeling Business</u>**

"Wheeling Business" *means the business of operating and maintaining a Distribution System or Transmission System, as the case may be, for conveyance of electricity in the area of supply of the Distribution Licensee or Transmission Licensee***.**

Stakeholder's Comments

Stakeholder has submitted that in this clause, the word Distribution system should be replaced by Transmission system.

Commission's Views

The Commission has considered the suggestion of the stakeholder and modified the definition accordingly.

3. BUSINESS PLAN

VIEWS OF THE STAKEHOLDERS AND COMMISSION'S ANALYSIS

Stakeholder's Comments

3.1 **Stakeholders have suggested that the 'Rate of Return on Equity' should be provided in the draft Regulations itself**. The main objective of MYT Regulations is to bring in certainty. The ROE rate is required to be specified to bring in certainty. The Commission is guided by the Tariff Policy and the regulations of the Central Commission as per section 61 of the EA, 2003. The ROE should be decided considering the ROE specified by CERC for generation. Under Section 61, the Commission is required to be guided by the Tariff Policy notified by the Central Government. In this regard, the relevant provisions of the Tariff Policy as amended in January, 2016, need to be referred to. The relevant provisions of the Tariff Policy are as under:

5.10 Consumer interest is best served in ensuring viability and sustainability of the entire value chain viz., generation, transmission and distribution of electricity, while at the same time facilitating power supply at reasonable rate to consumers. The financial turnaround/restructuring plans are approved by the Appropriate Government from time to time to achieve this objective. The Appropriate Government as well as the Appropriate Commission while implementing such plans shall ensure viability of the generation, transmission and distribution in terms of recovery ofall prudent costs.

5.11Tariff policy lays down the following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.

a) Return on Investment

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to *create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.*

The Central Commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. The rate of return notified by CERC for transmission may be adopted by the SERCs for distribution with appropriate modification taking into view the risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators.

The Central Commission has specified ROE of 15.5% and additional 0.5% for the projects commissioned in time, for the generating companies. Therefore, the ROE for distribution utilities to be specified by the State Commission which should be better than that specified by the Central Commission for generation.

The ROE for distribution companies in previous MYT Regulations 2007 & 2011 has been specified @ 16% when the CERC regulations allowed 14% to generating/ transmission utilities. Therefore, since the new CERC regulations 2014-19 has approved ROE for generation companies @ 15.5% (+ additional 0.5% for projects commissioned in time), therefore the rate of return for distribution companies should be allowed @ 18% minimum taking into view the risks involved in distribution business

3.2 The requirement of filing of Business Plan and the treatment thereof for the purpose of determination of Tariff is arbitrary and inconsistent in as much as these Regulations are open ended and does not give any specific targets, rate of return, borrowing rates and no methodology prescribed for the computation of controllable items such as O&M expenses, which are ultimately worked out on the basis of normative parameters. Therefore, in these regulations, a direction towards next MYT control period should be specified with respect to expectations in terms of target AT&C losses, other performance parameters, and commercial sustenance principles of utilities, etc

3.3 The mechanism for sharing of incentive-disincentive should also be defined in these

Regulations.

3.4 Stakeholder also submitted that the surcharge has been provided by the Hon'ble Commission for the purpose of liquidation of the regulatory assets created due to deferment of recovery of approved cost in the preceding years. It is pertinent that if the recovery of the cost incurred by the DISCOM for the preceding years would have been allowed by the Hon'ble Commission in the concerned year by way of surcharge then the same would have been considered as a part of the revenue realized and revenue billed in ensuing years.

Further in respect to the issue of inclusion of late payment surcharge (LPSC), it is submitted that the Hon'ble APTEL in its judgment dated 28.11.2013 in Appeal no.14/2012,has held that LPSC is required to be included in the computation of the collection efficiency. As the LPSC is included in the amount billed, due and collectable from consumer as numerator, the same has to be included in the denominator also, therefore, the same should be included in collection and billed revenue.

Based on the above submission and facts, deficit recovery surcharge or any other surcharge including late payment surcharge should be considered as a part of both revenue realized and revenue billed for the purpose of computation of the collection efficiency.

stakeholder suggested the provisions for computation of Collection Efficiency as:

"Provided that Revenue Realized or Revenue Billed on account of electricity duty shall be excluded from the computation of Collection Efficiency."

3.5 Stakeholder suggested the detailed cost benefit analysis and its impact on performance of utilities can only be given at the time of approval of schemes. Therefore the requirement of the same at the time of submission of Business Plan may be dispensed off.

3.6 Stakeholders have suggested that all timelines specified in the draft regulations which are to be reckoned as prior to commencement of the control period are to be realigned keeping in view the likely time by which the draft regulations would be notified to come into force. For e.g., Regulation 5 of the draft regulations provides for submission of business plan for next 5 years latest by 31st October of its' Base Year prior to the commencement of new control period. Draft Regulations have been made available on website for comments during December 2016. In case it is assumed that the control period will start from the date of MYT Order, then the timeline of submission of Business Plan has already elapsed which makes it impossible for the Utility to submit the Business Plan by the given timeline.

3.7 Stakeholder has submitted that it is State Transmission utility and is intermediary between National Grid & Delhi DISCOMs Grid connected with the voltage level from 11 kV to 400 KV. Any disturbances in their respective grid also have an impact on DTL availability. As such, annual voltage –wise availability is not truly reflective of DTL's performance. Thus the Commission is requested to do away with this proposed clause and fix the operational norm and transmission availability as was being done in the earlier Transmission Tariff Regulations.

DTL is having transmission system containing different voltage levels i.e. 400kV, 220kV, 66kV, 33kV & 11kV, where all the O&M activities are carried out by utilising same manpower and services, which is optimal and cost-effective. Therefore, Commission is requested to review and delete the requirement of the voltage-wise and bay-wise O&M expenses.

Business Plan of the Transmission Licensee is prepared as per Transmission planning criteria of CEA in consultation with CTU, availability of Generation, drawl by DISCOMs, n-1 criterion etc. to ensure reliable transmission. Further Delhi being the national capital, to maintain uninterrupted supply of power, sometimes more than n-1 criterion is also required. In addition the Load Curve of Delhi is volatile and varies widely from Summer to winter wherein reaching peak in Summer. Further Govt of India has put an emphasis on Renewable generation i.e. Solar Generation, 24X7 Power for All etc. and the capital investment in transmission system is required to be done to cater the need of the aforesaid parameters and also due to unforeseen future situations. Keeping in view, Commission is therefore requested to have following provision in Business Plan.

DTL is State Transmission Utility of Delhi and the Business Plan of DTL is also based upon the other power utilities of Delhi i.e. GENCOs and DISCOMs. The Business plan is being prepared for 5 years and in between this period due to various uncontrollable factor i.e.

Land acquisition, Right of Way, case of Load Growth in any area not envisaged before, future Generation capacity addition etc, it become imminent for provision of Mid Term Review of the Business Plan.

The Tariff Regulations is also required to provide description about the normative Transmission System Availability for recovery of full fixed charges. Further, the method of computation of Transmission System Availability has also not been provided in the Regulations so the existing method may be continued by Commission.

External Parameters i.e. Inflation, New Assets addition and further unforeseen/extraordinary expenses i.e. Impact of Pay Commission, Property Tax, Service Tax , GST etc. to be considered. Further, since DTL is having costly assets, possibilities are being explored to insure these assets. Commission is requested to also allow provision for the same as under:

Provision for Insurance of Assets:-

The transformer and GIS equipments are of high value assets and damage of the same can result in huge loss to the Company. To safeguard from the above loss it is beneficial to get these high value assets be insured. For the existing assets the expenditure shall be incurred to get them insured and Commission is requested to consider the same.

3.8 Stakeholders have submitted that Mechanism for sharing of inventive – disincentive mechanism is not specified in the Regulations.

3.9 Sh. Saurabh Gandhi, Sh. Sanjay Gupta and Sh. H.M. Sharma have suggested that the Business Plan should not only be future plan but also the achievement of previous year/years achievements etc. The commission may circulate specified Forms for each generating station, transmission utilities and distribution companies. For distribution utilities it must also be mandatory to submit their quarterly progress for review before the commission for review. If any outstanding dues remain, that is to be reviewed quarterly on public interest. Business Plan must include the renewable purchase obligations (RPO) and expected rates. Business Plan for future years must include the plan of liquidation of outstanding dues if any. This is required as very often it is published in the news that the distribution companies are defaulter of dues to be paid to the generating companies, transmission licensees etc. and they were threatening of discontinuation of power supply of the distribution licensees. If it is found that the distribution companies are exceeding certain limits, then there license is to be revoked on the interest of public. Generating companies are also to file their past business target achievements as well as future business plans so that there should not be any outstanding dues to be paid by the distribution companies and others. The business plan of distribution utility is to be submitted, the past business achievements including amount payable from the generating companies and transmission licenses. The generating companies and transmission licenses also submit the outstanding any amount to be receivables from the distribution companies. Regarding capital investment Plan, the distribution companies/generating companies/transmission licenses are to provide details of past completed capital works including GIS mapping, physical verification reports etc. For generating utility/company, the business plan must incorporate their receivables from the distribution licenses, transmission licenses etc and the planning for recoveries of the dues from those utilities/companies.

Commission's Views

<u>Business Plan Regulations:</u>

3.10 Pursuant to the suggestions made by the stakeholders and for the reasons stated therein that Return on Equity, O&M expenses, Distribution Loss Targets, NAPAF, NATAF etc. should be part of Regulations itself, the Commission deliberated thereon and consequently converted the term "*Business Plan Order*" to "*Business Plan Regulations*". To understand, in this respect, the earlier Multi-Year Tariff Regulations has been bifurcated into two separate Regulations namely: Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Business Plan Regulations.

3.11 Further, the stakeholder's apprehension that Return on Equity, O&M expenses, Distribution Loss Targets, NAPAF, NATAF etc. as part of Regulations has been addressed in the form of Business Plan Regulations which shall have limited validity due to various factors which impacts these parameters. Therefore, the Commission has modified Tariff Regulations, 2017 and specified that these parameters shall form part of Business Plan Regulations instead of Business Plan Orders as follows:

"BUSINESS PLAN

3. The Commission shall notify Business Plan Regulations for each Control Period based on the Business Plan submitted by the Utility which shall be read as part of these Regulations."

3.12 The Commission is of the view that the principles and procedure for determination of tariff for generate

3.13 ng entities, transmission licensee and distribution licensees is part of Tariff Regulations, 2017. Whereas, the operating norms and performance targets including various technical as well as financial parameters shall be part of the Business Plan Regulations, which is required to be modified based upon actual performance of the Utility and the external factors.

3.14 Business Plan Regulations shall have limited validity during a control period and the parameters shall be reviewed at the end of each control period based on the actual performance of the Utility and the external factors impacting these parameters on tariff determination of the Utility. The Commission has specified in Tariff Regulations, 2017 as follows:

"3. The Commission shall notify Business Plan Regulations for each Control Period based on the Business Plan submitted by the Utility which shall be read as part of these Regulations.

4. The Business Plan Regulations shall contain the following parameters applicable for a Control Period:

(1) Rate of Return on Equity,

(2) Margin for rate of interest on Loan,

(3) Operation and Maintenance Expenses,

(4) Capital Investment Plan,

(5) Mechanism for sharing of incentive-disincentive mechanism,

(6) Allocation of overhead expenses incurred on account of Administrative Expenditure out of Operation and Maintenance Expenses for creation of Capital Asset,

(7) Generating Norms:

(a) Gross Station Heat Rate,

(b) Plant Availability Factor,

(c) Secondary Fuel oil consumption;

(d) Auxiliary consumption and

(e) Plant Load Factor;

(8) Transmission Norms:

(a) Annual Transmission system availability;

(b) Annual Voltage wise Availability;

(9) Distribution Norms:

(a) Distribution Loss Target;

(b) Collection Efficiency Target;

(c) Targets for Solar and Non Solar RPO;

(d) Contingency limit for Sale through Deviation Settlement Mechanism (Unscheduled Interchange) transactions

(e) The ratio of various ARR components for segregation of ARR into Retail Supply and Wheeling Business."

3.15 In view of the above, it is clarified that the stakeholders may submit their comments related to fixation of the various targets and technical as well as financial parameters (i.e., *Rate of Return on Equity, Margin for rate of interest on Loan, Annual Transmission system availability, Targets for Solar and Non Solar RPO etc.),* which shall be decided in the Business Plan Regulation during the finalization of such parameters in Business Plan Regulation for the relevant control period.

3.16 The Commission has retained the philosophy for computation of collections efficiency as defined in the DERC Multi Year Tariff Regulations 2011 for Distribution licensees:

"Collection efficiency, which shall be measured as ratio of total revenue realised to the total revenue billed in the same year: Provided that revenue realization from electricity duty and late payment surcharge shall not be included for computation of collection efficiency;"

3.17 Further, based on the stakeholders comment, the Commission has modified the formulae for collection efficiency that electricity duty, late payment surcharge, any other surcharge shall be excluded from Revenue Realized and Revenue Billed for the purpose of computation of Collection Efficiency as follows:

"(11) Collection Efficiency shall be measured as ratio of total revenue realised to the total revenue billed in the same year:

Provided that Revenue Realised or Revenue Billed on account of electricity duty, late payment surcharge, any other surcharge shall be excluded from the computation of Collection Efficiency"

3.18 The Commission is of the view that annual Tariff determination for the Transmission Licensee shall take care of the mid-term review of the Business Plan as indicated by DTL in its suggestion.

3.19 The Commission is of the view that provision for insurance of asset, as suggested by DTL, are part of annual revenue expenditure of the Utility and the same shall be part of O&M expenses allowed in the ARR of the Utility.

3.20 The Commission has included the provisions for Geographical Information System (GIS) mapping of the assets in the Tariff Regulations, 2017 , based on the stakeholder's suggestions, as follows:

" 30. The following principles shall be adopted for approval of capital cost of any project or scheme:

(1) Prudence Check of capital cost considering:

(a) The benchmark norms specified, if any, by the Commission from time to time,

(b) Scrutiny of the capital expenditure, financing plan, interest during construction, incidental expenditure during construction for its reasonableness, use of efficient technology, cost over-run and time over-run,

(c) Mode of procurement,

(d) Geographical Information System (GIS) mapping of the assets, and

(e) Any other parameter considered appropriate by the Commission for determination of tariff."

3.21 The issue of payment to GENCOs and TRANSCOs by DISCOMs shall be governed as per Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010. Therefore, the Commission is of the view that there is no additional mechanism required to address this issue.

4. Tariff Petitions and Procedure for Tariff determination

Views of the Stakeholders and Commission's Analysis

Stakeholder's Comments

4.1 Sh. Saurabh Gandhi, Sh. Sanjay Gupta and Sh. H.M. Sharma have suggested that The tariff petitions also must be accompanied by the true up petitions along with the audited financial annual report of the previous year/years of the MYT period.

4.2 Stakeholders have suggested that, if the licensee uses the network of other Distribution Licensee, then the wheeling charges as determined by the Hon'ble Commission for the other Distribution Licensee will be applicable. These wheeling charges will be recoverable by the Licensee in the ARR of the distribution business. If the other distribution Licensee uses the network of licensee, then the wheeling charges as determined by the Hon'ble Commission for the licensee will be applicable. In view of the above, the Proviso to the Regulation should be re-worded to specify that in case of usage of each other's network, for inter-se transfer of energy between the Distribution licensees, the Licensee which has used the network of the other licensees shall have to pay wheeling charges as determined by the Commission to the Licensee whose network has been utilised.

4.3 Further, any details which the Utility has not maintained in past can also be not made available in future for the period pertaining to past. However the reports and/ or statements duly certified by Auditor can be made available for future years after the notification of the Regulations. All such details can be furnished along with the Tariff Petition in future for respective financial years.

4.4 Stakeholders have further suggested that *in the event of non filing of the Tariff Petition by the Utility "**after one month of scheduled date"** the Commission may initiate suo-motu proceedings for tariff determination."*

4.5 Stakeholders have suggested that there are different filing dates and different filing period for Generation/ Transmission Companies and Distribution Licensee. The principle of 120 days prior to the end of the financial year should be applicable to the Distribution Licensee as well. Section 64 of the Electricity Act, 2003, prescribed the timeline that has been statutorily provided is 120 days prior to the commencement of the new financial year.

Section 64. (Procedure for tariff order):

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-
(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;
(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:
Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

Therefore, the deviation from the established norm and practice, and only for the Distribution Licensee, in the absence of any coherent reasoning, brings this draft regulation in teeth with the parent statute. Moreover, differential timelines for generating and transmission licensees as compared to Distribution Licensees shall lead to an arbitrary differentiation being created. In light of the above submission and facts, stakeholder seeks to propose that the original timelines, i.e. 120 days prior to the end of Financial Year be retained as the last date for filing of the Annual Tariff Petition. The same would also bring about consistency, as far as timelines for Generating Companies and Transmission Companies are concerned.

4.6 Stakeholder has further suggested that it is not possible to give the statement on allocation of assets/ expenses for various categories of consumers as the same asset may be used to serve different categories of consumers. It is pertinent to mention that assets/ expenses are/can be bifurcated based on voltage level. Hence, this requirement may be deleted.

4.7 Stakeholder has submitted that the statement of Source of Financing is provided based on applicable Tariff Regulation and Loans as per financial books of accounts and the same can be used as source for regulatory ROCE purpose to be allowed by Hon'ble Commission's on approved figure of RRB. However, for prudence check, details of loans, their terms and conditions, purpose, auditor certificate etc. are separately provided to the Commission in the desired format apart from audited financial statements.

4.8 Stakeholder has also submitted that the Commission allows the normative working capital loans based on tariff regulations. However in financial accounts working capital loans are based on day to day actual operational activities/ requirement. Therefore, it is not desirable to give the Loan utilization certificate for working capital.

4.9 Stakeholders have suggested that the generating entity and transmission licensee shall submit multiyear tariff petition, based on the information and principles followed in the Business Plan, 120 days from the date of issue of present tariff regulation, 2016.

4.10 Stakeholders have suggested that the Commission should consider year wise asset register indicating capitalization and depreciation as per Companies Act, 2013, as approved by Board of Directors of the company. Further, the utility shall file a petition for business plan for true up of ARR for balance previous year and determination of tariff in applicable form along with relevant formats of generation, transmission and distribution companies showing detailed computations.

<u>Commission's Views</u>

4.11 The Commission has already made provisions for filing audited financial statement and other audited reports along with the business plan and tariff petition in Tariff Regulations, 2017 as follows:

"6. The Utility shall submit audited financial statement including Cost Audit report, wherever applicable and data for the cost, revenue and other operating parameters for preceding 5 (five) years along with the Business Plan comprising of following data, as applicable to the Utility

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FINANCIAL STATEMENTS

12. The Tariff Petition shall be accompanied by following Reports and/or Statements duly certified by the Auditor, as applicable:

(a) Shareholding structure of the Utility along with details of Shareholding and Cross-Shareholding among related parties;

(b) Accounting Policies including:

(i) Ratio for allocation of common expenses and allocation of jointly used assets/revenue among related parties;

(ii) Ratio for allocation of common expenses/revenue within different business segments of the Utility:

a) Generation and/or Transmission and/or Distribution of a Utility,

b) Different Units of a Generating Entity,

c) Retail and Wheeling Supply of a Distribution Company,

d) Any other identifiable Business i.e., Consultancy etc.

(c) Allocation of overhead cost to capitalised assets in Balance sheet and its exclusion from Operations & Maintenance expenses in Profit & Loss Account;

(d) Year wise asset register indicating capitalisation & depreciation;

(e) Allocation of capital cost/expense for various voltages;

(f) Pro-rated allocation of assets/expenses for various categories of consumers;

(g) Break up of any surcharge collected with Tariff;

(h) Statement on source of financing and amortization of Regulatory Asset, wherever applicable, created through Revenue Gap;

(i) Loan utilisation certificate for all the loans availed by the licensee during the relevant year duly reconciled with statutory books of accounts including:

a) Capital Expenditure (CAPEX),

b) Capital Work in Progress (CWIP),

c) Working Capital,

d) Regulatory Asset."

4.12 The Commission has defined the uniform timelines for filing of Annual Tariff Petition and has also made provisions for True up Petitions to be filed by Generating Entity, Transmission Licensee and Distribution Licensee in its Tariff Regulations, 2017 as follows:

" 8. The Generating Entity and Transmission Licensee shall submit Annual Tariff Petition,

based on the information and principles specified in the Business Plan Regulations, at least, one hundred and fifty (150) days prior to the end of relevant financial Year.

…

11. The Distribution Licensee shall submit Annual Tariff Petition, at least, one hundred and fifty (150) days prior to the end of relevant financial Year…

….

13. The Utility shall file a Petition for True up of ARR for previous years and determination of tariff in such form and in such manner as specified in these Regulations along with relevant formats of Generating Entity, Transmission Licensee and Distribution Licensee, as the case may be, duly supported with detailed computations."

4.13 The Commission is of the view that as per Sections 96 of the Companies Act, 2013 under normal circumstances, the deadline for audit of Utilities' books of accounts is 30th September of the relevant Financial Year, as follows:

" 96. Annual general meeting.— (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company ***and in any other case, within a period of six months, from the date of closing of the financial year:***
Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. "

4.14 Therefore, it is observed that the Utilities' financial statements are normally audited latest by 30th September of the relevant Financial year and as per provisions of the Tariff Regulations, 2017, the Utilities will get 1 month time period after audit of financial statements for preparation and filing of the True up and Annual tariff Petition before the Commission. Further, no provision of the Act bars the Utilities from filing of Tariff petitions 120 days before the completion of Financial Year and thus, there is no deviation in the Tariff Regulations, 2017 from the Act.

4.15 The Commission is of the view that the utilities have to submit the projected ARR & True up of ARR with Tariff Petition as per actual Wheeling Charges billed in the relevant financial year for which true up of ARR is proposed and at the same time projection of expected Wheeling Charges to be collected during the financial year for which tariff is to be determined.

4.16 It is clarified that the Utility has to prepare the relevant reports for filing the petition under Tariff Regulations, 2017 based on the financial statement and technical information available with the Utility. The Utility shall file the available information in requisite format for first control period under the Tariff Regulations, 2017, however from the subsequent control period the information shall be maintained and submitted in the requisite format only. The Commission has also specified separate formats for Generation, Transmission and Distribution Utilities in Tariff Regulations, 2017.

5. Views of the Stakeholders and Commission's Analysis – ARR Components

Stakeholder's Comments

5.1 Sh. A.K. Dutta, Sh. Sudhir Aggarwal, Sh. Hari Prakash Gupta, Sh. B.B.Tewari, Sh. H.M.Sharma, Sh. Saurabh Gandhi, Sh. S. L. Mendiratta, Sh. O. P. Ahuja have suggested that:

a) Incidental expenditure during construction (IEDC) of capital works; deposit and other project work to be mentioned and are to be apportioned. The amount is to be suitably considered for reducing O& M expenses for determination of Tariff for Generating companies, Transmission and distribution licensees.

b) Physical verification is to be made and certificate for physical verification report is to be made available for prudence check after verification of asset register.

c) Since the DISCOMs projects inflated Capex, the R&M expenses allowed on normative basis shall be trued up at the end of the Control period. Normative R&M expenses shall be derived based on asset value only.

d) Employees and A&G expenses may be allowed on normative basis based on WPI & CPL.

e) K-factor shall be derived and not arrived at by averaging the past expenses. Regulatory function is not an accounting procedure. With more Capex and new assests having performance guarantee period, the K-factor may be kept below 1.5%. GFA n-1 year shall be opening value of n-1 year which equals to closing value of n-2 year and is audited figure. The Capex shall have GIS compliant physical verification once in two years to avoid the present impasse of the 1st & 2nd Control period.

f) In view of the falling rate of interest, inflation, commodity prices etc. the return on equity at 14% to 16% unrealistically high and unjust enrichment to the electricity industry. Since all expenses are paid for even with carrying cost, the return on equity be fixed at 6%.

g) All projects proposal above Rs. 1.00 crore shall get approved in advance by the Commission. No project shall be divided into small work of less than 1.00 crores to avoid approval of the Regulator.

h) Self consumption of electricity shall be restricted to 0.1% of the net sale of the DISCOM. For self consumption of State GENCOs the same shall be restricted 2% of the total sale of power on schedule generation.

i) Legal expenses of the DISCOM shall be restricted to 0.25% of net annual sale. Any extra expenses shall be borne by the DISCOM.

j) There shall not be any free or subsidised power supply to staff who joined DISCOMs after privatisation.

k) Annual efficiency factor shall improve by 2% because of huge Capex, increased A&G and R&M expenses.

l) Third Party inspection of Independent Engineer of all existing assets and Capital assets to be introduced including scrutiny of quantity, quality, price and stock audit.

m) All other building except office & showroom shall have a life of 50 years with 1.8% annual depreciation.

n) Methodology of deriving the O&M expenses of Distribution licensee on the basis of audited O&M expenses for the last 5 completed financial year based on the parameters of load, growth, consumer growth, commercial loss, Distribution loss, inflation, efficiency and capital base is not necessary because parameters are over lapping each other. O&M is a requirement for the system based on the assets. If the consumer grows the voltage will grow which will increase capital base. Commercial & Distribution losses are only peripheral. The system is mandatorily to work efficiently without commercial loss with surveillance and detection system in place. Inflation may be considered during True up. Therefore K-factor maybe suitably derived based on trends, both for DISCOM and also adopted by other regulators. MPERC allows K-factor of 2.5 only. The distribution network of Madhya Pradesh spreads thousands of Km which need high expenses for O&M. Delhi DISCOMs are mostly spread over few hundred sq Km are concentrated and relatively easy to maintain. The Delhi Distribution Licensee are operating in a small geographic area.

5.2 Stakeholders have suggested that:

a) Interest during construction and financing charges, on the loans being equal to debt as per financing excluding however the equity deployment, provided however the equity deployment shall not exceed 30 percent of the capital cost and in case equity is deployed in excess of 30 % the excess shall be deemed to be a debt or notional loan. Hence, IDC is applied as per the Accounting standard as defined in AS 16 issued by ICAI.

b) The cost for the following shall be excluded or removed from the capital cost of the existing and new project or scheme:

i) The assets forming part of the project or scheme, but not in use: There is no classification of any assets as "assets not in use" for the distribution business,. However, there may be instances/cases where as per the plan given by the developer we develop the area, the gestation period of which is between 6 months to 1 year. Many times, due to reasons not attributable to DISCOM, an asset could not be energised as the density of population as committed by the developer does not attain for which the utility cannot be held responsible. Therefore, the following amendment was proposed by stakeholder - *"(1) The assets forming part of the project, but not in use due to the reasons attributable to the licensee/utility."*

ii) Final approved cost by DERC (which is considered as lower of the rates as submitted by the utility or the rates as defined in the cost data book issued by DERC) is considered by the utility hence referring the bench marking cost again during the prudence check may not be relevant. Specification for benchmarking may be specified at the time of scheme approval so that utility may take measures prior to capitalization or prior approvals can be taken for exceptions. Points and parameters which could not be envisaged at the time of approval by the State Commission should not form part of prudence check.

iii) The Funding is not project specific hence phasing of funds viz a viz capitalization is not possible. IDC is applied as per the Accounting standard as defined in AS 16 issued by ICAI.

iv) The cost variations may not be admitted only where the same is due to reasons attributable to the licensee/utilities. However, there may be instances/cases where as per the plan given by the developer we develop the area, the gestation period of which is between 6 months to 1 year. Many times, due to reasons not attributable to DISCOM, an asset could not be energised as the density of population as committed by the developer does not attain for which the utility cannot be held responsible. Further, North DMC issued a circular for recovery of usage charges for granting of way leave facility to various service providers such as electricity, telecom etc. in the jurisdiction of North DMC which was passed vide Resolution No. 185 dated

13.08.2015 for imposition of 'Way Leave charges/ Usage charges". These charges were raised at the rate of Rs. 75612 per running meter upto 1 mtr; Rs. 75162 x 2 per running meter upto 2 mtr. width per annum on the entire length and width of land/ road/ street/ footpath on which wires have been laid. Being aggrieved by such an illegitimate imposition of charges, stakeholder sought relief before the Hon'ble High Court of Delhi, vide WP 5293/2016. The electricity distribution licensees are already entitled to the right to open and break soil for laying the distribution network under section 67 of the Electricity Act, 2003 the charges imposed by NDMC do not have any statutory backing and as such Stakeholder is within its rights to not pay the same. In the counter affidavit filed by NDMC in the said matter, these charges were slashed down by 90% and brought down to Rs. 646 per mtr. without having any statutory procedure for its calculation. Such drastic reduction in the charges is in itself a clear indicator of the fact that these charges are illegitimate and Stakeholder is seeking the same before the Hon'ble High Court. Therefore, the delay caused in these scenario and the cost variation owing to such delay is not attributable to Stakeholder. In light of this, Stakeholder proposed modified version of the clause as follows:

"In case the time over-run beyond COD, if found entirely attributable to the utility after due prudence, the increase of capital cost on account of cost variation corresponding to such period of time over run shall be excluded from capitalization irrespective of price variation provisions in the contracts with supplier or contractor of the utility."

c) The Regulations specify guidelines only in case of refund of amount but does not specify on the recovery in case of deficit/ shortage in deposit schemes and its adjustment from unspent amount. Therefore, it is suggested that the Commission may also specify similar guidelines for recovery of amount because once guideline is specified by the Commission, it will help in recovering the same as a judicial body rule. Further, it is submitted that these regulations nothing has been mentioned about the interest recovery from the consumers in cases where the share of the deposit work based on the actual capital cost of the asset is more than the actual deposit amount received from the consumer. In such cases, the Discom should be allowed to recover the short amount with interest. Further, we request the Hon'ble Commission to provide guidelines on the refund process in case of part capitalisation. Refund within 30 (Thirty) days should be read as 60 days due to practical issues in closure of schemes within 30 days of capitalisation. (various activities to be performed after capitalisation- Reconciliation of material with BA, Amendment in Work Order (wherever deviation),Final Bill for releasing payment against work order, Technical completion of project (TECO), Preparing Statement of Account (SOA), Seeking beneficiaries details from customer along with sharing of SOA, Preparation of Cheque and dispatch). The Hon'ble Commission may consider interest @ 1.1 times of Bank rate + margin if refunded after 1 year as utility is not gaining even if it is presumed that amount is refunded after one year as in any case utility is paying interest. Though Stakeholder will put all endeavours to refund the amount before one year but putting huge penalties beyond reasonableness will make utility commercial unviable. Stakeholder proposed the regulation with the following modifications:

"Principles for treatment of the expenses on such capital expenditure shall be as follows:

*(1) Any unspent amount **or deficit recovery** on account of deposit work and consumer contribution shall have to be refunded**/recovered** by the Utility:*

*Provided that no interest shall be levied on the unspent amount**/deficit recovery**, if the unspent amount is refunded/recovered by the utility within 60 (sixty) days after CoD.*

*Provided further that interest at the rate of Bank Rate plus margin shall be levied on the unspent amount**/ deficit recovery**, if the unspent amount**/ deficit recovery** is refunded**/recovered** by the utility after 60 (sixty) days and upto 1 (one) year after CoD for the period between 61st day after CoD till date of refund.*

*Provided also that interest at the rate **of 1.1 times of Bank** Rate plus margin shall be levied on the unspent amount/**deficit recovery**, if the unspent amount**/deficit recovery** is refunded**/recovered** by the utility after 1 (one) year of CoD for the period between 61st day after CoD till date of refund."*

d) **Capital Cost - Variation And Treatment-** Stakeholder submitted that in case of distribution utilities any variation in the capital expenditure as considered while approving the tariff vis-à-vis actual capital expenditure is automatically passed on to the consumers along with carrying cost at the time of true up. Therefore the applicability of the said regulation on distribution utilities are not justifiable. The Hon'ble Commission may please clarify the applicability of the same on distribution utilities. Stakeholder reverse its right to comment in case the Hon'ble Commission clarifies the applicability of afore said regulation on distribution utilities.

e) **Debt- Equity Ratio and Return of Capital Employed:**

i) The ratio of 70:30 should be used only in respect to asset capitalised during the year. Weighted Average Cost of Capital (WACC) is a combination of cost of debt and return on equity allowed to the Distribution Licensee. While there is progressive repayment of debt, the equity remains invested in the business as a result of which, the debt to equity ratio of the assets is progressively reduced. The same can be explained through following table:

Financial Year	GFA (net of Depreciation)	Outstanding debt at the end of each year	Outstanding Equity at the end of each year	Debt: Equity at the end of year
COD	100	70	30	70:30
1 year	93	63	30	63:30
2 year	86	56	30	56:30
3 year	79	49	30	49:30
4 year	72	42	30	42:30
5 year	65	35	30	35:30
6 year	58	28	30	28:30
7 year	51	21	30	21:30
8 year	44	14	30	14:30
9 year	37	7	30	7:30
10 year	30	0	30	0:30

ii) Based on the above table, it is submitted that WACC should be calculated after determining outstanding debt (net of repayments) and outstanding equity for that respective year and then applying the rate of return on equity and debt rate on to arrive at WACC.

iii) Under these Regulations debt to equity ratio for computation of WACC is maintained at 70:30 throughout the life of the asset. As a result, a higher ratio of debt is assumed than the actual level after repayment of debt consequently reducing the return on equity as the equity component in the capital is proportionately deemed to be reduced under these Regulations. The same can be explained through following example

Financial Year	**GFA (net of Depreciation)**	**Outstanding debt at the end of each year**	**Outstanding Equity at the end of each year**	**Debt: Equity at the end of each year**	**Deemed outstanding debt at the end of each year**	**Deemed outstanding Equity at the end of each year**	**Deemed Debt: Equity at the end of each year**
		Actual scenario			**Proposed Scenario in these regulations**		
	A	**B**	**C**	**D**	**E= A*70%**	**F= A*30%**	**G**
COD	100	70	30	70:30	70	30	70:30
1 year	93	63	30	63:30	65	28	70:30
2 year	86	56	30	56:30	60	26	70:30
3 year	79	49	30	49:30	55	24	70:30
4 year	72	42	30	42:30	50	22	70:30
5 year	65	35	30	35:30	45	20	70:30
6 year	58	28	30	28:30	41	17	70:30
7 year	51	21	30	21:30	36	15	70:30
8 year	44	14	30	14:30	31	13	70:30
9 year	37	7	30	7:30	26	11	70:30
10 year	30	0	30	0:30	21	9	70:30

iv) Based on the above submission, it is not justifiable as mentioned in these regulations to calculate the WACC by considering directly 70%* cost of debt + 30* ROE on total RRB.

v) It is further clarified that Debt/Equity ratio of 70:30 should be applied on the fixed assets capitalised during the year only and not for the assets already capitalised earlier.

vi) It is pertinent to mention that the debt equity ratio for funding of the opening investment for the fixed assets as on 01.07.2002 has been allowed in 60:40 as per the transfer scheme. It is to the kind notice of the Commission, that the investment i.e. 40% equity which has already been invested at the time of privatisation, can't be undone now as 70:30 as these are the basis of entire reform process of electricity sector, DERA 2000 and Transfer schemes Rules 2001. Further this legal principle is also clear from the Licence issued by the Commission to the utility and therefore the said Debt Equity ratio should be followed in future also. Therefore, initial investment in the Debt/Equity ratio has to be considered in 60:40 and while computing the WACC for corresponding opening assets.

vii) In respect to consideration of working capital as 100% debt financed, it is submitted that the banks/FI's never give 100% financing of any assets whether it is project, working capital, house, car etc. because as per the general commercial principle bank always require some margin/security and in order to meet said requirement of margin/security the borrower has to deployed its own funds in the form of equity. In other words, the utility is required to invest shareholder's money for the margin amount which has not been funded by banks. The above fact has also been upheld by Appellate Tribunal of electricity in its Judgment dated 31st May 2011 in Appeal 52 of 2008 when same issue was raised for first MYT period (FY 2007-08 to FY 2011-12). The Hon'ble **Commission on the basis of this judgement has also allowed funding of working capital and revenue gap in 70:30 ratio**, therefore the said settled principles of law should also be applied in these Regulations.

viii) It is further submitted that due to substantial revenue gap in the books of account of the utility, the financial institutions are averse to any risk in funding the utility's distribution business. In fact, the existing receivables are insufficient to provide adequate security to lenders having regard to the huge revenue gap in the books of the Utility (Stakeholder). However, the Utility (Stakeholder) is constrained to arrange for funds from its own sources in order to maintain the required standard of service and supply as required under the Delhi Supply Code and the Impugned Regulations, failing which the Utility (Stakeholder) will be subjected to penal consequences. Thus, the Utility (Stakeholder) is constrained as a regulated entity to infuse additional funds from its own sources into the distribution business for its proper operation while on the other hand it is unreasonably denied return on such equity at the prescribed rate. Thus, infusion of equity for working capital or other expenditure is required in view of the large revenue gap created by the Commission in the ARR of the Utility (Stakeholder) thereby making it impossible for the Utility (Stakeholder) to recover its entire costs. Therefore, financing of Working capital should be considered in the ratio of 70:30 :: Debt: equity.

f) Due to re-financing, there could be reduction in interest rate. However, there are some incidental expenditure linked to refinancing. Therefore, these need to be allowed additionally on actual basis. It is submitted that the net savings in ARR should be calculated on the current savings for the remaining period of the loan which has been refinanced as these are the permanent savings which will flow in the ARR. The reforms process have to be implemented with such a broad concept that beyond the basic performance target if utility brings additional efficiency into the system even by a rupee to the benefit of consumers, it has to be adequately recognized, appreciated and incentivized. Therefore, if utility is able to reduce the interest rates through refinancing, it has to be suitably rewarded in the ratio of 2/3 and 1/3 for utility and consumers.

g) Tax on Return on Equity: It is submitted that Stakeholder has been paying Income Tax in its financial books of accounts based on net profit (which is sum total of ROE+ allowable Income (if any)– disallowance (if any)) as per the applicable Tariff Regulations, therefore Income tax payable amount has been more/less in financial books of accounts as compared to the tax to be allowed by the Hon'ble Commission in respect to ROE only which is further limited to actual payment of Income Tax.

It is pertinent to mention that as the Hon'ble Commission is allowing capitalization based on EI certificates and also, there may be a timing difference in allowance/ disallowance of other claims in the financial books and the ARR due to difference in the interpretation/ impact of the ROE, re-opening of past tariff orders/ other disputes at various judicial authorities. Therefore, the tax paid in the financial books can be more/ less than the ARR. This is shown with the help of an example below:

Impact on Tax allowed for Reversal of already allowed Incentive

Particulars	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	Total
As per Books of Accounts									
ROE Booked in Accounts equivalent to ARR	100.00	110.00	121.00	133.10	146.41	161.05	177.16	194.87	1,143.59
Income Tax on ROE @ 20% grossed up	25.00	27.50	30.25	33.28	36.60	40.26	44.29	48.72	285.90
Incentive allowed earlier	49.86	52.86	56.64						159.36
Incentive disallowed								(12.26)	(12.26)
Impact of Tax on incentive @ 20%	9.97	10.57	11.33	-	-	-	-	(2.45)	29.42
Total Profit in books	139.89	152.29	166.31	133.10	146.41	161.05	177.16	185.06	1,261.27
Tax actual paid (Tax on	34.97	38.07	41.58	33.28	36.60	40.26	44.29	46.27	315.32

ROE+ Tax on incentive)									
Cumulative Tax paid	34.97	73.04	114.62	147.90	184.50	224.76	269.05	315.32	
As allowed by DERC									
ROE considered in ARR	100.00	110.00	121.00	133.10	146.41	161.05	177.16	194.87	1,143.59
Income Tax on ROE	25.00	27.50	30.25	33.28	36.60	40.26	44.29	48.72	285.90
Cumulative Tax as per ARR	25.00	52.50	82.75	116.03	152.63	192.89	237.18	285.90	
Financial Impact									
Income tax to be allowed	25.00	27.50	30.25	33.28	36.60	40.26	44.29	48.72	285.90
Income tax allowed by DERC	25.00	27.50	30.25	33.28	36.60	40.26	44.29	46.27	283.45
Disallowance of I. Tax	-	-	-	-	-	-	-	2.45	2.45

From the above table, it can be seen that due to reversal of earlier year's incentive in FY 14-15; the company has to bear the hit of Rs. 12.26 Cr on its current year profit of Rs 194.87 Cr. Due to which utility has to pay lower income tax by Rs 2.45 Cr for the current year.

It is pertinent to mention that at the time of true up, the Commission will first compute Income tax payable on ROE and then compare the same with actual I. Tax paid for that respective year. As the tax paid is lower than the tax payable due to adjustment of such reversal, the Commission would allow/ true up the income tax up to the amount of Actual Income Tax. Whereas in the initial years utility has paid more I Tax but allowed lower than the actual paid. Therefore, while allowing the income tax for any year the cumulative tax paid should be compared with the amount of cumulative tax payable and allowed accordingly. Hence, it is suggested that the Hon'ble Commission should allow Income Tax on cumulative basis which is a correct and a justified approach and not on standalone yearly basis. The Delhi Commission needs to clarify as to how it would treat the deferred tax and adjustment of MAT Tax credit.

h) Gross Loan should be arrived by deducting outstanding debt portion of de-capitalized asset and not the value of de-capitalized asset. In case where the actual repayment of loans are more than the depreciation allowed by the Commission then for those cases the Hon'ble Commission is requested to clarify the how the difference between the actual repayment and deprecation allowed would be dealt with in the ARR. It is further clarified that rate of interest is not only dependent on the base rate of lenders; it is a combination of Base Rate and Margin, both of which are uncontrollable in nature as Base Rate largely depends on macro-economic factors both domestic and global while Margin is applied by lenders according to their own internal rating assigned to any borrower depending upon health of the sector, the financial and operational, health of the organization, past dealings, brand etc. Therefore, the spread/margin is an important criteria in fixation of interest rate and the same needs to be taken care while truing up the interest rate. The Hon'ble Commission is requested to bifurcate the loans into two parts:

   a) Loan outstanding at the start of current control period
   b) Loan availed during the current control period

Based on the above bifurcation, Stakeholder has proposed the following methodology

   a) Loan outstanding at the start of current control period

   i) Power sector is regulated sector in which utilities are incentivized for their better performance and penalized if not able to perform at the specified target. It is pertinent to mention that Tata Power- DDL has already brought a lot of efficiency into the system and reduced the interest rate to large extent in comparison to loan availed in the market based on economic conditions. The Hon'ble Commission in these draft regulations has proposed to approve the rate of interest of capex loan subject to benchmarking rate. It is further submitted that in case the weighted average cost of interest rate of utility is lower than the benchmarking rate as decided by the Hon'ble Commission the benefit of lower actual rate of interest should be passed on to the utilities for the each year of the control period.

ii) Process for fixation of benchmark rate of interest for opening loan: The Hon'ble Commission is aware that rate of interest are depending both upon macroeconomics factors and micro economic factors, due to which every company has its own cost of funding. Therefore for the purpose of fixation of benchmark rate it is requested to the Hon'ble Commission to compute only one weighted average rate of interest of all utilities for the base year. The said rate should be marked as benchmark rate and shall be applicable for all utilities. The same can be computed and explained as below:

Particulars	Loan outstanding (Rs Cr)	Weighted Average Rate of Interest of each utility	Cumulative weighted rate of Interest/ Benchmarking
Utility 1	1100	10.50%	10.79%
Utility 2	1500	10.70%	
Utility 3	1300	10.90%	
Utility 4	1400	11.00%	
Benchmarking rate of interest for opening loans			10.79%
Actual cost of funding utility 1			10.50%
Saving in Interest rate to be incentives to utility 1			0.29%

iii) The opening loans as on 01.04.2016 shall be computed based on above methodology for each year of the next control period and correspondingly incentivized for each year of the next control period.

b) New Loans availed during the current control period

i) Process for fixation of spread/margin to avail new loans in current control period: The Hon'ble Commission is aware that RBI has already issued guidelines to banks to adopt the MCLR instead of Base rate for the purpose of fixation of rate of interest for new loans as well as for old loans. Most of Banks are keeping the same rate of interest by interchanging the benefit of lower MCLR with the corresponding increase in spread, ultimately there is no benefit to the utility. Therefore while fixing the spread for new loans it is requested to the Hon'ble Commission to first compute the weighted average rate of interest of all utilities and after that reduce the said rate with the weighted average MCLR rate of loans the resulting figure may be treated as only one benchmark spread/margin for all utilities for all the year of next control period. The said computed margin/spread (resulting figure) may be added in bank rate for the purpose of fixation of interest rate for next control period. It is further submitted that in case the Hon'ble Commission decides to fix different spread for different utilities in that case utility having lower spread may be additionally benefited with the difference of maximum spread allowed to any utility minus minimum spread.

Particulars	Loan outstanding (Rs Cr)	Weighted Average Rate of Interest of each utility	Cumulative weighted rate of Interest/ Benchmarking
Utility 1	1100	10.50%	10.79%
Utility 2	1500	10.70%	
Utility 3	1300	10.90%	
Utility 4	1400	11.00%	
Less- Weighted MCLR rate as on 01.04.2016			9.29%
Spread/ Margin (required to be benchmark) for next control period for each utility			1.50%

i) Depreciation -

Asset Particulars	Useful Life (years) as per DERC	Comments
Switchgear including cable connections	**25**	As per CPWD, General Specifications for Electric works 2013 and Field experience, the life may be considered as 20 Years.
Microprocessor based Bay control protection units (BCPU) and Bay control units (BCU)	**25**	The should be cover with IT category rather than switch gear as existing 25 years life considered in depreciation schedule is totally unrealistic. Hence IEDs and its associated software should have the similar depreciation rate as that of IT Equipment i.e. 5 years
Office furniture and related equipment	10	It is proposed to bifurcate this asset into two groups: · Office furniture with useful life of 10 years · Office equipment like Projectors, Video Conferencing equipment, CCTVs etc. with useful life of 5 years

Further, different depreciation rates have been defined in the depreciation schedule for 1st 12 years and after 12 years which is different from the rates being followed in the fixed asset register in the financial books. Therefore, in case the written down value needs to be re-casted in the financial books which is a mammoth one time exercise and may involve onetime cost and may be allowed as additional expense in the ARR.

j) Date of Capitalization/de-capitalization of Assets should be considered in line with Financial books of accounts for the purpose of ARR as consideration of two different dates have no financial impact on consumers over the useful life of assets, it is just only the timing difference. It is to bring to the kind notice of the Hon'ble Commission that from FY 05-06, the Hon'ble Commission has considered capitalisation based on the receipt of certificate from Electrical Inspector as against the date of capitalisation considered in the financial books. Therefore, it is clear that both set of books have followed different methodology of capitalisation and therefore, the capitalisation considered in ARR/ regulatory regime does not match with the capitalisation considered in the financial books. It is further submitted that Fixed asset register has been maintained in accordance with the capitalisation date as per financial books of accounts and not based on electrical inspector certificate, therefore it is very tedious to maintain the another set of Fixed Assets Register for the purpose of ARR involving lakhs of line items in each year. It is pertinent to mention that the capitalisation from FY 05-06 is pending for true up. In absence of final true up of capitalisation, there are various difficulties being faced by the utility in respect to computation of useful life of assets, date of capitalization, Deprecation rate, ROCE and retirement of assets, which are stated below:

a) In the true up Order of previous year the Hon'ble Commission has considered de-capitalization/ retirement based on financial books of account then there can be some instances where the asset may be retired in books of accounts but due to pending physical verification/ non truing up the capitalization the said asset has never been treated as a part of RRB. Therefore reducing the RRB for such retired asset by the Hon'ble Commission without allowing capitalization and corresponding return on the said retired assets in earlier year shall ultimately eroding the ROE of the utility which has never been allowed by the Hon'ble Commission.
b) The utility in its books of accounts has computed profit/loss on retirement on assets based on the capitalization/de-capitalized date as considered in account, but there may be some instances in which capitalization for the purpose of ARR has been considered by the Hon'ble Commission at a later date. In that case it will very difficult to access the correct value of WDV of the asset at the time of retirement for both set of accounts. It is further submitted that consideration of different date of capitalization would also impacting the residual life of assets for the purpose of allowance of loss on retirement/de-capitalization.
c) Maintaining two different sets of Fixed Asset register is practically not possible considering the volume of assets.
d) Depreciation and ROCE will always be allowed for the defined useful life of the asset both for the purpose of financial books and ARR. Therefore, allowance of depreciation/ROCE at a later date based on receipt of Electrical

certificate is only a timing difference and will not make any financial impact on the consumer.

In view of the above submission, it is requested to the Hon'ble Commission to consider the date of capitalization/ de-capitalization of assets as per financial books of accounts instead of deferring the capitalization till the date of receipt of Electrical Inspector Certificate.

k) The Hon'ble Commission is aware that Ministry of Law and Justice has notified "The Companies Act, 2013" on 30th August, 2013. The Schedule II of the said Act specifies the useful life of assets to compute the depreciation and states the following about salvage value:

" **5**. Depreciation amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should not be more than 5% of the Original cost of the asset.

The said Act also mentions that the useful life or residual value of any specific asset, as notified for accounting purpose by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

Through the Hon'ble Commission is vested with the powers to specify the residual value of assets upto which depreciation can be computed, however, it is requested that the specific provision of the Companies Act recognizes that ordinarily the residual value of an asset is insignificant but it should generally be not more than 5% of the original cost of the asset. It is therefore suggested that the Hon'ble Commission may consider the advisory of the Companies Act, 2013 and specify the residual value as 5% of original cost instead of 10%.

l) Working capital shall not be covered as controllable, because the factor on which it is computed are uncontrollable, hence working capital shall be defined as uncontrollable and the same may be true-up on actual basis.

m) Credit period availed by the Generating stations towards the payment for purchase of

Coal/ Gas should be considered while determining the working capital requirement for generating companies.

n) Inconsistency in approach to be adopted for computation of working capital requirement for GENCO's/ TRANSCO's vis-à-vis for Distribution Utilities(Discom's).

Methodology for computation of working capital requirement as per these regulations

GENCO's	TRANSCO's	Discom's
A. Cost of Fuel		A. Power Purchase Cost
B. Maintenances spares @ 20%/30% of O&M exp.	B. Maintenances spares @ 15% of O&M exp.	
C. O&M Exp. for 1 month	C. O&M Exp. for 1 month	
D. Receivables equivalent to 2 months FC + EC	D. Receivables equivalent to 2 months Transmission Tariff	D. Receivables equivalent to 2 months revenue from electricity
Working Capital (A+B+C+D)	Working Capital (B+C+D)	Working Capital (D –A)

In the above table, it can be seen that to in order to determine the working capital requirement for the Discom's, the Hon'ble Commission has strictly followed the given below principle of working capital

Working capital = Current Assets (Receivables) – Current Liabilities (Power Purchase Creditors)

Whereas in order to determine the working capital requirement for GENCOs'/TRANSCO, the Hon'ble Commission has adopted different methodology as specified below:

1. Allowance of working capital to meet the O&M Expenses
2. Non consideration of Credit period allowed for payment of fuel bills

Therefore, based on the above submission, it is humbly proposed to the Hon'ble Commission to follow the same methodology for distribution utilities in line with GENCOs and the Trancos or to consider the 1 month O&M expenses and a certain percentage of maintenance spare as a part of working capital requirement of DISCOMs.

o) The Hon'ble Commission in its previous MYT regulations has considered 2 months billed revenue excluding any surcharge/DRS for the purpose of computation of working capital in spite of Stakeholder proposal for allowance of working capital based on 2 months Receivable for ARR. The said treatment is against the commercial principle and can be explained again through below example.

a) **In case of cost reflective tariff/ no revenue gap carried forward**		
Working Capital Requirement	**1 year**	**2 year**
A. ARR Requirement	10000	10000
B. Billed Revenue	10000	10000
C. Receivables 2 months ARR (A/6)	1666.67	1666.67
D. Receivables 2 months Billed Revenue (B/6)	1666.67	1666.67
E. Deficit in working Capital (C-D)	0.00	0.00
b) in case of non-cost reflective tariff/ Revenue gap for the year 1 is carried forward and said gap recovered through DRS in 2 year; therefore the same should be part of Billed Revenue		
Working Capital based on Billed Revenue	**1 year**	**2 year**
A. ARR Requirement	10000	10000
B. Billed Revenue	9000	10000
C. Surcharge to recover the previous year deficit		**1000**
D. Receivables based on 2 months ARR (A/6)	1666.67	1666.67
E. Receivable based on Billed Revenue (including surcharge) ((B+C)/6)	1500.00	1833.00
Difference (D-E)	**(166.67)**	**166.67**

From the above table, it can be seen that

In scenario a) where Tariff is cost reflective, (ARR = Billed Receivables), there is no difference in allowance of working capital as the total working capital requirement of the business is met by the receivables

whereas

In scenario b) when tariff is not cost reflective, Utility is in deficit for working capital in year 1 when the tariff is under recoverable (As billed revenue is lower than ARR requirement) and the said deficit is compensating in year 2 when the said revenue gap/deficit is recovered in the form of DRS/surcharge.

p) The Hon'ble Commission in these regulation has clearly mentioned that any surcharge would not form part of billed revenue. It is pertinent to mention that in case

DRS/surcharge would not form of billed revenue then the Utilities has to incur loss of working capital as explained below:

Working Capital based on Billed Revenue excluding surcharge	**1 year**	**2 year**
A. ARR Requirement	10000	10000
B. Billed Revenue	9000	10000
C. Surcharge to recover the previous year deficit		1000
D. Receivables based on 2 months ARR (A/6)	1666.67	1666.67
E. Receivable based on Billed Revenue (excluding surcharge) ((B)/6)	1500.00	1666.67
Difference (D-E)	**(166.67)**	**-**

Based on the above submission and facts, it is requested to the Hon'ble Commission to consider the DRS/surcharge as a part of Billed Revenue for the purpose of Computation of Receivables and suitably amended these regulations wherever applicable.

q) The Delhi Commission has to specify the methodology for fixation of O&M expenses for generating companies itself instead of directly referring CERC Regulations as a basis. The draft MYT Regulations states that O&M expense shall be decided on normative basis. Stakeholder would however, like to submit that the same should be linked to their availability. In case the Generation or Transmission Utility's availability is less than the NAPAF, the requirements of O&M should be adjusted accordingly. In case the Generation or Transmission Utility's availability is less than the NATAF, the requirements of O&M should be adjusted accordingly. The Methodology for determination of O&M expenses for next MYT control period has not been prescribed by the Hon'ble Commission in these draft Regulation for DISCOMS. Further, the Hon'ble Commission is requested to consider the following factors while determining the O&M Expenses or O&M methodology:

1. The base line O&M expenses should be considered based on actual O&M expenses of last year of the previous MYT control period.
2. The Hon'ble APTEL in Appeal no 14/2012 has already upheld that allowance of O&M expenses should be based on actual O&M expenses of last year of previous MYT

control period.

r) **Allowance of FRSR structure salary on actual basis as the same is not controllable in hands of Utilities**: FRSR Structure – comprising of the employees who were transferred from erstwhile Delhi Vidyut Board and whose terms of service are governed by FRSR Rules (Govt. Rules) and their service conditions are protected by the Tri-partite agreement in pursuance to the Transfer Scheme. The licensee is bound to pay salary to these employees according to Govt rules and hence their salary is uncontrollable in the hands of licensee. Therefore the salary of FRSR structure should be kept out of the normative allowance of employees' salary and be allowed on actuals. Further the impact of 7th Pay commission for FRSR Structure employees should be considered and allowed on actual basis.

s) **Recruitment of new employees against Retirement:** It is assumed that Stakeholder has to recruit additional manpower equal to the number of employees who have retired, therefore the Hon'ble Commission should also allow average actual salary to the extent of no's of retired FRSR employee who become part of CTC or Non FRSR structure salary.

t) **Pay Parity**: It is pertinent that on account of 7th Pay Delhi Commission recommendations, an increase of approximately 25%-35% has been allowed to the FRSR employees. In view of the above increase allowed to FRSR employees and in order to maintain relative parity in salary between the FRSR structure employees and the non-FRSR structure employees post wage revision, the company will be constrained to allow an interim increase to the (over and above normative increase) to non FRSR employees, as to as to avoid any possible industrial relation issues between employee that such categorization of employees within an organization may lead to.

u) **Efficiency factor:** Introduction of efficiency factor without identifying the specific areas where such efficiency improvement is possible results in denial genuine O&M expenditure to the distribution licensee. It is seen that the efficiency factor is resulting in dilution of annual escalation allowed to the licensee to cover additional expenses on account of inflation. No Efficiency should be applied on Tax portion included in O&M expenses

v) Allowance of inflation on R&M expenses also.

w) The sale of scrap is already reduced while working out loss/profit on sale as pass through in ARR, therefore the same cannot be treated as non-tariff income.

x) Working capital is allowed on normative basis so any interest on delayed or deferred payment on bills shall be on account of the Utility and may not be passed as Non-tariff income. Further, it may please be noted that in case the Hon'ble Commission is not agree with the Stakeholder above contention than in that case the corresponding financing cost should be allowed to utilities.

y) Being legal entity governed by Companies Act for preparation of financial statements is not required to prepare separate audited account for each business segments unless the company meets the requirements as mentioned in Accounting standards issued by ICAI and therefore for the purpose of determination of tariff the utilities can provide separate audited certificate for such segment of its business to the Learned Commission. The Companies Act 2013 does not provide for segmented reporting based on Generation, Transmission and Distribution businesses being treated separately. Clause 2.1.(1) of the draft states that Balance Sheet and Profit and loss account should be as per Schedule VI of CA 1956. Schedule VI of CA 1956 requires to make these statements for company as a whole and not for each segment or unit. Therefore, the proviso is contra to the main provision itself. In view of the above, separate Accounting Statements in the requisite Schedules of the Companies Act may not be insisted upon. The current methodology of providing an Auditor certified Allocation Statement to the Accounting statements as per the requirement of Companies Act may be continued.

z) It is clarified that to generate the Income from other business (i.e. consultancy income) Stakeholder has to incur expenses at various stages (i.e. from the date of Bid till date of award of Bid). However the Income from those projects will come in future which may result in loss for initial years. Hence, it is proposed that any loss in a particular financial year may be allowed to carried forwarded the same and subsequently adjusted only against the income of other business for the ensuing years or the profitability can be seen on cumulative basis.

5.3 Stakeholders have suggested that:

a) De-capitalisation: The conditions mentioned in the said regulations are overly restricted and hence arbitrary. The proposed regulations is also arbitrary because it is against business realities. There can be capital equipment whose manufacturers cease to manufacture and supply the spare parts and in turn such capital equipment becomes technologically obsolete and difficult to operate in the absence of availability of spare parts. Also, we have noticed that several times the cost of the spare part goes up in such high proportion that it becomes economically unviable to operate that capital equipment. While on the other hand, the Distribution Licensee is mandated to maintain the Statutory SoP and Supply Code obligations necessitating replacements of the particular capital equipment/s. Furthermore, in the state of Delhi due to very harsh and diverse weather conditions, the life and performance of the capital equipment is susceptible to early retirement/ de-capitalisation/ replacement. This is a known fact and there cannot be two divergent views on this. Hence, any loss or gain due to de-capitalisation of assets owing to technological obsolescence, wear & tear etc. should not be to the account of the Utility. Therefore, it is our considered suggestion that the words "technological obsolescence, wear & tear" ought to be added before the words "or Force Majeure".

b) Principles for treatment of capital asset with prior approval of DERC - The Statutory mandates under SoP and Supply Code as well as the obligations under the Electricity Act 2003 requires the Distribution Licensee to continuously revisit the performance of its capital equipment and replace/ retire the same. This is a dynamic activity and it is almost impossible that it would leave so much of time so as to approach the Hon'ble Commission for seeking "prior approval" before replacing/ de-capitalising each and every capital equipment. The Distribution Licensee has different types of assets which gets damaged and can be repaired and reused later. Majority of such assets can repaired within 3-6 months of the time and can be reused. The impact of proposed Regulation 47 is that the computation of depreciation and ROE for thousands of assets of DISCOM would not only be highly complex, time consuming and wasteful but be unnecessarily arbitrary. For example even if one transformer were taken out of service for repair even for 24 hours the Hon'ble Commission would be required to rework the depreciation and ROE for those 24 hours. This surely could not be the expected ambit of the Regulation. Equally the conditions under which the assets could be reused are not within the control of DISCOMs. This is especially so under the proposed new Standard of Performance notified by the Hon'ble Commission. By virtue of such new Standard of Performance the repair and replacement of assets would be much more and much more frequent than what they were earlier. Under the Regulation as contemplate even if one power cable was taken down for 3 hours and replaced, the Hon'ble Commission would have to rework the ROE and Depreciation for such 3 hours period. This would be an absurd consequence of the proposed Regulation. Therefore, it is our considered suggestion that at least 6 months ought to be provided for repair and maintenance of such asset before removing from GFA. In case the asset is reused within 6 months, the asset may not be removed from GFA otherwise the same may be de-capitalised till the time the same is reused. Further the process and the likely timelines that the Hon'ble DERC is required to follow as per its Conduct of Business Regulations in order to render "prior approval" would hinder the Distribution Licensee to replace/ retire the capital equipment in a timely manner so as to obey the mandates under the SoP and Supply Code and to protect the interest of its consumers for giving better service. Therefore, it is our considered suggestion that the words "prior approval" be replaced with "post-facto approval".

c) Renovation and Modernization for Life Extension- The Detailed Project Report of GENCOs and TRANSCOs needs to be presented and proper consultation should be done with all the beneficiaries, regarding meeting the expenditure on renovation and modernization(R&M). Further, to the above Hon'ble Commission needs to do prudence check (keeping in view the deduction on account of charges allowed under O&M charges) and once this approval is accorded by the Hon'ble Commission, the expenditure incurred or projected to be incurred on R&M activities will form the basis for determination of tariff.

d) Capital Cost-Variation and Treatment – The following Regulations are only applicable for Generation companies and not for Distribution Licensees due to the following reasons
e) (ii) where the capital cost considered in tariff by the Commission on the basis of projected capital cost as on COD or the projected additional capital expenditure exceeds the actual capital cost incurred on year to year basis by more than 5%, the Utility shall refund to the beneficiaries the excess tariff recovered corresponding to such excess capital cost, as approved by the Commission along with interest at 1.20 times of the bank rate as prevalent on 1st April of respective year:
f) (iii) The utility shall file a supplementary Petition to the Commission, along with all

supporting documents for consideration of any upward revision in the tariff, where the capital cost considered in tariff by the Commission on the basis of projected capital cost as on COD or the projected additional capital expenditure falls short of the actual capital cost incurred on year to year basis by more than 5%. The Utility shall be entitled to recover from the beneficiaries for the shortfall in tariff corresponding to addition in capital cost, as approved by the Commission along with interest at 0.80 times of bank rate as prevalent on 1st April of respective year.

g) Unlike GENCOs in case of DISCOMs, there is no single capital cost. Instead there are many schemes for which there is separate COD.

h) The tariff of Distribution Licensee is not determined based on the projected capital cost as on COD. Instead the tariff is determined based on the estimated capital investment. After that, the DISCOM is required to submit the cost-benefit analysis for in-principle approval of the Hon'ble Commission. Once the in-principle approval is granted by the Hon'ble Commission, the DISCOM undertakes the capital expenditure and capitalises the same. Therefore the tariff of DISCOM is based on purely estimated capital cost and not based on projected capital cost as on COD subsequent to which the DISCOMs have to take scheme-wise approval from the Hon'ble Commission.

i) Further the said Regulation purports to compare two unequal parameters, i.e., to say it compares the projected cost "as on COD" with the actual expenditure on "year to year basis". In order to be just fair and reasonable, the two parameters should be judged either both "On COD" or both on year to year basis. To take an example if in FY 2016-17, a sum of Rs. 100 is projected to be the capital cost "as on the COD of a particular project, if the COD is achieved during the same year there is no problem. However if the COD is achieved one day after the Financial Year is over, the actual cost to be considered on year to year basis may be zero since the COD was not in that Financial Year. In such situation, even though the DISCOM would have spent the entire amount of Capex in the same year, the Hon'ble Commission may treat the actual expenditure on year to year basis as zero, since the Hon'ble Commission may consider the actual expenditure as on COD in the next Financial Year. If such is the interpretation the said regulations would be completely arbitrary to Article-14 of the Constitution of India.

j) Debt-Equity ratio- These Regulations will result in a serious anomaly. There is a huge uncovered Revenue Gap in the form of Regulatory Assets for DISCOM till FY 2015-16.

Also, there are claims on account of non-cost reflective tariffs/ non pass through of legitimate expenses which are pending adjudication before the various Courts. In this situation, the Licensee may not have actually earned any RoE. If the RoE was available, the same could have been infused as equity to meet CAPEX. Therefore, the Hon'ble Commission ought not to rely only upon the Audited Statements to identify equity to meet CAPEX. Instead, the Hon'ble Commission should consider RoE embedded in the distribution business along with equity infused towards CAPEX as means of finance towards CAPEX. In the alternative, if the Hon'ble Commission is not inclined to accept the above suggestions and wishes to seek the Auditor's Statement then the Hon'ble Commission ought not to selectively rely upon the Auditor's Statement with respect to certain items and Regulatory Accounts with regards to certain other items and therefore, take the actual CAPEX, actual interest, actual O&M etc. from the Auditor's Statement. It also appears that the Regulation requires submission of Audited statements identifying internal funds as equity for each and every individual distribution schemes. This will not be possible as the Company does not infuse equity project wise. Even, the Hon'ble Commission does not approve the funding of CAPEX scheme-wise. Accordingly, this is our considered request that these Regulations may be omitted.

k) Return on Capital Employed

The formula for computation of Regulated Rate Base for the ith year of the Control Period as per the Draft Regulation states as under:

"$RRBi = RRB\ i\text{-}1 + \Delta ABi /2 + \Delta WCi$;

Where,

"i" is the ith year of the Control Period;

RRBi: Average Regulated Rate Base for the ith year of the Control Period;

ΔABi: Change in the Capital Investment in the ith year of the Control Period.

This component shall be arrived as follows:

$\Delta ABi = Invi – Di – CCi - Reti$;

Where,

Invi: Investments projected to be capitalised during the ith year of the

Control Period and approved;

Di: Amount set aside or written off on account of Depreciation of fixed assets for the ith year of the Control Period;
CCi: Consumer Contributions, capital subsidy / grant pertaining to the ΔABi and capital grants/subsidies received during ith year of the Control Period for construction of service lines or creation of fixed assets;
Reti: Retirement / Decapitalisation during ith Year;

RRB i-1: Closing Regulated Rate Base for the Financial Year preceding the ith year of the Control period. For the first year of the Control Period, Closing RRB i-1 shall be the Opening Regulated Rate Base for the Base Year i.e. RRBO;

RRBO = OCFAO – ADO – CCO;
Where;
OCFAO: Original Cost of Fixed Assets at the end of the Base Year;

ADO: Amounts written off or set aside on account of depreciation of fixed assets pertaining to the regulated business at the end of the Base Year;

CCO: Total contributions pertaining to the OCFAo, made by the consumers, capital subsidy / grants towards the cost of construction of distribution/service lines by the Distribution Licensee and also includes the capital grants/subsidies received for this purpose;

ΔWCi: Change in normative working capital requirement in the ith year of the Control Period, from the (i-1)th year. For the first year of the Control Period (i=1), ΔWC1 shall be taken as the normative working capital requirement of the first year."

As per the aforesaid formula RoCE is allowed based on Net Fixed Assets, i.e., GFA minus depreciation. However the same is incorrect as it results in reduction of return on equity as the depreciation on account of asset funded through equity is also deducted while computing Regulated Rate Base whereas the equity has not been taken out by the Licensee.

The aforesaid formula fails to take care of the fact that unlike loan, equity is the shareholder's fund which once invested will not be taken out of the asset unless asset is retired. The loan is repaid over the tenure as per the conditions specified in the agreement whereas the equity remains intact in the business. The Licensee ought to be allowed returns on the amount of equity infused/ utilised towards the asset till the useful life of asset unless the same is either retired or equity is taken out of the asset. The formula is arbitrary and does not take care of the ground realities.

Rate of Return on Equity - The Hon'ble Commission has notified two Tariff Regulations since its establishment in the year 1999 viz. 2007 Tariff Regulations and 2011 Tariff Regulations. Both of these Regulations have expressly provided RoE at 16%, however for the first time the draft 2015Tariff Regulations keeps the rate of RoE open ended. RoE is a fundamental criteria to run the distribution business. This cannot be kept open ended. The extracts of the 2007 Tariff Regulations and 2011 Tariff Regulations are as follows:

Regulation 5.10 of MYT Regulation 2007....

"re is the Return on Equity and shall be determined at the beginning of the Control Period after considering CERC norms, Licensee's proposals, previous years' D/E mix and other relevant factors. The cost of equity for the Wheeling Business shall be considered at 14% post tax.

Regulation 5.39

The Commission shall specify the retail supply margin in such manner that the return from the Wheeling Business and Retail Supply Business shall not exceed 16% of equity."

Regulation 5.11 of MYT Regulations 2011....

"re is the Return on Equity and shall be considered at 16% post tax"

The funding pattern of the licensed business is also dependent upon its revenues. Not knowing how under business is likely to earn from its operations would be extremely arbitrary, irrational and violation of Article-14.

l) Rate of Income-Tax-The words “actual tax paid” is contrary to the various judgments of the APTEL.As per the law laid down by the APTEL, the Hon’ble Commission has to compute the actual tax payable by the regulated business based on the ROE trued-up by the Hon’ble Commission. This principle of law has been laid down by the APTEL after a long line of judgments. The first of the Judgments in this connection was delivered on 4.4.2012 in Appeal No.157/2006. This was followed by several subsequent judgments including judgment dated 28.5.2009 in Appeal No. 111/2008, Judgment dated 28.5.2009 in Appeal No. 115/2008, Judgment dated 23.3.2010 in Appeal No.68/2009, Judgment dated 19.11.2010 in Appeal No. 134/2010, Judgment dated 5.1.2011 in R.P.No.9/2010 in Appeal No.68/2009, Judgment dated 14.2.2011 in Appeal No.174/2009, Judgment dated 15.2.2011 in Appeal No.173/2009, Judgment dated 11.12.2007 in Appeal No.90/2007, Judgment dated 28.11.2013 in Appeal No.104/2012. The rationale decided in all these judgments ultimately culminated in the Judgment dated 2.12.2013 in Appeal No.138-139/2012. The conclusion of this Hon'ble Tribunal in Judgment in Appeal No.104/2012 reiterated in Appeal No.138-139/2012 is extracted as under:

> “53. For example, when on standalone basis the regulated business has taxable income to be taxed at normal rates, there may be losses/tax exemptions in other businesses which may result in overall taxable income being less than the regulated taxable income and, hence, actual tax liability for all businesses being less than that of regulated business on standalone basis. In case, actual tax liability is allowed by the regulator whether in full or in proportion of profit of regulated business, it obviously amounts to less than due tax allowance for regulated business due to exemptions/losses of other business being utilized for subsiding the regulated business, which is not permissible as per the above judgment. The impact is more pronounced when the overall taxable income becomes so small or even negative that the tax rate applicable is MAT, which not only artificially reduces the tax liability for regulated business due to lower rate, but also creates an incorrect

impression that this tax allowed at MAT rate is to be reversed in future as MAT credit allocating MAT credit. This is obviously not permissible and for giving effect to the said judgment in Appeal No.251 of 2006 tax computation for regulated business has to be done on standalone basis at normal rates even though it may result into tax allowance higher than actual tax payment for overall business.

54. The above example, however, raises a doubt whether it will be in contradiction to the judgment in Appeal No.174 of 2009, where the ratio was that income tax cannot be used as a means of earning profit in regulated business. That is to say that income tax to be allowed should be equal to, i.e. neither more nor less than actual tax liability. It appears that the interpretation in the above example allows tax higher than actual tax liability, which is in contradiction to the Judgment in Appeal No.174 of 2009.

55. However, a careful analysis of the above example with the ratio of the Judgment in Appeal No.174 of 2009 would reveal that this Judgment is specifying tax allow ability for regulated business only and does not in any manner deal with implications on tax for regulated business due to other businesses. Further, the ratio is with regard to tax liability on the regulatory income, computed with permissible profits and applicable tax depreciation to be considered as taxable income, and not on the actual taxable income. Hence, any notional or actual income even within regulated business that is not permissible to be considered as regulatory taxable income cannot be allowed as it would amount to allowance of more than warranted regulatory tax liability/profits. As such, the above example when seen only with reference to the regulated business allows just the real tax payable for regulated business without taking or giving any support from other businesses and, hence, does not amount to making profit from tax. The tax benefit of exemptions/losses in other businesses should only be available to those businesses. In case, the situation would have been reverse in the above example, i.e. the regulated business had exemptions/losses then the tax benefit of such exemptions should have been attributable only to regulated business. As such, there is no conflict in the above two judgments and both can be implemented simultaneously with regulated business being

treated separately on a standalone basis and tax liability computed as per applicable tax laws for that business only considering notional regulatory taxable income. This concept is followed by regulators for all items of ARR/Revenue which are considered on normative basis, where irrespective of actual expense/revenue normative expense/revenue is considered for tariff purposes. Accordingly, there is no requirement of allocating the overall tax liability on regulated and unregulated businesses.

56. It is also to be noted that for difference in book depreciation and tax depreciation, the tax laws provide for creating Deferred Tax Liability (DTL) which gets amortised with time when tax depreciation becomes lower than book depreciation. However, in regulated business DTL is not considered as it is not the current tax liability. Thus, in case the benefit of accelerated tax depreciation for one year in regulated business may result in lower overall tax on overall book profit (due to MAT) and may seem to subsidise other businesses. However, in subsequent years the overall tax liability may be more than tax on overall book profit, which would seem to given subsidy from other businesses to regulated business. In both these situations, the methodology of standalone tax computation and allowance would give correct picture.

57. In the present case, the State Commission has worked out the book profit of each segment separately. It observed that the Appellant has paid MAT. It did not worked why and how the tax liability of the company, under normal income tax rates, got reduced to such a level that it came under MAT. Was it due to regulated business or unregulated business? Was the regulated business enjoying any tax holiday or accelerated depreciation or other tax deductions? Book Profit calculations in the impugned order do not reflect any such deductions in the regulated businesses of G, T&D. Obviously, it was due to other business (unregulated by MERC) of the Appellant which caused massive permissible deductions. The benefit of such deduction must be shared by the beneficiaries of such business only and not by the consumers of regulated business. Presently, those businesses may be getting tax rebates due to tax holidays or accelerated depreciation. But in the future at the end of tax holidays and reduced depreciation, these deductions would

not be available to those companies and their tax liability would increase. Under those circumstances, the tax burden of the unregulated business would not be allowed to be shared by regulated business of MERC.

58. The Tribunal in Appeal No.251 of 2006 has laid down the ratio that the income tax assessment of the licensee must be done on standalone basis. In Appeal No.173 of 2011 the Tribunal has provided the methodology for assessing the income tax liability of the licensee. The State Commission did not follow these directions and got carried away with the observations that the utility must not gain or loose on account of income tax made in the context of grossing up of income tax. It simply allocated the actual tax paid by the Appellant, for the company as a whole, in proportion to their respective book profit."

The words "pro-rata basis" would also be contrary to the aforesaid judgments. In view of the above, the following is proposed at Regulation-11 (162):

"The Commission, in its MYT Order, shall provisionally approve Income Tax payable for each year of the Control Period, if any, based on the actual income tax payable on permissible return as allowed by the Commission relating to the electricity business regulated by the Commission, as per latest Audited Accounts available for the applicant, subject to prudence check"

Furthermore, the effective rate of tax should be derived after taking to account the income-tax already paid by the Licensee on the Regulatory Assets. Accordingly appropriate modification may be made to the draft regulations.

m) Rate of Interest on Loan: The said Regulations may be modified as under:

"76. The rate of interest on loan shall be based on weighted average rate of interest for actual loan portfolio subject to the maximum of bank rate plus the margin as approved by the Commission in the business plan order for a control period."

n) Further the said fourth proviso to the aforesaid Regulations may be modified as under:

"Provided also that if the Utility does not have actual loan then the SBI PLR shall be considered for the notional loan."

o) Useful Life of assets as per Appendix-I Delhi witnesses very harsh and diverse weather conditions. Therefore, the life and performance of the capital equipment is susceptible to early retirement/ de-capitalisation/ replacement. This is a known fact and there cannot be two divergent views on this. A practical approach is required to be taken for specifying the useful life of the capital assets for computing the depreciation including inter alia obtaining specific inputs from the Original Equipment Manufacturer (OEM). We find that the useful life specified by the Commission is very long as compared to the life specified by OEMs considering the weather conditions prevalent in Delhi. We also find that had the peculiarities of the weather conditions been taken into account, the useful life could have been far lesser than that specified. Also, the useful life of various capital assets specified by the Hon'ble Commission is far longer than the useful life of similar capital assets considered by other SERCs in the country as would be amply clear from the annexed tabulated comparative chart. Apart there from, the useful life specified by the Commission is not in accordance with the useful life derived based on the depreciation rates specified by the CERC in its Regulations as would be amply clear from the relevant extracts of the CERC Tariff Regulations 2014-19. Section 61 of the Electricity Act, 2003 makes it incumbent on the SERCs to follow the methodologies specified by the CERC which would obviously include the useful life of various assets in the electricity sector.

p) Working Capital Norms- O&M Expenses for one month has been kept out for working out the working capital for Wheeling and Retail Supply business although the first version of the draft Regulations proposed to include O&M Expenses for one month for computing the working capital. It is noteworthy that for Generation and Transmission Utilities, the Hon'ble Commission has made a provision of taking into account O&M Expenses for one month for computing the working capital requirements of those Utilities but such a provision has been conspicuously deleted/ missing while in the case of Distribution Utilities which is discriminatory and parity ought to be maintained among GENCOs , TRANSCOs and DISCOMs. Apart there from, the Regulations framed in majority of the States in the country have included O&M Expenses for one month to calculate the working capital for the Distribution Utilities. We are annexing a tabulated chart for providing the details pertaining to the other States for the ready reference of the Hon'ble Commission. The MYT Regulations, 2007 provides for O&M Expense for one month for calculating the working capital. The subsequent MYT Regulation, 2011 withdraw the provision of O&M Expenses for one month. Thereafter, the draft Tariff Regulations, 2015 proposes to include O&M Expense for one month. The latest revised draft withdraws the said provision. This is an arbitrary approach without a logic or any rationale. Admittedly, the answering Distribution Licensee is suffering an accumulated Revenue Gap of Rs. 3051 Crore which have not been liquidated for the past over 12 years. Apart there from, there are various tariff related disallowances which have been taken up by the Distribution Licensee before the Appellate Tribunal for Electricity and the Supreme Court of India. In this situation, it is inevitable that these affect the cash flow of the Licensee. Hence, if O&M Expenses for one month is taken into account for computing the working capital, it would provide a significant bailout to the Distribution Licensee and would be beneficial for the Distribution segment of the sector. It is also noteworthy that the Central Government's Notification dated March 30, 1992 providing the factors for determination of tariff for sale of electricity by the GENCOS to the SEBs specify that O&M Expenses for one month would be taken into account for calculating the working capital requirement. A copy of the said notification is annexed herewith for the ready reference of the Hon'ble Commission. The Hon'ble Commission may kindly note that CERC has in the statement and objects and reasons of the Tariff Regulations FY2014-FY2019 while dealing with the objection for inclusion of one month O&M expenses for calculating the working capital rejected the said objections for the following reasons;

"28.21 Regarding inclusion of one month of O&M expenses as a part of the working capital requirement, the Commission is of the view that O&M expenses incurred for a given month are recoverable along with the tariff in the next month and therefore, the same needs to be a part of working capital. Further, exclusion of the same may also have impact on the liquidity position of the utilities. The Commission has therefore, decided to continue with provision of one month of O&M expenses as a part of working capital requirement"

In view of the above, it is our considered request that O&M Expenses for one month should be included for calculating the working capital requirement.

Further receivables for the purpose of working capital ought to be considered equivalent to ARR of the Licensee. Since ARR and not the revenue billed is the amount receivable from the consumer to the Licensee, same ought to be considered for the purpose of computation of 2 months receivables in the working capital of the Licensee.

q) Rate of interest on working capital loan - While giving comments to the 2015 Draft Regulations, we have, vide our letter dated February 15, 2016, identified the lacunae in the provision related to the Rate of Interest on working capital loans. We, furthermore, submit that since the working capital loans are for funding day to day requirements and is purely short term in nature, the rate of interest for such loans perforce requires to be that applicable to short term loans. In view of this, it is our considered suggestion that the rate of interest on working capital loans should be clearly specified as the Bank Rate, plus margin of short term loans as determined by the Commission in its Orders. Further "as on 1st April of the respective financial year" may be deleted from the said regulation (including proviso).

r) O&M Expenses - The Regulations provide for a comparison of Audited O&M Expenses for past 5 completed years vis-à-vis normative O&M Expenses allowed in those past years. The Distribution Licensee would have already borne the consequences of the actual O&M Expenses incurred versus the normative figures in the said past period. Hence, there would be no rationale for considering the purported comparison for deriving the normative O&M Expenses for the future Control Period. The Appellate Tribunal for Electricity in its Judgment in Appeal No. 36 of 2008 held as follows:

"The target for MYT period needs to be set on the basis of losses at the beginning of the MYT period and not on the basis of loss level on the date of privatization when the policy target period began. The consequences of failure or success in reaching the loss reduction target have already been borne by the licensee. Hence, reference to the initial level of loss at the time of privatization is not necessary."

Thus, Regulation 93 in the revised draft may be revised in line with the APTEL's Judgment in 36 of 2008. Furthermore, The APTEL in its Judgment in Appeal No. 171 of 2012 laid down the methodology for calculating the O&M Expenses;

"The methodology adopted by the Commission also does not take into account the different modes of works carried out by the distribution licensee. For example if a distribution licensee carries out more repaired maintenance work through third party contracts instead of own employees, then its employees cost will be lower but repair and maintenance will be higher. This company will be considered more efficient as per the norms adopted by the Commission even though its overall O&M expenses may be higher than other companies. Comparison of O&M expenses per consumer or per unit sale which includes employees expenses, R&M expenses and A&G expenses will be correct and like to like comparison." [Emphasis Added]

Therefore, the Hon'ble Commission ought not to compare individual elements of the O&M Expenses. This would tantamount to micromanagement of the Distribution Licensees affairs. If at all a comparison of expenses is needed, such comparison ought to be done holistically on actual O&M Expenses as has been laid down by the APTEL.

s) Moreover, the benchmarking factor of "Capital Base" would result in erroneous results because a licensee which has a large Capital Base owing to investment in new distribution systems would be wrongly compared with another Licensee which has not made any investments in the distribution system for diverse reasons including non-approval of schemes by the Hon'ble Commission, non-receipt of right of way, delay in approval of CAPEX schemes, lack of funds/ non-cost reflective tariffs/ non-amortisation of Regulatory Assets. Also, the Commission has yet not completed the process of physical verification of assets due to which capital base is not the correct parameter for approval of O&M Expenses for next Control Period.

t) In view of this, it is our considered suggestion that the O&M Expenses for the Control Period be allowed after taking into account the actual O&M Expenses, as a whole and not individual elements, of the Base Year without any reference to the capital base. Benchmarking, if any, of O&M Expenses ought to be done with other similarly placed DISCOMs operating in Delhi while ensuring that efficient DISCOMs are rewarded for their operational efficiencies. Notwithstanding the above, if capital base is to be necessarily considered, then the O&M Expenses ought to be linked to capital base based on the geographical location, network conditions and ageing of the assets as the new assets would require less O&M Expenses in comparison to older assets.

u) Non-Tariff Income –

(i) If the amount of statutory investment has not been allowed as an expense, there is no question of taking the income derived there from for reducing the ARR. Therefore, it is our considered suggestion that the words "(iv) income from statutory investments" should be amended to read as follows;

"Income from statutory investments provided that the amount of the statutory investment has been allowed as an expense in the ARR of the Utility."

(ii) A distribution Licensee for the optimum utilisation of its assets can allow advertisers to use the infrastructure, bills, publications etc. The income derived from such advertisements squarely form the income within the meaning of Section 51 of the 2003 Act read with the DERC Other Income Regulations , 2005 allowing the DISCOM to retain 20% of the revenues from such income. Inclusion of income from advertisements as a Non-tariff income would be ultra vires and contrary to Section 51 of the 2003 Act read with the DERC Other Income Regulations, 2005 and hence should be deleted.

5.4 Stakeholders have submitted that

(i) the state commission is requested to allow certain capital spares as and when requested by utilities in line with 29(2) of CERC Regulation which read as under:

"29.(2) The water charges and capital spares for the thermal generating stations shall be allowed separately"

(ii) Sharing of the benefits accrued on account of PAT Scheme: 100% of the gross reduction in heat rate and APC will be retained by the generation company in the 1st year of a PAT cycle and any gain after implementation of energy efficiency plan will be shared with the beneficiaries.In the 2nd & 3rd year of PAT cycle the generator will share benefit of reduction heat rate and APC @ 10% in the 2nd year of implementation of planned schemes and progressively increased by 10% every year till the PAT cycle ends.

(iii) In case of existing assets, total depreciated value as on 1st April of any Financial year shall be worked out by summing up the cumulative depreciation as calculated after including admitted capital cost by the Commission up to 31st March of preceding financial year for arriving gross depreciable value of the assets.

(iv) Water charges on account of use of sewage treated water, annual expenditure on DLN Burners of gas turbines provided for environmental compliance, statutory levy and taxes under O&M expenses indicated separately in the audited financial statement shall not form part of normative O&M expenses.

5.5 Stakeholder has submitted that:

(i) if the associated Transmission/ Generation /distribution system is not commissioned then the DTL Transmission system shall be considered as Deemed Commissioned. It is observed that out of 10 sub stations Project executed during last 5 years, the component of (min.) spare/mandatory spare w.r.t. total of Project cost varies from 3.31% to 11.52% and the average comes out to be 6.5%. It may please be seen that in all these substation projects only minimum mandatory spare, as prescribed by the Vendor, were considered in Terms of Contract condition. It is also observed from five transmission Link Projects executed recently the component of spares w.r.t. Project Cost varies from 0.5 to 3.1 %. It has been observed that in three projects, only straight through joints (10% of total quantity) and termination (only 2 nos.) were considered as a mandatory spares and on this account it has been observed the component of spares value of these three project varies from 0.5 to 1.7%. However, practically it was observed that in most of the cases of breakdowns cable of same construction /specification is also required to revive the cable system. Accordingly, after lot of deliberations, it was decided to procure one drum approx. 500 mtr. of cable of same configuration and the same was considered. Wherein the cost of spares comes out 2.7 % and 3.08 %. Accordingly, the spare considered in these two projects are the bare minimum requirement keeping in view the number of breakdown incidents and consumption pattern over a period of time. Since a number of utilities are working in Delhi Region which are regularly carrying out the digging activity leading to the possibilities of frequent breakdown. Hon'ble Commission is therefore requested to consider the cost in regard of initial spares to be capitalized as 7 % for sub-station projects and 3% for cable projects. This may appear higher than the CERC norms however Commission may kindly consider that the route length in the Delhi being less the overall cost comes out to be less whereas in the Central Transmission utility, the Line length and the initial investment is high, the higher percentage of initial spares may be considered by Hon'ble DERC. The Physical and financial closure of a project takes some time so it is proposed that the period for refund shall be increased to at least three months.

(ii) The said provision of providing the margin of 5% and further the recovery of excess / shortfall due to variation in capitalization at 1.20 /0.80 times of interest rate should not be applicable to DTL due to various reasons i.e. Allocation and allotment of land in Delhi, Right of Way problems, VIP areas/movement, Congested areas etc. Further DTL being the State Transmission Utility of Delhi, Business Plan of DTL is also based upon the other power utilities of Delhi i.e. GENCOs and DISCOMs. The Business plan is being prepared for 5 years and in between this period due to various uncontrollable factor i.e. Land acquisition, Right of Way, Load Growth in any area not envisaged before, future Generation capacity addition etc, so keeping in view of these discussions/ factors, it can be seen that a wide gap/variation is unavoidable between the proposed capitalization in the Business plan submitted with MYT petition and the actual capitalization achieved later on. Further it is also submitted that whereas the provision in DERC draft Regulations is similar to the CERC Regulations 2014 for Central Utilities but in CERC, the Capitalization petition is filed before 6 months of Scheduled COD whereas in Delhi the tariff is determined on the basis of the Future Projections.

(iii) Hon'ble Commission is therefore requested to consider to delete the above provision and consider Mid-Term review as suggested by DTL for bringing down the gap between approved capitalization and actual as per feasibility and dynamics of the system. Further the rate of under-recovery /over recovery shall be same as per the interest cost approved by the Commission.

(iv) The Return on Equity is allowed after the project gets commissioned which brings down the effective return less than the prescribed value. Commission has not specified any rate of return on Equity whereas CERC allows RoE @

16%. So, Commission is requested to allow Return on Equity @ at least 16% and further provision of additional RoE @ 1% for timely completion of project. Higher RoE to be allowed for compensating the above or at least Normative IDC to be allowed for construction period for equity portion.

(v) Hon'ble ATE in appeal No. 255/2013 has allowed the actual income tax paid by DTL. So the income tax shall be allowed as per actual tax paid by the company. The relevant extract of the ATE Judgment in Appeal No. 255/2013 is reproduced below:

"45.4 In our opinion, the Commission has to consider the income tax actually paid by the Appellant with due verification and the same has to be included in the Tariff computation and shall be passed on to the beneficiaries. Further, tax on any income other than that through its licensed business shall not be passed through, and it shall be payable by the Transmission Licensee itself. Accordingly, the issue is decided in favour of the Appellant and the issue is remanded back to consider the Income Tax amount paid with due verification and prudence check."

Hon'ble Commission is therefore requested to kindly consider the same.

(vi) The salvage value of IT equipment and software shall be considered as Nil in line with the CERC (Fees and Charges of Regional Load Dispatch Centre and other related matters) Regulations, 2015.

(vii) It is submitted that the O&M expenses should be allowed by the DERC as per the methodology being followed in the MYT Regulations 2011 and also provide the additional O&M expenses for new transmission assets addition as the base year caters the need of only current transmission assets. Further Provision may also be made for various expenses i.e. Pay Commission Impact, Property Tax etc.

(viii) DTL is catering the electricity needs of Delhi being the capital of country feeding many VIP areas and restoration of power to be done in minimal possible time for which more resources are required and being the national capital various additional expenditure has to be incurred to maintain the 24x7 power supply. Further, DTL is the only transmission utility in Delhi, the national capital and having comparatively more nos. of GIS substations due to land constraint, Higher percentage of U/G cables due to RoW problem. So commission is requested to consider the same and allow suitable increase in the norms being the capital city and taking into account the Inflation aspect also.

Commission's Views

5.6 Capital Cost : Stakeholders have suggested modification in principles for determination various parameters impacting the capital cost of the Utility, which has been summarised as follows:

(i) **Fixed Asset Register** : The Commission is of the view that fixed asset register based on capitalisation schedule as per Tariff Regulations, 2017 may not always match with the fixed asset capitalisation schedule to be maintained under Companies Act, 2013 due to variance in the useful life of the asset, depreciation rates, residual value etc. Therefore, it is inevitable for the Utilities, which are regulated under electricity Act to maintain same set of books of accounts for fixed asset register under electricity Act as well as under Companies Act, 2013.

(ii) **Perform Achieve and Trade (PAT) Scheme:** The Commission is of the view that sharing of benefits accrued on account of PAT scheme shall be decided by the Commission on case to case basis. The same provision is already placed in Traiff Regulations, 2017 as follows:

"27. The capital cost incurred or projected to be incurred on account of any applicable PAT (Perform, Achieve and Trade) scheme of Government of India will be considered by the Commission on case to case basis and shall include:

(1) Cost of plan proposed by developer in conformity with norms of PAT Scheme; and

(2) Sharing of the benefits accrued on account of PAT Scheme."

(iii) **Benchmark Norms for Capital Cost:** The Commission is of the view that in principle approval of capital schemes shall be examined as per the benchmark norms for capital cost, if available, at the relevant time. It is also clarified that the approval of Capital Cost is dependent on various parameters and not only benchmark norms. Further, Capital cost over and above the specified benchmark norms, exceeding the capital cost from benchmark norms may be considered based on reasons submitted by the Utility to the satisfaction of the Commission on case to case basis. The relevant Regulation of the Tariff Regulations, 2017 is as follows:

"30. The following principles shall be adopted for approval of capital cost of any project or scheme:

(1) Prudence Check of capital cost considering:

(a) The benchmark norms specified, if any, by the Commission from time to time,

(b) Scrutiny of the capital expenditure, financing plan, interest during construction, incidental expenditure during construction for its reasonableness, use of efficient technology, cost over-run and time over-run,

(c) Mode of procurement,

(d) Geographical Information System (GIS) mapping of the assets, and

(e) Any other parameter considered appropriate by the Commission for determination of tariff.

(2) Capital cost over and above the specified benchmark norms, if any, may be considered based on reasons submitted by the Utility for exceeding the capital cost from benchmark norms to the satisfaction of the Commission on case to case basis"

(iv) **Over/Under recovery of Deposit Scheme:** The Commission has specified the treatment for over/under recovery of Deposit Scheme based on the suggestions from stakeholders. The relevant Regulation of the Tariff Regulations, 2017 is as follows:

" DEPOSIT SCHEME

....

40. Principles for treatment of the expenses on such capital expenditure shall be as follows:

(1) Any unspent amount on account of deposit work and consumer contribution shall have to be refunded by the Utility:

Provided that no interest shall be levied on the unspent amount, if the unspent amount is refunded by the utility within 30 (thirty) days after CoD;

Provided further that interest at the rate of Bank Rate plus margin shall be levied on the unspent amount, if the unspent amount is refunded by the utility after 30 (thirty) days and upto 1 (one) year after CoD for the period between 31st day after CoD till date of refund;

Provided also that interest at the rate of 1.2 times of Bank Rate plus margin shall be levied on the unspent amount, if the unspent amount is refunded by the utility after 1 (one) year of CoD for the period between 31st day after CoDtill date of refund;

Provided that any interest paid on this account shall not form part of the ARR;

(2) Any under-recovery on account of deposit work and consumer contribution shall be collected by the Utility within 30 (thirty) days after CoD;

Provided that, the Utility shall specify a due date of payment which shall not be less than 15 (fifteen) days from the date of raising the demand note for under-recovered amount;

Provided further that Utility shall levy interest at applicable bank rate as on 1st April of the relevant financial year on the balance unrecovered amount left after due date;

...”

(v) **<u>Bifurcation of Capital Schemes:</u>** The Commission is of the view that limit for approval of Capital Schemes is being governed as per terms and conditions of the Licence issued to the Utilities. Therefore, the bifurcation of Capital Schemes shall be examined as per terms and conditions of the Licence issued to the Utilities as follows:

" 10.6 For the purpose of Clause 10, the term "Major investment" means any planned investment in or acquisition of Distribution facilities, the cost of which, when aggregated with all other investments or acquisitions (if any) forming part of the same overall transaction, equals or exceeds Rs.2,00,000/- (Rupees Two Crore only) or such other amount as may be notified by the Commission from time to time.

10.7 The Licensee shall submit to the Commission, alongwith the "Expected Revenue Calculation" filed in terms of Clause 24, an Annual Investment Plan – consisting of those schemes that have been approved by the Commission; schemes submitted before the Commission for approval; and all schemes not requiring approval of the Commission planned for the ensuing financial year – and shall make investment in the said financial year in accordance with the said investment plan:

Providing that the aggregate cost of all schemes not requiring an approval from the Commission shall not exceed Rs.20,00,000/- (Rupees Twenty Crore only) in any financial year or such other amount as may be notified by the Commission from time to time:

Further, provided that if any unforeseen contingencies require reallocation of funds within the schemes listed in the annual investment plan, the Licensee may do so after intimating the Commission. However, such relocation in respect of individual projects shall not exceed Rs.1,00,00,000/- (Rupees One Crore only) and on an aggregate basis shall not exceed Rs.10,00,000,000/- (Rupees Ten Crore only) in any financial year or such other amounts as may be notified by the Commission from time to time.

Also provided that if on account of any unforeseen circumstances, the Licensee is required to make investments in a scheme that does not find a *place in the annual investment plan, the Licensee may do so subject to the condition that such investment in respect of individual projects shall not exceed Rs.1,00,000,000/- (Rupees One Crore only) in any financial year or such other amounts as may be notified by the Commission from time to time. Also, the Licensee shall satisfy the Commission, within 30 days thereof, that such investment was the result of a prudent decision warranted by compelling circumstances. "*

(vi) **Geographical Information System (GIS) mapping of the assets:** The Commission is of the view that provision for Geographical Information System (GIS) mapping of the assets by the Utilities will lead to physical verification of the assets linked with their Fixed Asset Register.

(vii) **Capital Cost Variation:** The Commission is of the view that in case the actual capital expenditure varies substantially with respect to the projected/estimated capital expenditure, the impact of the same needs to be allowed at the time of truing up with interest. It is important that the wide variation between projected and actual capital expenditure is controlled. In order to have more accurate projections with regard to capital expenditure and in order to limit the impact on consumers in terms of carrying cost of under recovered or over recovered tariff on account of variation between projected and actual capital expenditure, the Commission has proposed differential interest rates for refund and recovery as the generating or transmission company is in the best position to make realistic projections of capital expenditure. The Commission is of the view that the band of 5% variation between actual capital cost and capital cost considered for tariff is adequate as the projections made by the utilities are based on remaining works to be carried out in case of new projects.

(viii) **IDC and IEDC:** The Commission would like to clarify that as per the provisions of the Regulations, in case of additional costs on account of IDC and IEDC due to delay in achieving COD, the utilities shall be required to furnish detailed justification with supporting documents and the Commission will take an appropriate view after due prudence check. On the issue of allowing IDC for the equity infusion above the desired level, the Commission would like to refer to the Tariff Policy issued by the Government of India, which states that all the new power projects would be financed in the debt-equity ratio of 70:30 and the investors are free to infuse equity more than the 30% level with a condition that equity infusion above the threshold limit of 30% would be considered as normative loan. The Commission is of the view that any investment deployed either in the form of equity or debt has a cost to be serviced. The investments made in the form of equity are risk capital carrying higher rate of return and have perpetual flow of return up to the end of the life of the plant. However, the loan capital does not enjoy the aforesaid perpetual and higher rate of return. As the equity in excess of 30% of capital cost has been considered as notional loan for the purpose of tariff, the Commission is of the view that the equity capital equivalent to notional loan shall also be entitled for interest during construction.

As regards the expenses incurred before the Zero date for obtaining consents/approvals, statutory clearances, arranging finances, and other expenses for development of the Project up to Zero date, the same are to be treated as part of Project Development expenses while approving the Capital Cost based on prudence check. As regards the interest on works which are in original scope of work but not completed as on COD, will be considered on case to case basis based on prudence check while approving the additional capitalisation.

As regards the date from which the IDC is to be computed, the Commission is of the view that it will be more appropriate that interest should be computed from the date of the infusion of debt fund and the date of financial closure should not be considered. Therefore, AS-16 may not be applicable for computation of IDC, which relies upon the accrual concept of accounting.

As regards the funds invested before infusion of debt, the Commission is of the view that as per the prudent industry practice, any project is funded in the following pattern:

i. Certain proportion of upfront Equity (30% or 50%)

ii. Similar proportion of upfront Debt

iii. Debt and Equity in proportion to Debt: Equity ratio

Therefore, typically the debt funding to the project starts once upfront equity is infused in the Project and hence, it will not be appropriate to provide IDC on equity funded for meeting the initial expenses prior to infusion of debt fund.

(ix) **Water Charges:** The Commission has made the provision for Water Charges in Tariff

Regulations, 2017 which is in line with CERC Tariff Regulations, 2014-2019. The relevant Regulation of Tariff Regulations, 2017 is as follows:

" 87.The Utilities shall be allowed Operation and Maintenance expenses on normative basis including expenses for raising the loan for funding of Working Capital and Regulatory Asset as specified by the Commission in the Business Plan Regulations for the respective Control Period:

Provided that the Normative O&M expenses for the respective Control Period shall not be trued up;

*Provided further that the **water charges**, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement **shall not form part of Normative O&M expenses**."*

(x) **Initial Spares**: The Commission has made the provision for initial spares subject to the ceiling rates specified by the Commission in the Tariff Regulations, 2017 which is in line with CERC Tariff Regulations, 2014-2019 as follows:

" 25. The Capital Cost of a new project or scheme shall include the following:

(1) The expenditure incurred or projected to be incurred up to the date of commercial operation of the project or scheme as approved by the Commission;

(2) Interest during construction and financing charges, on the loans being equal to debt as per financing excluding however the equity deployment, provided however the equity deployment shall not exceed 30% of the capital cost and in case equity is deployed in excess of 30% the excess shall be deemed to be a debt or notional loan;

*(3) **Capitalized initial spares subject to the ceiling rates specified by the Commission**;*

..

38. Initial spares shall be capitalized as a percentage of the Plant and Machinery cost upto cut-off date, subject to the norms specified in CERC (Terms and Conditions of Tariff) Regulations, 2014 as amended from time to time for Generating Entity and Transmission Licensee:

Provided that the norms specified for capitalisation of initial spares for Transmission Licensee shall also be applicable mutatis mutandis to the Distribution Licensee.
."

(xi) **De-capitalisation:** The Commission is of the view that post facto approval for de-capitalisation of asset due to technological obsolescence and wear and tear etc. should not be allowed. There must be the prudence check on the claims of the utility that whether the technology has become obsolete or the asset has been depleted due to wear and tear before completion of useful life. Therefore, the provisions have been made for adjustments on these accounts in the ARR of the utility as specified by the Commission in Tariff Regulations, 2017 as follows:

"45. Loss or Gain due to de-capitalisation of asset based on the directions of the Commission due to technological obsolescence, wear & tear etc. or due to change in law or force majeure, which cannot be re-used, shall be adjusted in the ARR of the Utility in the relevant year."

(xii) **Assets not in use:** The Commission is of the view that total cost of asset which is not in use, should not be factored in the ARR during such period of asset not in use. It is clarified that if the asset is not in use then the wear and tear of that asset is not taking place when the asset was operational. Therefore, the Commission has specified the procedure in its Regulation 48 of Tariff Regulations, 2017 that detailed principles for treatment of capital asset which has been removed from GFA before completion of its useful life. The relevant Regulation of Tariff Regulations, 2017 is as follows:

"48. Principles for treatment of capital asset which has been removed from GFA before completion of its useful life with prior approval of the Commission and such removed asset is held in reserve for a continuous period of more than six months for its reuse later shall be as follows:

(1) In case the asset has been depreciated more than 70%, depreciation shall not be allowed on such asset from the date of de-capitalisation to the date such asset is put to re-use;

(2) In case the asset has been depreciated less than 70%, depreciation shall be allowed upto 70% of the total value of asset from the date of de-capitalisation to the

date such asset is put to re-use;

(3) The Utility shall be allowed Carrying Cost, at the rate of interest for CAPEX Loan on written down value of such asset during the period from the date of de-capitalisation to the date such asset is put to re-use;

(4) In case such asset has been put to re-use, differential of maximum permissible depreciation, as specified in the Appendix-1, and actual accumulated depreciation, shall be allowed from the date such asset is put to re-use;

(5) The Utility shall be allowed Return on Equity, Interest on Loan on the written down value of the de-capitalised asset from the date such asset is put to re-use.

(xiii) **Time over run/Cost over run in Deposit Scheme**: The Commission is of the view that in case of deposit scheme, no additional impact of time over-run or cost over-run shall be admissible on account of non energisation of the associated distribution system by scheduled COD, as the same should be recovered through mutual agreement between the distribution licensee from the developer. The relevant Regulation of Tariff Regulations, 2017 is as follows:

" 40 (5) No additional impact of time over-run or cost over-run shall be admissible on account of non energisation of the associated distribution system by scheduled COD, as the same should be recovered through mutual agreement between the distribution licensee from the developer."

(xiv) **Deemed Commissioning of Capital Assets**: The Commission is of the view that burden of cost of stranded asset/un-utilised asset due to delay in commissioning on account of generating company, transmission licensee and distribution licensee may not be passed on to the consumers. The loss incurred by either of the utility due to delay in commissioning should be recovered through Implementation Agreement between the generating company, transmission licensee and distribution licensee as specified by the Commission in the Tariff Regulations, 2017:

"37. No additional impact of time over-run or cost over-run shall be admissible on

account of non-commissioning of the generating station or associated transmission system or associated distribution system by scheduled COD, as the same should be recovered through Implementation Agreement between the generating company, transmission licensee and distribution licensee.”

5.7 **<u>O&M Expenses:</u>** Stakeholders have suggested to include the methodology for fixation of O&M Expenses in the Tariff Regulations, 2017. The Commission in the Tariff Regulations, 2017 has clearly specified that O&M Expenses for the Utilities shall be specified by the Commission in the Business Plan Regulations. However, the Commission has provided broadly the principles and parameters to be considered during fixation of O&M Expenses in the Tariff Regulations, 2017 as follows:

“ 87. The Utilities shall be allowed Operation and Maintenance expenses on normative basis including expenses for raising the loan for funding of Working Capital and Regulatory Asset as specified by the Commission in the Business Plan Regulations for the respective Control Period:

Provided that the Normative O&M expenses for the respective Control Period shall not be trued up;

Provided further that the water charges, statutory levy and taxes under O&M expenses if indicated separately in the audited financial statement shall not form part of Normative O&M expenses.

88. Escalation to be allowed for adjustment towards increase in inflation, consumer price index (CPI), wholesale price index (WPI) etc. shall be as specified in the Business Plan Regulations for the respective Control Period.

89. Normative Operation and Maintenance expenses of a new Generating Entity shall be as per the norms approved by the CERC in Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 as amended from time to time, for respective year unless specifically approved by the Commission.

90. Normative Operation and Maintenance expenses of existing Generating Entity *shall be as specified in the Business Plan Regulations for the respective Control Period.*

91. The Commission shall specify the target for Normative Operation and Maintenance expenses of the Transmission Licensee in the Business Plan Regulations for the respective Control Period.

Provided that the Commission may specify Normative Operation and Maintenance expenses target of a Transmission Licensee on the basis of number of Bays and Circuit Kilometres.

92. Normative Operation and Maintenance expenses of a Distribution Licensee shall consist of:

(a) Employee Expenses,
(b) Administrative and General Expenses; and
(c) Repair and Maintenance Expenses.

93. Normative Operation and Maintenance expenses of a Distribution Licensee for a Control Period shall be derived on the basis of audited Operation and Maintenance expenses for last five (5) completed Financial Years vis-à-vis normative Operation and Maintenance expenses allowed by the Commission during the corresponding period based on the following parameters:

(a) Load growth,
(b) Consumer growth,
(c) Commercial loss,
(d) Distribution loss,
(e) Inflation,
(f) Efficiency,
(g) Capital base and,
(h) Any other factor."

5.8 **Working Capital:** The Commission is of the view that the components for determination of Working Capital are un-controllable in nature, therefore, working capital shall be trued up for the respective financial year.

5.9 It is clarified that the computation of working capital includes two months of ARR of the Distribution Licensee. Further, O&M expenses are part of the ARR of the Distribution Licensee, therefore two months liability on account of O&M expenses has already been factored in the computation of working capital and the relevant regulation consisting of details of items included in the ARR is as follows:

"116. The Aggregate Revenue Requirement for the Retail Supply and Wheeling Business of the Distribution Licensees for each year of the Control Period, shall contain the following items:

(a) Cost of power procurement;

(b) Transmission & Load Dispatch charges;

(a) ***Operation and Maintenance expenses;***

(b) Return on Capital Employed;

(c) Depreciation;

(d) Income Tax;

(e) Interest on Consumer Security Deposit;

(f) Carrying Cost on Revenue Gap/Regulatory asset;

(g) Less: Non-Tariff Income;

(h) Less: Income from Other Business,

(i) Less: Income from wheeling of electricity; and

(j) Less: Receipts on account of charges other than Wheeling Charges from open access consumer."

5.10 The Commission is of the view that the provision for funding of working capital through 100% debt is in line with the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 which had been upheld by the Hon'ble High Court of Delhi in W.P.(C) 2203/2012 & C.M. No.4756/2012 vide judgement dated 29/07/2016. The relevant extract from the Judgement is as follows:

" 24. One of the grievances urged by the petitioner is that the impugned Regulations

*do not provide for any return on equity capital used as working capital. It is asserted that in terms of the impugned Regulations, the Return on Capital Employed (RoCE) is computed on the basis of the asset base for each year and the Weighted Average Cost of Capital (WACC). WACC is a combination of interest on the debt component of the total funds employed and 16% post-tax return on the equity component. Although asset base includes working capital but for purposes of computing WACC, the working capital is considered to be financed entirely by debt. This is postulated by the first proviso to Regulation 5.11. Regulation 5.11 reads as under:- 5.11 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner: 1+D/E * rd + 1+D/E * re Where, D/E is the Debt to Equity Ratio and for the purpose of determination of tariff, debt-equity ratio for the asset capitalized shall be 70:30. Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan. The interest rate on the amount of equity in excess of 30% treated as notional loan shall be the weighted average rate of the loans of the Licensee for the respective years and shall be further limited to the prescribed rate of return on equity in the Regulations. Where actual equity employed is less than 30%, the actual equity and debt shall be considered: Provided that the Working capital shall be considered 100% debt financed for the calculation of WACC; Provided further that the Debt to Equity Ratio for the assets covered under Transfer Scheme, dated July 1, 2002 shall be considered as per the debt and equity in the transfer scheme; Provided further that Debt to Equity Ratio for the assets capitalised till 1.04.2012 (other than assets covered under Transfer Scheme) shall be considered as per the debt and equity approved by the Commission at the time of capitalization. rd is the Cost of Debt and shall be determined at the beginning of the Control Period after considering Licensee's proposals, present cost of debt already contracted by the Licensee, credit rating, benchmarking and other relevant factors (risk free returns, risk premium, prime lending rate etc.); re is the Return on Equity and shall be considered at 16% post tax: Provided further that any additional investment made by the Licensee other than in the fixed asset of the distribution business, shall not qualify for the return on equity.*

25. In addition, the petitioner is also aggrieved by the third proviso to Regulation 5.11 *in terms of which revenue gap is also considered as entirely financed by the debt component. The petitioner submits that revenue gap of approximately Rupees three thousand crores has been created in the earlier years and the petitioner has been constrained to infuse equity to finance such revenue gap. According to the petitioner, it is also entitled to return on equity infused to finance such revenue gap and since the impugned Regulations do not provide for return on such equity, the same are violative of the tariff policy which requires a reasonable return on equity employed. 26. The above submissions have been countered by the Commission and it is asserted that the working capital margin has been funded by 15% receivables and further 10% by inventories and the petitioner has not brought any shareholders' funds for financing working capital. This is stoutly disputed by the petitioner and it is asserted that as per the banking norms, 25% of the working capital is required to be funded by shareholders. It is further asserted that the receivables and inventories which form part of the current assets cannot be considered as financing working capital. 27. In our view, the question whether the working capital is to be considered as financed wholly or partly by debt is not an issue which is amenable to judicial review. Even if it is assumed that the petitioner is right in its contention that a part of the working capital is financed by shareholders' funds and the impugned Regulations consider the same to be financed entirely by debt, it is difficult to accept that the same violates Section 61 of the Act. The net effect of treating the entire working capital as financed through debt is that the return on the amount so utilized is restricted to the rate of interest on debt. This per se cannot be considered as unreasonable or arbitrary so as to render the impugned Regulations violative of Article 19(1)(g) of the Constitution of India or Section 61 of the Act. Section 61 merely requires that distribution of electricity be done on commercial principles. And, restricting the return on working capital does not militate against any commercial principle."*

5.11 **Interest on Loan:** It is clarified that the mechanism for sharing of incentive on account of net benefit due to refinancing of loan shall be provided by the Commission in the Business Plan Regulation of the relevant control period. The Commission is of the view that interest on loan shall be based on the bank rate and the margin approved by the Commission in the Business Plan Regulation for the relevant control period. Therefore, in case there is no loan available in the books of accounts of the utility the Commission shall determine the margin based on the data available at the appropriate time for the purpose of interest rate. The relevant extract of the Tariff Regulations, 2017 is as follows:

"77. The rate of interest on loan shall be based on weighted average rate of interest for actual loan portfolio subject to the maximum of bank rate as on 1st April of the year plus the margin as approved by the Commission in the Business Plan Regulations for a Control Period:

Provided that in no case the rate of interest on loan shall exceed approved rate of return on equity:

Provided further that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided also that if the Utility does not have actual loan then the rate of interest shall be considered at the bank rate plus margin, as specified by the Commission in the Business Plan Regulations, for the notional loan of the relevant control period:

Provided also that the loan availed through open tendering process (Competitive Bidding) among Scheduled Banks, Financial Institutions etc., shall be considered at the rate discovered through open tendering process."

5.12 **Debt Equity Ratio and Return on Capital Employed (RoCE):** The Commission is of the view that in case of depreciation is used for repayment of debt only then there is a case of Unjust Enrichment of the utility at the stage when additional depreciation is allowed to the utility above 70%. As per normative Debt Equity Ratio, the debt portion is only 70% of the Gross Fixed Asset at the date of Commissioning. As per the formula proposed by the utilities the equity once infused into the business should not be reduced whereas after the capital asset has been depreciated by more than 70%, the utility is free to withdraw/utilise the available equity in the form internal accrual through depreciation of such asset for the purpose of any fresh investment required into the business. However, the utilities are getting additional return on equity on depreciation over and above 70% of the values of gross fixed asset. As per the table indicated in TPDDL's comments which shows the Debt Equity Ratio up to 10^{th} year where outstanding debt has indicated is zero and equity is 30 (100%) but the utility has not indicated the treatment of depreciation after 10^{th} year when the asset is in use and depreciation is allowed.

The double accounting of equity for the purpose of computation of return on equity can be observed from the fact that Stakeholder has not indicated the treatment of Depreciation allowed from 11^{th} year till useful life even after total re-payment of loan (total loan repaid in 10 years).

The concept of depreciation under regulated regime of power sector is that the amount recovered through Depreciation shall be used for repayment of loans. Therefore, ideally there should not be any depreciation allowed after the total repayment of loan (in this case 10 years). However, contrary to this, the stakeholders are suggesting to consider the depreciation from 11^{th} year till useful life whereas there is no adjustment for the same depreciation in tariff computation.

This issue has also been examined by the Hon'ble High Court of Delhi in W.P.(C) 2203/2012 & C.M. No.4756/2012 vide its judgement dated 29/07/2016, whose relevant extracts are as follows:

"....

12. At this stage, it is also necessary to refer to relevant extracts of para 5.3 of NTP, 2006, which is set out below:

> *5.3 Tariff policy lays down following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.*
>
> *a) Return on Investment Balance needs to be maintained between the*

interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector. The Central Commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. The rate of return notified by CERC for transmission may be adopted by the State Electricity Regulatory Commissions (SERCs) for distribution with appropriate modification taking into view the higher risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators. While allowing the total capital cost of the project, the Appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital costs should be evolved by the Regulatory Commissions.

> *Explanation: For the purposes of return on equity, any cash resources available to the company from its share premium account or from its internal resources that are used to fund the equity commitments of the project under consideration should be treated as equity subject to limitations contained in (b) below.*

The Central Commission may adopt the alternative approach of regulating through return on capital. The Central Commission may adopt either Return on Equity approach or Return on Capital approach whichever is considered better in the interest of the consumers. The State Commission may consider distribution margin' as basis for allowing returns in distribution business at an appropriate time. The Forum of Regulators should evolve a comprehensive approach on distribution margin within one year. The considerations while preparing such an approach would, inter-alia, include issues such as reduction in Aggregate Technical and Commercial losses, improving the standards of performance and reduction in cost of supply.

b) Equity Norms For financing of future capital cost of projects, a Debt : Equity ratio of 70:30 should be adopted. Promoters would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.

36. Lastly, the petitioner submitted that impugned Regulations insofar as they restrict the Debt-Equity Ratio as 70:30 violates Section 61(b) of the Act. It was contended on behalf of the petitioner that the Commission has not taken into account progressive repayment of debt during the control period. It is submitted that repayment of debt would result in increase in the ratio of equity component and the petitioner would be entitled to return on the enhanced equity component.

37. Paragraph 5.3(b) of NTP, 2006 provides that for financing of future capital cost of projects, a Debt-Equity Ratio of 70:30 should be adopted. But, it is also expressly provided that the Promoters would be free to have higher quantum of equity investments and the equity in excess of the norm should be treated as loans advanced. It is, thus, seen that Regulation 5.11 of the impugned NTP, 2006 which provides for the formula for computing the weighted average cost of capital assumes the Debt-Equity Ratio for the assets capitalized to be 70:30. The formula under Regulation 5.11 only provides for a norm for determining the cost of capital. We find no infirmity with the approach of the Commission in fixing a normative formula and there is no mandatory provision which proscribes the Commission from taking such approach.

38. It is a well accepted principle of financial management that enterprises align their financial structure for optimizing the return on equity by properly leveraging the equity base. The extent of leverage is determined by a host of factors including the risk appetite of the management, availability of owned resources, cost of debt, *etc. Thus, business entities consciously make effort to maintain a certain Debt-Equity Ratio which is considered by them to be optimal. Thus the assumption that the component of equity would progressively continue to increase may not hold good. Further, as is rightly pointed out by the Commission, the repayment of debt over a passage of time is also coupled with an erosion in the value of the capital assets and if it is assumed that the capital asset is financed 30% by equity and 70% by debt, any depreciation in the value of the assets would also correspondingly result in erosion of the value of equity to that extent.*

39. The Commission is an expert body which is constituted to perform the functions as specified under the Act including determination of the tariff and specifying the terms and conditions for such determination. Such functions which by nature require expert knowledge would ordinarily be outside the scope of judicial review and no interference would be warranted unless it is established that the actions of the Commission are contrary to the provisions of the Act and/or ultra vires the Constitution. In Transmission Corporation of Andhra Pradesh Ltd. & Anr. v. Sai Renewable Power Pvt. Ltd. & Ors.: (2011) 11 SCC 34, ***the Supreme Court held as under:-***

> *..... This Court has consistently taken the view that it would not be proper for the Court to examine the fixation of tariff rates or its revision as these matters are policy matters outside the preview (sic) of judicial intervention. The only explanation for judicial intervention in tariff fixation/revision is where the person aggrieved can show that the tariff fixation was illegal, arbitrary or ultra virus (sic) the Act. It would be termed as illegal if statutorily prescribed procedure is not followed or it is so perverse and arbitrary that it hurts the judicial conscious of the Court making it necessary for the Court to intervene. Even in these cases the scope of jurisdiction is a very limited one.*

40. In view of the above, we are unable to accept that the impugned Regulations are violative of any provision of the Act or are ultra vires the Constitution of India."

5.13 **Income Tax:** The Commission is of the view that the benefit of Minimum Alternate Rate (MAT) should be passed on to the consumers and any tax liability on account of incentive and Income Tax from other businesses should not be passed on to the consumers which has also been indicated in the Tariff Regulations 2017 as follows:

> *"**72. Tax on Return on Equity:** The base rate of return on equity as specified by the Commission in the Business Plan Regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid vis-à-vis total income of the Utility in the relevant financial year in line with the provision of the relevant finance Acts. The actual tax on other income Stream shall not be considered for the for the calculation* of "*effective tax rate*""

The proposed computation of Income Tax from FY 2007-08 to 2014-15 by Stakeholder indicates that there is disallowance of Income Tax of Rs. 2.45 Cr. for the FY 2014-15 as per their computation. It is observed that the disallowance of Income Tax is on account of the incentive disallowed during FY 2014-15 of Rs. 12.26 Cr. It is amply clear from the above Regulation that any tax liability on account of incentive and income from other stream of business shall not be allowed with tax on return of equity. Therefore, the Commission is of the view that effective tax rate of taxation during any financial year shall be computed bases on the estimated profit and tax to be paid by the utility on pro-rata basis by excluding the income from other stream and incentives. It is further clarified that effective tax rate varies on year to year basis. Therefore, the tax to be allowed on return of equity should not be allowed on the basis of cumulative Income Tax paid and cumulative Income Tax allowed as proposed by Stakeholder.

Further, the stakeholders has suggested that the initial Debt: Equity ratio of GFA should not be altered as per the notification No.F.11(118)/2001-Power/2889 dtd. 22 November, 2001. However, as per the said notification, the policy direction was applicable for a limited period upto FY 2006-07. The relevant extract of the said policy directions is as follows:

" 11. For the years 2002-03 to 2006-07, the AT&C loss levels for the purposes of

tariff computation for the distribution licenses shall be the lower of the following:-

(a) The AT&C losses derived on the basis of the opening AT&C loss taken for the purpose of bidding and the reductions proposed in the bid submitted by the purchase selected as per terms of the RFP document for "Privatisation of Electricity Distribution In Delhi" to be issued shortly by the Government for Sale of 51% equity in the distribution companies; or

(b) The AT&C losses derived on the basis of the opening AT&C loss for the purpose of bidding and the minimum reduction in AT&C Loss stipulated by the Government.

12. For the years 2002-03 to 2006-07, in the event that the actual AT&C loss level of a distribution licensee for any particular year as determined by the Commission is better (lower) than the level proposed in the bid, the distribution licensee shall be entitled to retain 50% of the additional revenue resulting from such better performance. Notwithstanding the provisions of resulting from such better performance. Notwithstanding the provisions of para 11, the balance 50% of additional revenue resulting from such better performance shall, however, be counted for the purpose of tariff fixation. While generally the incentive to be allowed to the licensee (including additional incentives by deviating from the principles laid down in the Sixth Schedule to the Electricity (Supply) Act, 1948), should be determined by the Commission on an annual basis, the Government is of the considered view that in the larger public interest and to effectively achieve the proposed disinvestment and privatization, it is necessary to impart certainty to the incentives payable over a specified period and to make these incentives attractive as a part of the transfer arrangements, in order to ensure successful disinvestment. In the absence of such a certainty it may not be possible to attract private sector participation in the distribution of electricity.

13. ***From the date issuance of these directions till the end of 2006-07 and subject to provisions of paras 11 and 12 above and all expenses that shall be permitted by the Commission, tariffs shall be determined such that the distribution***

***licensees earn, at least, 16% return** on the issued and paid up capital and free reserves (excluding consumer contribution and revaluation reserves but including share premium and retained profits outstanding at the end of any particular year) provided that such share capital and free reserves have been invested into fixed or any other assets, which have been put into beneficial use for the purpose of electricity distribution and retail supply and provided further that such investment of such share capital and free reserves has the approval of the Commission."*

5.14 **Depreciation** The residual value of asset for the purpose of computation of Depreciation is considered as 10% which is in line with practice followed by CERC and other SERCs across the country. Therefore, the Commission is of the view that to maintain uniformity the residual value of asset for the purpose of computation of Depreciation should be considered as 10%. The Commission has also considered 100% depreciation (nil residual value) for I. T Equipment including software which is also in line with the CERC Tariff Regulations, 2014-2019.

5.15 The Commission has considered Straight Line method for computation of depreciation, and under the Straight Line method of depreciation, depreciation is computed by dividing useful life of Fixed Asset from the value of Gross Fixes Asset reduced by the residual value. Therefore, depreciable value (value of Gross Fixes Asset reduced by the residual value) shall be fixed throughout the life of the asset and written down value of the asset at relevant year is not used for computation of the depreciation. Relevant extract from the Tariff Regulations, 2017 is as follows:

" DEPRECIATION

78. Annual Depreciation shall be computed based on Straight Line Method for each class of asset as specified in Appendix-1 of these Regulations.

79. The base value for the purpose of depreciation shall be the capital cost of the asset approved by the Commission. Depreciation shall be chargeable from the first year of commercial operation and in case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

80. The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that any depreciation disallowed on account of lower availability of the generating station or generating unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life and the extended life."

5.16 Some of the Stakeholders have suggested to adopt the rate of depreciation should be based on the depreciation schedule under companies act, 2013 and stakeholders have suggested that useful life should be back calculated from the depreciation schedule indicated in the CERC Tariff Regulations, 2014-19. It is clarified that the Commission has endeavoured to align the depreciation schedule in line with CERC Tariff Regulations, 2014-19, however the stakeholders have ignored the fact that CERC has clarified different rate of depreciation for 12 years and balance useful life after 12 years based on the useful life of the fixed asset in the main regulation. The relevant extract from CERC Tariff Regulation 2014-19 is as follows:

"(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-II to these regulations for the assets of the generating station and transmission system:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets*".*

6. RECOVERY OF AGGREGATE REVENUE REQUIREMENT

VIEWS OF THE STAKEHOLDERS AND COMMISSION'S ANALYSIS

6.1 Stakeholders have suggested that:

a) The ASDM levied on a distribution utility on account of tripping of DTL transmission levies shall be reduced/adjusted in subsequent bills of the transmission utility (DTL) and not to be deducted in the ARR of distribution utilities.

b) Various factors to be considered for maximum normative rebate (i.e. 2%) for the purpose of allowance of net power purchase cost as follows:

(i) Consideration of 1 month Power Purchase Creditors for determination of working capital: it is clarified that that the Working Capital proposed for the retail supply business has only one month's power purchase cost (2 months revenue minus power purchase cost for one month) whereas the normal recovery cycle based on the Regulations is 2 months. Therefore, it is not justified to net out the power purchase cost with maximum rebate, which is given by the generator if the payment is made immediately on production of bill. Therefore, rebate as admissible for payment within 1 month to the generator should be considered and not the maximum normative rebate. The proposed regulation 118 is contrary to the APTEL judgment Under Section 61(c) and (e) of the EA 03, in determining the tariff, the Commission is required to be guided by principles rewarding efficiency in performance. As per these Draft Regulations, the distribution licensees are entitled to working capital cost assuming that payment of power procurement cost shall be made on the 30th day from the date of the bill. Thus, the normative working capital requirement sets the target level for efficiency of the distribution licensee in respect of the timelines for payments towards power procurement. However, the Draft Regulations seek to penalize the utility by deducting maximum rebate even despite the utility managing its finances within the funds made available under the Regulations and thereby meeting the standard of efficiency envisaged there-under in respect of management of finances. To such extent, the clause of maximum normative rebate in these Regulations are arbitrary and unfair.

(ii) The Hon'ble Appellate Tribunal for Electricity in Appeal No. 153 of 2009 (North Delhi Power Limited v. Delhi Electricity Regulatory Commission) dated 30.07.2010 dealt with the issue of whether rebate earned above 1% by the distribution licensee should be allowed to be treated as non-tariff income considering that the normative working capital only included power purchase cost for one month. The Hon'ble Tribunal noted the correlation between considering the rebate earned as revenue and the working capital allowed as follows:

" 34. … The Working Capital includes Power Purchase Cost for only one month. The generation company offers rebate of 2% on payment of presentation which takes place immediately after completion of the month. On the other hand the billing cycle of domestic consumers is bi-monthly and for Industrial and Commercial consumers taking supply at 11 KV and above it is monthly. The consumer also gets 15 days time for payment of bill after issue of bill. Thus there is mismatch between the receipt of payment from consumers and the payment to be made by distribution licensee for power purchase for getting 2% rebate. Applying the principle that all gains and losses on account of overachievement or underachievement in performance with respect to norms, have to be retained/borne by the distribution licensee, we hold that rebate over and above 1% cannot be considered non-tariff income for reducing the ARR. In view of the same, it has to be concluded that the rebate earned on early payment of power purchase cost cannot be deducted from the power purchase cost and rebate earned only up to 1% alone can be treated as part of non-tariff income. Therefore, the finding on this issue by the State Commission is contrary to the law and spirit of the MYT Regulations as it defeats the very purpose of allowing cost on normative basis. It is also contrary to the principle of allowing cost on normative basis of working capital. On the one hand, the State Commission has reduced one month power purchase payment from the working capital requirement and on the other hand it has been observed that if the Appellant is making the payment earlier, the benefit of entire rebate is used for reducing the power

purchase cost."

(iii) It is further submitted that in case of early recovery of receivables on account of change in billing cycle a rebate of 0.2% to 1.2% of the billing amount has to be allowed as a credit to the consumers which is not allowed as a pass through in ARR and therefore, such rebate is borne by the utility from its ROE. The Hon'ble Commission in the interest of consumers has penalized DISCOMs in case they shift billing cycle by their own choice vis-à-vis allowance of receivables of 2 months on normative basis. The same principle should be applied at the time of consideration of normative rebate for power purchase (i.e. if the Hon'ble Commission allows one month power purchase creditors in working capital than only 1% rebate should be considered). Stakeholders have suggested to modify Regulation as ***"****Distribution Licensee shall be allowed to recover the net cost of power purchase from long term sources whose PPAs are approved by the Commission, assuming normative rebate of 1% from each source, for supply to consumers.****"***

c) While approving the cost of power purchase, the implementation of "Merit Order Dispatch" is to be considered with Delhi SLDC's approval. In today's scenario Merit Order Violation" SLDC is not able to implement merit order scheduling on account of reasons mentioned below which results in disciplined DISCOMS such as Stakeholder being forced to incur huge financial losses on account of the same.

Some DISCOMs of Delhi, who are facing self-created power shortfall as a result of their power being regulated on account of non-payment to the Generators, insist for scheduling of power from other costly stations such as Dadri-1, Dadri-2 (Example, power from Aravali being regulated upon STAKEHOLDERS and hence they are more dependent upon the power from Dadri) and the same is being scheduled by them in an irrational manner (despite rates in short term markets being lower by almost 40% when compared with the cost of power from these stations) without getting consent from other DISCOMs of Delhi (like Stakeholder) and considering their position in the "Merit Order List". As the units of costly generating station keep on running as per the instructions of some DISCOMs, the same leads to forced scheduling of power to the non-consenting DISCOMs also. Running of such costly stations such as Dadri-1. Dadri-2 and Aravali, leads to violation of merit order dispatch resulting in backing down of cheaper stations like Sasan&Singrauli during several hours of the day. Stakeholder is facing a financial loss of around 24 lakhs per day only on account of sale of forcefully scheduled power from Dadri-1 &Dadri 2- in exchange at a lower rates on a daily basis. It may please be noted that such uneconomic scheduling of power from costly stations such as Dadri-1, Dadri-2 &Aravali in such a scenario where power is available in short term markets at a rate of Rs. 2.00 per/ unit (approx.) is clearly in violation of “Merit Order Dispatch” and is affecting the financial health of Stakeholder & other Delhi DISCOMs adversely.

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Further, CERC Tariff Regulations as amended in June, 2015, allow compensation to thermal power stations for reduced generation schedule below the technical minimum of 55% in terms of higher Station Heat Rate, Auxiliary Consumption and secondary fuel consumption. Therefore, sometimes it may be prudent to give a schedule corresponding to minimum technical limit specified by CERC out of merit order to avoid imposition of additional charges.

In view of the above, following points need to be considered while approving the power purchase cost of the DISCOMs in line with the principal of “Merit Order Dispatch”:

1. Force scheduling of power from any station should not be considered as merit order violation in case the power being scheduled to any DISCOM is without its prior consent and on account of requirement of power of other DISCOMs.
2. Force scheduling of power by NRLDC/Delhi SLDC in case of managing line loadings (CTU/STU) without any specific consent from the concerned beneficiary should not be considered as merit order violation.
3. Delhi GENCOs (Pragati& GT) &BTPS need to schedule power in view of transmission constraints and grid stability. Any such scheduling of power should not be considered as merit order violation.
4. Further, as proposal submitted by Stakeholder in the matter of Reallocation of Dadri & Aravali share amongst Delhi DISCOMS vide Stakeholder letters dated 28th July 2016, 8th September 2016 and 22nd November 2016, has not been concluded till date, any power being scheduled forcefully to Stakeholder from stations like Dadri-1, Dadri-2 &Aravali should not be

considered as merit order violation.

5. Forced booking of RRAS power by NRLDC/ SLDC should not be considered under merit order violation.
6. Any incremental schedule given to a thermal power station in variance from the merit order, to maintain technical minimum load, shall be permitted.
7. Any Late Payment surcharge paid by the Utility should be allowed as a part of Power Purchase Cost because sometime the utilities has to raised disputes before higher judicial authorities about unnecessary demand of GENCOs/TRANSCO's. it is further clarified that as the consumer as a large should get benefit from this therefore any LPSC paid to GENCO's/TRANSCO's should be allowed as a part of Power Purchase Cost.

122. To promote economic procurement of power as well as maximizing revenue from Sale of Surplus Power other than Banking Transactions, the Commission may specify the appropriate mechanism to incentivize/penalize the Distribution Licensee linked with the Power Exchange Rate:

Provided that the incentive arising on Sale Rate of Surplus Power over and above the Power Exchange Rate, shall be shared between Consumers and Distribution Licensee as specified by the Commission in the Tariff Order;

Provided further that any disincentive arising on Sale Rate of Surplus Power below the Power Exchange Rate shall be to the Distribution Licensee's account

a) Stakeholders have suggested certain modifications regarding incentivizing/penalizing the Distribution Licensee linked with the Power Exchange Rate as follows:

1. Periphery/Delivery Point at which the sale rate will be considered for the purpose of calculation of incentive/disincentive need to be same.
2. Any power disposed under UI should not be treated as sale of surplus power, because UI is an uncontrollable factor. Power may go under UI on account of many reasons such as force scheduling of power, load/demand reduction due to unpleasant weather conditions, tripping of transmission lines etc., which leads to a situation of underdrawal and is beyond the control of the Distribution

licensees. Any of the above occurrences should be excluded while fixing of sale rate targets.

3. Linking of Incentives/Disincentives with the exchange rate may be revisited in view of the following. As exchange rates of future are unpredictable, such benchmarking will act a as a deterrent for the bilateral sale of power. There may be occasions where utility sells power under competitive bidding/reverse auction based on the assessment of current and past exchange rates. However, going forward there is no guarantee that the rates discovered for bilateral sale will be more than the exchange rates of the same period. The rates in exchange are more dynamic and varies within a larger price band even for single day. In case any utility has tied up any bilateral sale well in advance and during the period of supply if exchange rates discovered are higher than the rate of previously contracted bilateral sale due to any reason, then the utility will become liable for disincentive despite being proactive in his approach for disposal of surplus power.
4. It is proposed that in place of exchange rates, which is unpredictable in nature, weighted average variable cost of long term generators in the portfolio of a utility should be considered as a benchmark for the purpose of calculating incentives/disincentives on a monthly basis. As a practice, Stakeholder endeavours to sell power over and above the variable cost of generating stations.
5. No sharing of profit/incentive on account of sale of surplus power should be done with the consumers as any loss/disincentive on account of the same is a direct loss to be borne by the utility. The Hon'ble Commission is requested to maintain a balance and incentivize/ disincentivizes the utility equally in the event of sale rate being more than the target rate/ being lower than the target rate.
   b) In case of any shortfall, Distribution utilities should be allowed the market clearing price of the certificate and not only the floor price. If price of REC is restricted at floor price and if REC is not available at floor price in the market then Stakeholder should not be held responsible for not fulfilling the RPO specified by the Commission.
   c) The PPAC formula does not include the variation in short term power purchase cost and power sale rate. Non-inclusion of these elements results in PPAC not reflecting the true variation in power purchase cost during the year.

Unlike many other utilities, the revenue from sale of surplus power in Delhi is substantial part of power purchase cost.

In this light, it is important to note that in the judgment pronounced on 10.02.2015, by the Hon'ble Appellate Tribunal in A. 171 of 2012, it has been held that difference in power sale rate should also be considered in PPAC formula, in the following words:

"The price obtained on a power exchange in a particular month (October 2011) cannot be the basis of projecting the average power sale price for the whole year. Similarly, the average power purchase cost which is mainly dependent on the long term Power Purchase Agreements will not be reflective of the short term price of power. The short term price of power will depend on the demand and availability of power in different periods of the year.

9.4 The Appellant has long term Power Purchase Agreements in which it has the liability to pay the fixed cost irrespective of the actual drawal. In our view the anticipated power surplus may be estimated month-wise and peak/other than peak period. For price of power, actual sale for price in short term market month-wise and peak/other than peak period basis during the previous year, trend of short term power sale during the current year etc., may be considered to project the anticipated short term sale price of surplus power during the control period. These guidelines may be kept in view by the Appellant while projecting the sale price of surplus power and the State Commission to consider while approving the same in future.

9.5 [****]

9.6 As regards the control period 2012-13 to 2014-15, the actual sale price of surplus power has to be trued up and the difference between the actual sale price and that allowed in the ARR (Rs.4 per unit) should be allowed with carrying cost to the Appellant by the State Commission. Accordingly, decided. "

Thus, it is abundantly clear that the Hon'ble Appellate Tribunal has provided guidelines regarding the accurate assumption of sale rate for the surplus power and the same cannot be higher than the actual rate of sale.

Tariff Policy dated 28.01.2016 under clause 8.2.1(7) for distribution provides that "the Appropriate Commission shall specify an appropriate price adjustment formula for recovery of costs, arising on account of variation in price of fuel, power purchase etc. on monthly/quarterly basis for recovery of all prudent costs of the generating company and the licensee". Therefore, the Regulations should provide for adjustment for variation in power purchase cost. In addition to above Variation in sale rate should also be considered in calculation of PPAC. Therefore, "Variation in Price of Fuel" should be replaced by "Variation in power purchase cost and power sale cost".

Spreading of PPAC will result in adverse impact on the cash flow of the Utility; hence, this clause is to be deleted. This clause is contrary to section 61(d) of the Act regarding recovery of cost of electricity in a reasonable manner, provision 8.2.1 of the Tariff Policy, order of the Appellate Tribunal in OP 1/2011 dated 11.11.2011 and basic intent of providing PPAC. It is also not in consumers' interest as the consumers will be loaded with avoidable carrying cost. The very purpose of having PPAC in place is that difference in the projected price and actual price of power purchase cost is not deferred and is passed on to the consumers on time so that consumers are not burdened with carrying cost, If carry forward of the PPAC is allowed, this defeats the purpose of PPAC mechanism in the tariff regulation itself.

6.2 Stakeholders have suggestedthat:

a) Energy Charge: In view of various instances of erroneous billing and formulation of Regional Energy Account (REA) by Central Transmission Utility, prepared without even consulting the DISCOMs, it is imperative that Regulation may be replaced with the following:

"The Transmission Licensee shall raise the bill for the transmission charge for a month based on the NATAF. Transmission system availability factor for a calendar month (TAFM) shall be calculated by the STU and shall be sent to the DISCOMs for their comments and observations. The revised TAFM shall be verified and certified by the SLDC. Adjustments, if any, shall be made on the

basis of the TAFM certified by the SLDC in next monthly billing."

b) ARR of Distribution Licensee This Regulation provides the various components of the ARR to be allowed to the Distribution Licensee. However, this ARR misses out three (3) very important components namely as follows:

    a. Provision for Bad and doubtful debts;
    b. Contribution to contingency reserves;
    c. Bank charges and Finance charges paid to the banks for availing any loans.

The distribution licensee neither has adequate security deposit nor has a provision for bad and doubtful debts to cover its financial position. While on the other hand, section 43 of the Electricity Act, 2003 imposes universal service obligations on the Distribution Licensee. Even though section 56 allows the distribution licensee to disconnect the supply for default on the part of the consumer to make payment of the amount due, there is a time lag of two and half months for effecting the disconnection during which time the supply has to be maintained. However, there is not an enough amount of security deposit available with the distribution licensee to compensate for the default by the consumer. Therefore, even if the Distribution Licensee does not receive payment of bills from any consumer the distribution licensee still has to organize its financial position in order to carry out the statutory obligation under section 43. This is inequitable and therefore either the Hon'ble Commission should provide for adequate security deposit based on the actual monthly billing amount of the consumer to cover at least two months of current billing. In the alternative, the Hon'ble Commission like many other SERCs provide for provision for bad and doubtful debts on a normative basis, i.e., 1.5-2% as percentage of total bill. The difference between the actual bad debts and the provision allowed in the ARR may be considered to the Licensee's account.

The contingency reserves are to meet expenses or recoup loss of profits arising out of accidents, strikes or other circumstances which the distribution licensee could not have prevented; to meet expenses on replacement or renewal of plant or works; and for payment of compensation required by law for which no other provision has been made. These are all the expenses which the distribution licensee has to incur. The reservation in the form of contingency reserve is made so that money is always available for meeting these expenses and the supply of electricity in not interrupted.

It is therefore our considered suggestion that contingency reserve should be provided for a component of ARR. It may also be noted that the Hon'ble Commission itself by its various Tariff Orders dated June 26, 2003, June 9, 2004, February 23, 2008, May 28, 2009 and August 26, 2011 provided for contingency reserve. Hence, even from the requirement to maintain consistency, the tariff regulations must provide for contingency reserves as a component of ARR.

It is well known that cost of debt includes financing cost such as processing fee, syndication fee, rate of interest, documentation fee, etc. as per the loan agreements. These bank charges are akin to a processing fee paid for taking a loan and such cost is beyond the control of the Distribution Licensee.

The finance charges is charged by the Banks/ Financial Institutions for completing various formalities like documentation, legal formalities, processing fees, service charges etc. Such charge is required to be paid upfront by the Distribution Licensee apart from the interest cost during the year .It is akin to a processing fee paid for taking a loan. Finance charges is a pre disbursement condition of the loan for any bank. The finance charges which are capitalized during the year are not directly attributable to specific assets/ capital expenditure incurred during the year. In fact the funds are borrowed generally for capex purposes and related borrowing costs are capitalized as per the requirements of Clause-12 of AS-16 which states as under:

> *"12. To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be determined by applying a capitalisation rate to the expenditure on that asset. The capitalisation rate should be the weighted average of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs capitalised during a period should not exceed the amount of borrowing costs incurred during that period."*

However the finance charges are not being capitalized and are charged to Profit and Loss Account as finance costs. The practice adopted by the Distribution Licensee regarding borrowing costs, i.e., syndication fees and finance charges etc. is in line with that followed by DISCOMs operating in other states.It is mandatory for any firm or company to pay processing fees, documentation charges, guarantee fees etc. for the requisite amount of loan to be sanctioned. The finance charges incurred are neither factored in A&G Expenses nor allowed as a part of Interest charges in the ARR. Other State Electricity Regulatory Hon'ble Commission also allow the borrowing cost, i.e., syndication fees or borrowing charges separately in addition to the interest charges on loan. Other SERCs viz. CSERC, MERC, TNERC, RERC, HERC etc. are also providing the same.

Further, the charges incurred by DISCOMs on account of LC, gateway charges for online transactions. Etc shall also be allowed in the ARR.

It is further submitted that the energy distribution Sector is operating on cost plus regime. Any costs incurred by the Licensee to borrow funds from the market ought to be allowed in its ARR otherwise the Licensee would be penalized without any fault of its own. The absence of providing such costs would make the regulations, impractical, arbitrary and ultra-vires the principle of Section-61 of EA 2003.

c) Incentive/ Dis-incentive for sale of surplus power: Instances of surplus power being rendered with the Distribution Licensee is totally beyond its control. While disposing of the surplus power, the Licensee may earn an incentive or suffer a dis-incentive vis-à-vis the power exchange rate. The Regulation makes an imbalance by requiring the Licensee to share with the consumer the incentive but not the dis-incentive. The Regulation provides that the dis-incentive arising out of the sale rate of surplus power below the power exchange rate shall be to the Distribution Licensee's account.

The said Regulation is contrary to the various factors provided for in Section 61 of the Electricity Act, 2003 which the SERCs are mandated to be guided by. Some of these factors are: (a. that distribution of electricity is conducted on commercial principles; b. factors which would encourage efficiency). Apart from the above, there seems to be no basis in law for allowing the consumers to share the incentive but not to share the dis-incentive.

Further the Licensee tries to forecast its demand on a prudent and professional basis, keeping in mind the directions issued by the SLDC, past demand profile, seasonal/climatic variations, planned outages in the system and projections prepared by the Central Electricity Authority (hereinafter referred to as "CEA"), Indian Meteorological Department forecast, and NRPC methodology. As is inherent with any projection, the same is only estimation, which cannot be done with mathematical precision, and the actual situation may vary. Among various things that impact the projections on a short term basis, are unseasonal variations or changes on a day to day basis, which cannot be forecasted or provided for in the long term projections done by the Licensee. However, the Licensee tries to even deal with any surplus or shortfall on a real time basis by procuring or disposing off power so as to ensure that it is able to meet the demand requirements of its distribution area on a real time basis as well as remain compliant with the Power Directions direction from the Hon'ble Commission that it should not have an unmet demand greater than 1% of the total demand serviced, vide direction dated 21.10.2009. Therefore, the Licensee has to create a sufficient buffer to ensure that it does not fall foul of the Power Directions as well as be able to meet the requirements of its consumers. It is pertinent to note that requirements similar to the Power Directions does not exists outside of Delhi and therefore the attempts of the Licensee in procuring power and disposing off the same get more challenging than what would be faced by any other distribution licensee in the country. Given the inherent character of electricity, namely, that it cannot be stored, the Licensee undertakes various commercial arrangements to ensure that it has power available for its demand when such demand arises and in case the demand does not materialize for reasons beyond its control, to dispose the same off in a prudent manner. Also Seasonality as well as history of usage has a major impact on the demand for power. For effective management of surplus/shortfall, the Licensee is required to take decisions on a seasonal basis. The opportunities for purchase and sale of power through banking transactions are not available on a specific time-slot basis. Thus, even though the power requirement for the Licensee may be only during specific time-slots, contracts for such supply do not normally exist in the market for these specific slots, and the Licensee is constrained to procure RTC power or power on a peak period basis, so as to ensure 100% availability, in order to remain compliant with the Power Directions.

Moreover the sale of power is entirely governed by DERC short term Power Guidelines 2010 and also through DEEP portal. Therefore the price of sale of power is market driven and cannot be controlled by the DISCOMs.
Even the objective of introduction of Reverse Auction is for reduction in the rates, hence there are very remote chances of making profit out of Sales.

Therefore, the aforesaid Regulation is inequitable and unlawful.

d) Penalty for non-fulfilment of RPO targets the proposed Regulation 123 is ex-facie arbitrary. In as much as though it seeks to permit the procurement of Renewal Energy Certificate to make up for the shortfall in fulfilment of RPO, the proposed Regulation mandates that the DISCOM would be entitled to recover only the floor price of the REC and not the price at which the REC was actually purchased. This is inherently contrary and violative of Article 14.

Further the purchase of REC is permitted by the CERC's REC Regulation as an alternative to procuring Renewal Energy. Hence the CERC's REC Regulation completely equates Renewal Energy and Renewal Energy Certificates. The proposed Regulation seeks to carve out an exception, in that, for the purpose of procurement Renewal Energy is equated with the Renewal Energy Certificate but for the purpose of recovery of cost while the cost of renewal energy would be reimbursed at the purchase price, the cost of renewal energy certificate will not be reimbursed at its purchase price. Hence the said Regulation dilutes the CERC's REC Regulations.

It is further submitted that, as a well known fact, the CERC is struggling to improve the volume of transactions in the REC market. The proposed Regulation would effectively negate any transaction in the REC market by the DISCOMs.

It is further submitted that the Electricity Act, 2003 contains provisions for the imposition of penalty for non compliance of the orders and directions of the Commission. By virtue of the proposed Regulations the Hon'ble Commission could not seek to add to or amend those powers available under the Act. It is settled law that the delegated legislation like the proposed Regulation are in aid to and to support the principal legislation, namely the Electricity Act. By recourse to framing the proposed Regulation, the Commission could not arrogate to itself a power which it does not possess under the Act. This has been expressly held by the Supreme Court in PNGRB Vs IGL.

The provision in the proposed Regulation that the Commission will specify the penalty for non fulfilment of RPO target in the tariff order would clearly be an instance of the Regulation violating the aforesaid well settled legal principle.

e) Maximum Normative Rebate: Instead of “maximum normative rebate”, the actual rebate available from each source should be provided for as part of cost of power procurement of the licensee. Maximum normative rebate cannot be deducted from power purchase cost due to the following reasons:

i. All other State Commissions consider power purchase cost including rebate as uncontrollable item. The working capital norms provided by other SERCs are better than the norms proposed for DISCOMs in the Draft Tariff Regulations whereas actual rebate availed by DISCOMs is considered instead of normative rebate as proposed in Draft Tariff Regulations.

ii. The concept of normative rebate is based on assumptions that the system is perfect as under:

   a. There is no creation of Regulatory Asset.

   b. The Hon’ble Commission has timely implemented all the Judgments of Hon’ble ATE.

   c. There is no major variation in power purchase cost.

   d. PPAC is timely allowed.

   e. All consumers are paying on time.

   None of the above conditions holds true in case of the Petitioner. In fact, in any other state also, no DISCOM has been able to avail maximum normative rebate when aforesaid conditions are not met.

iii. 1% rebate has already been factored in norms for working capital given at Regulation-181 of draft regulations. Since the quantum of working capital has been reduced by power purchase cost of 1 month, the Hon’ble Commission is assuming that 1 month credit will be given by Generation and Transmission Licensee and as per CERC Tariff Regulations if the DISCOMs are availing 1 month credit they will be entitled to 1% rebate. Hence maximum 1% rebate is available at best for Distribution Licensees. In case 2% maximum normative rebate is considered then the consumers will be doubly benefitted firstly by way of reduction in working capital requirement of Licensee by 1 month power purchase cost assuming distribution licensees are paying on time and secondly by way of 2% maximum normative rebate whereas the same is not available.

iv. ATE Judgment dated July 30, 2010 (Appeal 153 of 2009) clearly specifies that 1% rebate is at best available for DISCOMs as per the norms given for working capital. Regulation-181 provides exactly same working capital norms which was provided in MYT Regulations, 2007 and were subject matter of dispute in Appeal 153 of 2009. Such provision of draft MYT Regulation is a clear circumvention of the directions given by ATE.

v. Parity is not being maintained in terms of provision of rebate/ LPSC in case of generating companies, transmission companies and distribution companies. Same is evident from the table given below:

S. No	Particulars	GENCO	TRANSCO	DISCOM
1	Working capital	2 months receivables	2 months receivables	2 months receivables less 1 month pp cost
2	Rebate available for DISCOMs as per CERC Regulations			
A	If payment made on presentation of bills	2%	2%	2%
B	If payment made within 1 month	1%	1%	2%
C	If payment made within 2 months	0%	0%	2%
D	If payment made beyond 2 months	LPSC of 1.50% per month levied on delay in PP bills by DISCOMs	LPSC of 1.50% per month levied on delay in PP bills by DISCOMs	LPSC on pro-rata basis recovered from consumer (Financing cost of LPSC which is almost 0.02% per month as shown in the illustration below

Illustration:

Suppose amount billed by GENCOs to DISCOMs is Rs. 5000 per month and same amount is raised by DISCOMs

S. No	Particulars	DISCOMs	GENCOs	Remarks
1	Amount billed	5000	5000	
2	10 days of delay	2	75	DISCOMs= Amount billed X 1.5% X No. of days/ 365 GENCOs= Amount billed X 1.5%
3	DERC treatment			
A	Principal amount	11		Amount billed/ 18
B	Rate of Carrying Cost	10%		Assumed
C	Carrying cost	1.14		a x b
D	Passed on to consumer	0.91	0	a-c
E	Retained by Utility	1.14	75	c=e
4	**Effective rate of FC**	**0.02%**	**1.50%**	**Amount retained by utility/ (Amount billed)**

As evident from above, the provision of rebate and LPSC are not in line at all for GENCOs/TRANSCOs and DISCOMs. Therefore the actual rebate ought to be considered while truing-up the ARR of the DISCOMs.

f) PPAC: The full bench of the APTEL has in OP1 of 2011 held that the power purchase cost variation should be given as soon as possible so as to not burden the consumer through a payment for the cost subsequently, and that too with carrying cost. This can be ensured by including all cost variations of power purchase in the PPAC formula which in turn would enable the Distribution Licensee to recover its expenses on a quarterly basis.

Since the revised draft does not include all cost variations of power purchase in the PPAC formula namely short term power purchase cost and revenue from sale of surplus power, the said draft Regulations do not carry out the mandate laid down in OP1 of 2011.

Also variation on account of bilateral transaction following Short term guidelines or through e-portal or power exchange is transparent in nature and does not consume considerable time in terms of prudence check. Such transaction ought to be allowed on actual in PPAC Formulae.

Hence, it is our considered suggestion that any cost variations of power purchase and revenue from sale of surplus power ought to be included in the PPAC formula. This will not only secure cash flow at the hands of the Distribution Licensee but will also lessen the burden of carrying cost on the consumers, thus balancing the interest of both the stakeholders.

6.3 Stakeholdershave suggested that consideration of period for arriving the moving average is not defined i.e. whether the state commission will be arriving moving average for the fuel prices of all previous months of the financial year including the months preceding to the month of tariff determination date of the tariff determination year or 3 months prior to date of the year of tariff determination as given in CERC regulation, 2014. There is no need for price adjustment formula.

6.4 Sh. Saurabh Gandhi, Sh. Sanjay Gupta and Sh. H.M. Sharma have suggested that power purchase adjustment charges must be restricted only on fuel surcharge price variation only according to the provisions of 62(4) of the EA 2003 only for long term PPA of generation. No PPAC is to be payable on variation in fixed part of generation tariff and transmission tariff which is not allowable as per law. There proposal of draft regulation is ultra virus. The formula must be restricted only for the variable part. While considering the PPAC applications from the distribution licenses, it is also requirement of the commission to specify the format under which it must be made mandatory to provide the amount actually paid to the generating companies, transmission licenses, SLDC surcharges, govt dues etc failing of which no PPAC is admissible to the distribution licenses.

Commission's Views

6.5 **<u>Power Purchase Rebate:</u>** The Commission is of the view that Tariff Regulations, 2017 provides 1 month Power Purchase Cost in computation of requirement of Working Capital to the Distribution Licensees. The Distribution Licensees are required to pay the Power Purchase Cost in the subsequent months within 2 days, in order to avail maximum normative rebate, of the date of the Power Purchase bills raised by GENCOs/TRANSCOs. Therefore, the Distribution Licensees are in a position to pay GENCOs/TRANSCOs immediately from the provision of the Working Capital. During the subsequent months, the Distribution Licensees shall collect the Power Purchase Cost through tariff from consumers to pay their Power Purchase bills.

6.6 The same provision for deduction of maximum rebate for true up of Power Purchase Cost was also there indicated in Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 which had already been upheld by the Hon'ble High Court of Delhi in W.P.(C) 2203/2012 & C.M. No.4756/2012 vide judgement dated 29/07/2016. The relevant extract from the Judgement is as follows:

"34. Next, the petitioner complained that in terms of Regulation 5.24, it is assumed that the petitioner would avail the 2% rebate on power purchase costs allowed to a distribution licensee on immediate payment of purchase bills. It was submitted on behalf of the petitioner that even though the working capital has been determined on the basis that bills for purchase of electricity would be paid within a period of one month, nonetheless, the impugned Regulations assumed availing of rebate of 2% which is only possible if the bills are paid by a letter of credit. It is submitted that to the aforesaid extent, the impugned Regulations are contrary to Section 61(c) and 61(e) of the Act which required the Commission to be guided by the principle of rewarding efficiency in performance while determining the tariff. Mr Sanjay Jain countered the aforesaid submissions by pointing out that the bills for purchase of electricity are raised only at the end of the month and, ***therefore, the petitioner is expected to pay the same immediately thereafter and there is no inconsistency in the Regulations***

...

42. The petition is dismissed with the aforesaid observations. The pending application also stands disposed of.".

6.7 **<u>Merit Order Dispatch:</u>** The Commission is of the view that as per the Merit Order Dispatch principle, the plants are stacked in least cost approach of their Variable Cost. The demand is then met through stations in ascending order of their Variable

Cost subject to various Technical Constraints and the balance power from the left over stations after meeting the required demand, are not scheduled. Such balance power from the left over stations can be backed down considering Technical Constraints and resultant surplus power can be avoided.

Tariff Regulations, 2017 provides that Merit Order Dispatch principle should be followed by the Distribution Licensees and any Forced Scheduling (certified by Delhi SLDC), due to reasons not attributable to the Distribution Licensees, shall be part of the Power Purchase Cost. The relevant extract of the Tariff Regulations, 2017 is as follows:

> *" 152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:*
>
> *(a) Variation in revenue and sales of the distribution licensee based on projected revenue and sales vis-a-vis actual revenue and sales;*
>
> *(b) Variation in long term power purchase quantum and cost of the distribution licensee based on merit order dispatch principle of projected long term power purchase quantum and cost vis-a-vis actual long term power purchase quantum and cost:*
>
> *Provided that the distribution licensee shall submit report from State Load Despatch Centre (SLDC) for instances of forced scheduling due to the reasons not attributable to the Distribution licensee for scrutiny of dispatch of power in Delhi on merit order basis in it's area of supply;"*

6.8 **<u>Sale Rate of Surplus Power:</u>** The Commission had made observations on several occasions in the Tariff Orders to the Distribution licensees for optimisation of Power Purchase Cost related to better realisation towards Sale Rate of Surplus Power. The relevant extract of the Tariff Order dtd. 29/09/2015 is as follows:

" 3.280 .....The Commission observed that there was scope for better management of the process for short term sale of the surplus power so as to significantly promote the interest of the consumers. The Commission is of the view that Petitioner should endeavor to maximize revenue from sale of surplus power and enter into increased banking transactions. Competitive bids by giving vide publication, have to be floated for sale of surplus power at better rate. .....

....

Further it is observed that the DISCOMs have also not made serious efforts to avoid short term Power Purchase/Sale which has been observed due to overlapping in Banking transactions (forward/backward) and scheduling of power without considering merit order dispatch. It is pertinent to state that in case of backing down of generation plants due to scheduling done by Distribution Licensee, the short term Sale of Surplus power could have been avoided leading to optimisation of power purchase cost. The Commission observed that DISCOM wise scheduling is already in place in Delhi SLDC."

6.9 In order to promote optimisation of Power Purchase Cost related to better realisation towards Sale Rate of Surplus Power, the Commission has provided the mechanism for Incentive/Dis-incentive to the Distribution Licensees towards Sale of Surplus Power in the Tariff Regulations, 2017. The Distribution Licensees had suggested that due to dynamic pricing at Power Exchanges based on the demand - supply scenario prevailing at relevant slot, it is impossible to forecast the rate of sale of surplus in advance due to un-predictable nature of Power Exchange Rate and requested to modify the draft Regulations from Power Exchange Rate to Variable Cost of their Power Portfolio. The Commission has observed that in absence of benchmark rate of Sale Rate of Surplus Power at Power Exchange, the Distribution Licensees are not in position to compare their current sale rate discovered through Bilateral or Banking. Therefore, the Commission has modified benchmarking of Sale Rate of Surplus Power by considering next higher variable cost of the generating stations from which power is surplus after meeting the demand in order to compute the Incentive/Dis-incentive to the Distribution Licensees. The relevant extract of the Tariff Regulations, 2017 is as follows:

" 123. To promote economical procurement of power as well as maximizing revenue from Sale of Surplus Power the distribution licensee shall ensure the cost benefit for rate of sale of surplus power in the relevant slots through Banking, Bilateral and Power Exchange transactions other than the forced scheduling, as certified by the SLDC, in comparison with the next higher variable cost of the generating stations from which power is surplus after meeting the demand of power in it's area of

supply;"

6.10 **<u>Fuel prices for GENCOs:</u>** The Commission is of the view that the landed fuel cost of primary fuel and secondary fuel for tariff determination may be based on 3 months actual weighted moving average cost of respective fuel before the start of the tariff period prior to date of the year of tariff determination for existing and new generating stations.

6.11 **<u>Power Purchase Cost Adjustment Charges (PPAC) for DISCOMs:</u>** There are contrarian view of different stakeholders for items to be included for computation of Power Purchase Cost Adjustment Charges. Some of the Stakeholders have suggested that only variation in energy charges for power procured through long term sources should be considered for PPAC whereas the Distribution Licensees has suggested that even variation in short term transactions including sale of surplus power should be considered as part of PPAC computation.

6.12 Hon'ble APTEL in its judgement in OP No. 1 of 2011 dtd. 11/11/2011 has also directed SERCs to provide PPAC in order to compensate the distribution companies for the increase in cost of power procurement during the financial year. The relevant extract of the said Judgment is as follows:

"In view of the present precarious financial conditions of the distribution companies, it would be necessary that the State Commissions also to provide for Power Purchase Cost Adjustment Formula as intended in the section 62(4) of the Act to compensate the distribution companies for the increase in cost of power procurement during the financial year."

6.13 The Commission has also considered the incremental cost of power procurement through long term sources on quarterly basis in line with the above direction of Hon'ble APTEL. It is clarified that loss on sale of surplus power and cost or power procurement through short term sources are part of the prudence check exercise being conducted by the Commission at the time of True Up of ARR for the relevant year. Therefore to make a balance between the suggestion made by the Distribution licensees and individual stakeholders the commission has made provision of PPAC in Tariff Regulations, 2017 as follows:

"POWER PURCHASE COST ADJUSTMENT CHARGES

134. The Distribution Licensee shall be allowed to recover the incremental Power Procurement Cost on quarterly basis, over and above the Power Procurement Cost approved in the Tariff Order of the relevant year, incurred due to the following:

(a) Variation in Price of Fuel from long term sources of Generation;
(b) Variation in Fixed Cost on account of Regulatory Orders from long term sources of Generation;
(c) Variation in Transmission Charges.
135. The Commission shall specify the detailed formula and procedure for recovery of such incremental Power Procurement Cost as Power Purchase Cost Adjustment Charges (PPAC) formula in the Tariff Order;

136. To avoid the tariff shock for consumers, the Commission may carry forward PPAC of one quarter into more than one quarter on provisional basis;"

6.14 **REC-RPO:** The Commission is of the view Floor price of the Renewable Energy Certificates (REC) shall be considered for computation of Power Purchase Cost for projection purpose only. It is observed that the price of REC at the Power Exchanges are being generally traded at Floor price and not even nearer to Forbearance price fixed by CERC for the relevant Financial Year.

6.15 Further, it is also clarified that the actual expenses for purchase of Renewable Energy Certificates shall be trued up by the Commission based on the actual cost of procurement. The relevant extracts of the Tariff Regulations, 2017 is as follows:

" 124. The cost of Renewable Purchase Obligation (RPO) of the Distribution Licensee shall be computed on the basis of approved cost of power procurement from Renewable Energy Sources as specified in the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012:

Provided that any projected shortfall, in procurement of power from Renewable Energy Sources to meet the RPO shall be computed at the Floor Price of Renewable Energy Certificates (RECs) notified by Central Electricity Regulatory

Commission for the relevant year:

Provided further that the actual expenses for procurement of power from Renewable Energy Sources and purchase of Renewable Energy Certificates shall be trued up by the Commission:

Provided also that the Commission will specify the targets for Solar and Non Solar RPO in the Business Plan Regulations for a specific Control Period:

Provided also that the penalty for non fulfilment of RPO targets, as specified by the Commission in its Tariff Order, shall be adjusted in the ARR during True up of the relevant Financial Year."

6.16 **Additional Deviation Settlement Mechanism (Additional Unscheduled Interchange)**: The Commission is of the view that the Additional Deviation Settlement Mechanism Charges (ADSM) levied to the Distribution Licensees on account of Forced Scheduling (certified by Delhi SLDC) shall be allowed in the ARR of the Distribution Licensees. The relevant extracts of the Tariff Regulations, 2017 is as follows:

" 152 (c)

....

Provided that any Additional/Penal Deviation Settlement Mechanism (Unscheduled Interchange) Charges other than forced scheduling of power as certified by SLDC paid by the Distribution Licensee shall not be allowed in Power Purchase Cost;"

6.17 **Bank Charges/Finance Charges:** The Commission is of the view that the expenses incurred upto CoD for arranging finances, the same are to be treated as part of Project Development expenses while approving the Capital Cost based on the prudence check. It is clarified that any Bank Charges/Finance Charges towards refinancing of the loan shall be adjusted while computation of net benefit accrued due to such refinancing of the loan and shall not be part of the ARR. It is further clarified that any Bank Charges/Finance Charges towards availing the loan for Working Capital shall be part of computation of effective rate of interest for the Working Capital loan of the relevant Year. Bank Charges for collection of the bills are already part of A&G expenses of the Distribution Licensees. Therefore, Commission has not provided separate provision for Bank Charges/Finance Charges in Tariff Regulations, 2017.

6.18 **Provision for Bad debts:** The Commission is of the view that the target of collection efficiency shall be fixed with a scope of provisions for bad/doubtful debts in the Business Plan Regulations. Therefore, no separate Provision for Bad debts is required in Tariff Regulations, 2017.

6.19 **Provision for Contingency Reserve:** The Commission is of the view that the concept of creation of Contingency Reserve is to ensure that such amount is readily available to meet certain emergency requirements, without having to approach the consumers for allowance of the expenses including avoidance of creation of Regulatory Assets. It is observed that there is accumulated Revenue Gap (Regulatory Assets) in the regulated accounts of the Distribution Licensees since past few years. Therefore, mandatory provision for contribution into Contingency Reserve shall be an additional burden to the consumers.

7. NORMS OF OPERATION AND TRUING UP VIEWS OF THE STAKEHOLDERS AND COMMISSION'S ANALYSIS

Stakeholder's Comments

7.1 Stakeholders have suggested that:

a) Banking needs to be excluded from the scope of the competitive bidding guidelines. Banking is generally based on the mutual agreement between two utilities and hence, some sort of flexibility must be available with both the utilities to conclude any banking agreement. As a general practice it has been observed that majority of the utilities do not come with a banking tender. Such banking arrangements are finalized only on the basis of negotiation and mutual discussions. However, trading margin applicable for such banking transactions should be as per CERC (Fixation of Trading Margin) Regulations, 2010.

b) No disallowance should be applicable in case of case of overlapping sale/purchase/Banking transactions. Every export/ import transaction is based on a definite set of assumptions, actual real time issues and information available at a particular point of time. The same can be understood with the following example. Utility having a winter surplus of 400 MW during night Hours (0-6 & 20-24 Hrs.) for which there are no buyers and around 300 MW to 350 MW during remaining hours (06-20 Hrs.) for which buyers are available. If utility disposes of its day surplus power of 300 MW separately, then the utility will be left with night off peak surplus of 400 MW which it will have to sell in exchange at extremely low rates leading to increase in Power Purchase for the end consumers... To dispose of its night surplus optimally, it is beneficial for him to export entire 400 MW on a RTC basis in banking and arrange the minor shortfall of power from short term market through banking/bilateral transactions during peak hours on a day ahead basis/ firm basis for a limited time period. Such transactions which are aimed towards the overall benefit of the consumers cannot be considered as an overlapping transaction. Further, the short-term power management is dynamic in nature and many a times the utility needs to take some decisions on very short notice of time. For example any utility has firmed up an export of 100 MW RTC power for particular month in advance and in case of a real time generator outage it imports again 50 MW of power for certain time slots for a limited time. The necessity of import was situational (on account of generation outage) and the same should not be considered as an overlapping transaction. Additionally there are instances when a reallocated power is suddenly returned back to the original beneficiary (e.g. Aravali reallocation to Southern States was changed before the end of initial approved period, BTPS reallocation to Madhya Pradesh was changed before the end of initial approved period), warranting change in bilateral/ export scenario of a utility. Similarly consumers opting for open access can also lead to change in the utility's bilateral scenario.

c) Even in case of transactions planned in advance, No disallowance should be applicable in case of case of overlapping sale/purchase transactions. Any RTC (00:00 to 24:00 Hrs.) import should not be considered as an overlapping transaction when compared to an export transaction done for few hours or vice versa. Sometimes such transaction may be more beneficial and cost effective for the utility and its consumers. For example, in overall benefit of the consumers of Delhi, the Hon'ble commission had approved the export by Stakeholder to UPPCL during 03:00 to 06:00 hours in the months of May 2016 to September 2016, wherein Stakeholder was getting return banking import from J&K, GRIDCO & Chhattisgarh on RTC /slot wise basis during the same months.

d) Any additional / penal UI charges paid by the distribution licenses as a result of force scheduling of power/ Generator outage/ Transmission line outage should not be disallowed from the power purchase cost because such penal charges are not under the control of the distribution licensee.

e) While abiding with the MoP guidelines and DERC regulations in the matter of short term sale purchase of power, we submit that to provide some operational flexibility and arrange power for possible contingencies, a time period of upto 15 days may be allowed by Hon'ble Commission as exclusion to the mandated process for sale/ purchase of power. Any sale purchase transaction done for a period of up to 15 days should be excluded from the scope of DERC short term sale/ purchase regulations. Banking and bilateral transactions are generally planned well in advance and the power scheduled under the same cannot be curtailed on real time basis. So in case of real time power shortage on account of generator outage or any other reason not attributable to the utility, to efficiently cater to the demand of its consumers, arrangement of power on a short notice becomes a must to avoid load shedding.

f) Power disposed under UI should not be treated as sale of surplus power, because UI is an uncontrollable factor. Power may go under UI on account of many reasons such as force scheduling of power, load/demand reduction due to unpleasant whether conditions, tripping of transmission lines etc. which leads to a situation of under drawl and is beyond the control of the Distribution licensees. Any of the above occurrences should be excluded while fixing of sale rate targets.

g) There should be a true up of O&M expenses over and above the normative levels for the statutory levies, additional expenses incurred on the direction/approval of the Commission and other expenses which were not a part of the base year expense.

h) Working Capital is derived on the basis of the power purchase and sales both of which are uncontrollable in nature, therefore working capital should be considered as uncontrollable to that extent. Further, no bank allows 100% financing through debt, therefore, the financing of working capital should consider both equity and debt portion while allowing interest on working capital. The interest on working capital rate should be also be trued up in line with the truing up guidelines as mentioned in the regulations.

i) The draft Regulations has mentioned the true up of depreciation, ROE and the interest on loan but does not mention anything on the true up of working capital. It may be noted that working capital is derived from sales and power purchase, both are uncontrollable parameters. Therefore, Hon'ble Commission is requested to kindly true up the interest on working capital at the time of true up. Further, no bank allows 100% financing through debt, therefore, the financing of working capital should consider both equity and debt portion while allowing interest on working capital. The interest on working capital rate should be also be trued up in line with the truing up guidelines as mentioned in the regulations.

j) The National Tariff policy provides for "*The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:*

a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;

b. Recovery of outstanding Regulatory Assets along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same."

As the State Commission has already given its proposal for amortization of Regulatory Assets before the Hon'ble Supreme Court, therefore the same amortization plan should be followed strictly. According to proposed provision of the Hon'ble Commission, it allows deferment even beyond a full control period (it could effectively mean pushing the existing Regulatory Asset to a period beyond the next MYT period; therefore the Hon'ble Commission should not institutionalize a mechanism for deferring recovery by skipping an entire control period which is also against the National Tariff Policy and make financing if not impossible then extremely difficult. Further, deficit recovery surcharge is being allowed to recover the carrying cost as allowed by the Hon'ble Commission therefore, any collection towards such 8% deficit revenue surcharge need to be first adjusted from the carrying cost for the year and if any surplus is available then only can be adjusted from the principal component of the gap.

k) DSM charges being governed by the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related matters) Regulations, 2014, as amended from time to time. However, it is pertinent to mention that, deviation charges incurred by the utility on account of parameters those are beyond their control need to be approved by the Hon'ble Commission. Any DSM/ADSM charges being incurred by the utility on account of outage/tripping of transmission line (Interstate/Intrastate), force scheduling of power, Generation Outage etc. or any other reason that is beyond the control of the utility should be approved in the ARR. The said proposed clause is conferring unrestricted, wide powers in terms of defining the scope and ambit of the power of the Hon'ble Commission. Any power conferred upon the commission to modify the already existing performance parameters in the Business Plan Order has to be in consonance with views, concerns and practical ground realities faced by Licensee. There is no justification or cogent reason, circumstances have been provided as to when such discretion and modification may be effected or exercised by the Commission, except for *"increasing the efficiency and evolve mechanism for incentivising/penalising the Utility based on actual performance."* Moreover, the Ld. Commission has not built in the proposed regulation any opportunity of hearing or taking the views of Stakeholders, either prior to, or at any other time of specifying such *"additional controllable performance parameter/(s)"*. The reserving of such power with the Commission is unusual, especially in light of there being no consultation with the potentially affected stakeholders who might face any adverse impact due to such exercise. Any such additional parameters, which might be introduced later, must be provided in the regulation itself. It is established law that there must certainty, predictability and consistency in law. In the absence of the specification of these criterions, the stakeholders are left in the dark and shall have no knowledge, while running their businesses, as to what they might be doing that might lead to their penalisation if the Hon'ble Commission deems fit. The Hon'ble Commission has to ensure the commercial interests of the Licensee.

l) There are certain observations in the formula for computation for the over or underachievement of the Distribution loss Target i.e.,

a) Consideration of APPC instead of ABR

b) Lower sharing in saving of MU's

The impact of the same can be explained as given below table:

Particulars	**PPAC**
Target Distribution Loss	20%
Target Billed Units	800
Target Input	1000
Actual Billed Units	800
Actual Distribution Loss	15%
Actual Input	941
Saving in Units = (1000-941)	59
Saving in units as per DERC for sharing	47

Particulars	**Target**	**Actual**
Average Power Purchase Cost (PPAC)		Rs 5/unit
Average Billed Rate		Rs 10/unit
Target Distribution Loss	15%	
Actual Distribution Loss Level		20%
Unit Input	1000	1000
Billed Units	850	800
Revenue Billed @ ABR of Rs 10 unit	8500	8000
Differential Revenue from the target level	(500)	
Recovery from Distribution unit	If we recovered penalty for 40 Mu @ 5/ unit(i.e. on PP cost) = Rs 200 then the amount recovered from DISCOM is lower than the estimated amount of recovery of Rs. 500 (i.e. @ 10/unit) as estimated while	
[Actual billed units*(TDL – ADL)]		
800*(15%-20%)} = (40) MUs		

Particulars	PPAC
Based on Proposed formula	
[Actual billed units*(TDL –ADL)]	
941*(20%-15%)	
Loss of MU's in Sharing	12

Particulars	Target	Actual
	fixation of Tariff	

It is evident from the above example that

1. The average billing rate should be considered in place of power purchase per unit while computing the incentive/ penalty. The reason of the same has already been clarified in above example where in case of underachievement the amount recovered from DISCOM using power purchase rate is lower than the estimated amount of recovery.

2. The another reason is that in addition to PP cost there are other associated cost (i.e. O&M , ORCE, Income Tax) which are additionally recovered through increase in billing efficiency. In other words increase in billing efficiency will reduce the per unit fixed cost ultimately saving to the consumers.

3. It is further clarified that DISCOMS has allotted long term PPA's and according to PPA's DISCOMs have limited scope of scheduling based on merit order dispatch and therefore have to compulsorily purchase the power. Due to reduction in distribution loss, utilities will be able to sell additional units through bilateral arrangement, thereby recovered additional revenue from the sale of said surplus units.

4. The formula for computation of saving in MU's for the purpose of incentive/ disincentive also needs to be revised.

Target level input needs to be calculated using the actual units billed with the Distribution loss target and the difference between the Target level Input and the Actual Input should considered for the computation of any over/under achievement.

A. Saving in Units = Actual billed units/(1- Target Distribution Loss) – Actual billed units/(1- Actual Distribution Loss

5. Based on the above, Proposed Formula is given below = A* ABR *106

whereas

A. Saving in Units = Actual billed units/(1- Target Distribution Loss) – Actual billed units/(1- Actual Distribution Loss

m) Stakeholder has already achieved AT&C loss level where the sustenance of the itself is a great challenge, therefore, the Delhi Commission must allow "sustenance allowance" to the licensee over and above on the trajectory as set by the Delhi Commission itself. Further as the AT&C loss level have already reached at such a level where scope of further reduction in the same is almost negligible or the scope of earning over achievement incentive is very small in terms of absolute amount, therefore, overachievement in Distribution loss should be shared in the ratio of 2/3 and 1/3 between utility and consumers over and above sustenance level incentive. This is worthwhile to mention that at the current level of AT&C loss, a reduction of 1/10 percentile in Distribution loss requires a high level of O&M expenses which if not incentivised adequately, will discourage the utility to over perform. There should be parity in the principle and any financial impact on account of overachievement as well as underachievement should be shared in the same ratio between the utility and the consumers. In case of underperformance loss target entire loss will be to the account of licensee Utility, therefore in case of over-achievement the entire profit should be to the licensee Utility account. Hence, the profit sharing ration of 50:50 may be dispensed with upto the level of 100% may be dispensed with.

7.2 Stakeholders have submitted that to modify the proviso as " *Provided that the amount under recovered or over recovered, along with simple interest at the rate equal to the bank as on 1st April of the respective year, shall be recovered or refunded by generating company or transmission licensee, as the case may be, in 6 equal monthly instalments starting within 3 months from the date of tariff order issued by the commission."*

7.3 Stakeholders have submitted that:

a) Variation in long term power purchase quantum & cost: The proposed Regulation provides that the truing up of long term power purchase quantum and costs is to be done on the basis of the Merit Order Despatch Principle. Not only is, such provision unworkable and arbitrary but it also ignores the fundamental concept of truing up. The Merit Order Despatch Principle can, if at all, only be a guiding principle for the computation of quantum and cost of power at the time when the tariff is determined. However the actual drawl of power is dependent on the schedule given by the SLDC and not on the basis of the Merit Order used by the Hon'ble Commission in the tariff order.

There can be and often is a wide variation between the two. To take a simple example, at the time of tariff determination the Hon'ble Commission would determine the tariff in accordance with the Merit Order projecting that the license's power requirement would be met by the ten cheapest stations in the merit order. However during the course of the ensuing year depending upon the availability declared by the generating station or by virtue of any unplanned shutdown etc. or on account of SLDC's instructions the procurement by the license may extend beyond the 10 cheapest stations and, to say, the 13th cheapest station. In such event the truing up could not be limited to drawl from the 10 cheapest stations. However the proposed regulation provides that the truing up would in fact be done on the basis of procurement from the first 10 cheapest station. Following points may be noted in regarding to actual power purchase cost:

The availability of Plants are beyond the control of DISCOMs and the actual availability of Plants differs from the projections. And the monthly MOD submitted by the DISCOMs are based on past Month ECR which may not be valid on real time basis.

Further, in line with the CERC (IEGC) 4th amendment 2016 Regulation, as quoted below:

"The CGS or ISGS may be directed by concerned RLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries and it is further stated that where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be compensated depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be…………….

In case of coal / lignite based generating stations, following station heat rate degradation or actual heat rate, whichever is lower, shall be considered for the *purpose of compensation:*

Sr. No.	*Unit loading as a % of Installed Capacity of the Unit*	*Increase in SHR (for supercritical units) (%)*	*Increase in SHR (for sub-critical units) (%)*
1.	*85-100*	*Nil*	*Nil*
2.	*75-84.99*	*1.25*	*2.25*
3.	*65-74.99*	*2*	*4*
4.	*55.64.99*	*3*	*6*

Compensation for the Station Heat Rate and Auxiliary Energy Consumption shall be worked out in terms of energy charges."

As can be inferred from above, there are multiple buyers from each generator and this part load operation will impact the MOD schedule of the buyers.

b) Further to the above, it is submitted that Operation of Plant is not under the control of DISCOMs, and Delhi DISCOMs allocation is around 10%-30% in significant number of Plants. Since allocation of these Plants are on shared basis and operation of the same is on the basis of aggregation of demand and keeping into account the Grid Security, therefore, the decision of actual operation/availability of plant is not under control of the DISCOMs. And, there are various instances where forced Scheduling is done to maintain Grid security. Therefore, in view of the above submissions the Hon'ble Commission may exclude the factors like force scheduling by SLDC and other RLDCs which are beyond the control of the DISCOMs.

c) Following points may be noted with respect to short term power purchase quantum and cost:

a. DISCOMs enter into contracts as per DERC short Term Power Guidelines 2010 and it has to be done through DEEP portal as MoP guidelines.

b. These contracts are done based on certain assumptions which are justifiable at that point of time based on the prevailing market conditions and historical data, but the future changes cannot be predicted at that point of time.

c. The demand/availability/prices of power cannot be forecasted accurately.

d. Further to the above, if there are certain factors effecting the Demand, availability and prices on real time, then the DISCOMs try to explore best options available in the real time. But if such restrictions are imposed on the DISCOMs then they won't be able to optimally utilize other options available on real time basis.

e. Stakeholder submits that in the coming months there will be more variation in availability due to more procurement of Renewable Energy ,addition of Net metering connections.

f. Further addition of Open Access consumers will also add to variation in DISCOMs schedule, since these Open access consumers have the option to either procure power from outside or switch to the DISCOMs procurement of power.

As evident from above, the energy demand, availability and rate of short term sources is unpredictable and likely to undergo drastic changes given the new developments in consumption profile of consumers of Delhi. Such developments are beyond the control of the Licensee and thus any cost ought to be allowed which is incurred during uncontrollable circumstances and justifiable by the Licensee. Therefore a proviso may be added as *"Provided any short term transaction which is undertaken on account of uncontrollable factors shall be allowed by the Commission subject to prudence check"*

d) There are instances where the Distribution Licensee is mandated by instructions of the DERC, GoNCTD, other governmental bodies/ ministries, to arrange for the procurement of power to meet exigencies of shortfall in future periods. Following those instructions, the Distribution Licensees contracts for the quantum of power as directed by the aforesaid bodies. It is however been noticed that there may not in fact be a shortage during specific time periods for which the Distribution Licensee may have already contracted for power purchase following the aforesaid instructions. This leaves no other option for the Distribution Licensee but to engage in forward and reverse transactions for being absolved of the cost of power as well as penalties leviable by the sellers as the sellers would charge the cost of power contracted if the Distribution Licensee were to cancel the contract in the event of a surplus situation. Further such clause would promote inefficiency in the system which is definitely not the objective of Electricity Act 2003. Such clause will mandate the licensee to dispose the surplus power if any arisen due to banking/ bilateral within 3 months in exchange irrespective of the lower rates available at exchange. Such scenario will simply increase the cost and put burden on the consumers. Such a scenario is ultra-vires EA 2003 under which the Licensee despite having better options to sell surplus power is forced to sell power through a means which may yield lower rates. In view of the above, it is our considered opinion that the Regulation must carve out an exception for absolving the Distribution Licensee from any disallowance of power purchase cost including trading margin, transmission charges or transmission losses if the forward and reverse transaction in the same time slot is necessitated on account of procurement of power by the Distribution Licensee based on instructions of the DERC, GoNCTD, other governmental bodies/ ministries.

e) At the outset, we would like to submit that since Feb ’14 i.e; after the notification of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 by Hon’ble CERC the term “UI” has been re-termed as “Deviation”. Further, it is submitted that UI surplus or deficit cannot be predicted beforehand, as the Licensee does not know with certainty the exact extent of its surplus but only as an approximation, as it does not have a final say in the accounting/scheduling of the same. Further, the calculation of UI is not in the hand of the Licensee and is done post facto. Therefore, where the calculation machinery itself fails, the Commission cannot penalize the Licensee, as it is not in the Licensee’s control and is dependent on statutory authorities such as the SLDC. Finally, the SLDC’s directions to schedule in order to maintain grid discipline, as issued under Section 32 cannot be disregarded by the Licensee, who necessarily has to follow the same. Accordingly, the Licensee cannot be penalized for disposing off surplus power in UI, where the Licensee cannot, with 100% freedom decide its drawal (as it has to follow SLDC directions) or account for the surplus power in its system for disposal (as it is dependent upon the SLDC’s accounting of the same). It is submitted that the generation and calculation of the UI is not entirely in the control of the Licensee. This, coupled with the fact that UI gets determined post facto, establishes that the Licensee cannot be held responsible as it has to carry out the directions of statutory authorities such as the SLDC and NRLDC, empowered under the EA, 2003 and cannot disregard the same. Further DISCOMs enter into contracts as per DERC short Term Power Guidelines 2010 and it has to be done through DEEP portal as MoP guidelines. These contracts are done based on certain assumptions which are justifiable at that point of time based on the prevailing market conditions and historical data, but the future changes cannot be predicted at that point of time. The demand/availability/prices of power cannot be forecasted accurately. If there are certain factors effecting the Demand, availability and prices on real time, then the DISCOMs try to explore best options available in the real time. But if such restrictions are imposed on the DISCOMs then they won't be able to optimally utilize other options available on real time basis. It is further submitted that in the coming months there will be more variation in availability due to more procurement of Renewable Energy ,addition of Net metering connections. Further addition of Open Access consumers will also add to variation in DISCOMs schedule, since these Open access consumers have the option to either procure power from outside or switch to the DISCOMs procurement of power. The Hon'ble Commission has proposed that Sale through UI transactions on monthly basis shall be limited to the contingency limit to be prescribed by the Hon'ble Commission in the Business Plan Order. However in actual scenario, the UI bills are generated after 3 months because of inherent time lag. It is further submitted that, the UI schedule is revised from time to time. UI data is not available on real time or daily basis, therefore stakeholder states that since UI data is not fixed on real time /daily basis therefore no contingency limit should be set for the same. Severe penalties already exist under Deviation Settlement mechanisms which are frequency and quantum based .Further restrictions on the same will lead to extra penalization on the same mechanism. Further the conditions put forth for functioning of the Licensee as a Distribution Business are arbitrary in nature as one hand the Licensee will be penalized in case of load-shedding of power by more than 1% and on the other hand the Licensee will be penalized in case availability exceeds demand and UI transactions on monthly basis exceed more than 3% of contingency limit. The demand of Distribution licensee depend upon many parameters. Weather temperature is one of such parameter. Any sudden change in temperature results in drastic change in demand. Accordingly, it is very difficult to estimate the demand in advance to any degree of accuracy so as to enter in to long term or medium term bilateral arrangements. In view of the above, the contingency limit on sale through UI transactions on monthly basis ought to be deleted from the Regulations.

f) The deviation settlement mechanism in the state to be made on the principle of zero sum accounting as per which the deviation by one Licensee shall be adjusted in other Licensee's account in order to maintain grid discipline. Such treatment will not yield any residual value after adjustment. Therefore "Subject to zero sum accounting" may be added in the aforesaid Regulation.

g) Targets for Distribution loss ought to be set in such manner that it is practical for the Utilities to achieve the same. Ministry of Power (MoP), GOI has prepared a trajectory for reduction of AT&C Loss for various States in India. Accordingly Utility-wise target has also been set upto FY 2019-20. Copy of the letter as received from Ministry of Power is attached as Annexure-G. The Targets should not have any reference to actual and normative Loss levels set in the past. MoP has set very practical AT&C Loss Targets which the Utility should strive to achieve. For e.g. West Bengal Electricity Regulatory Commission (WBERC) has adopted normative AT&C Loss target of 14.3% for ensuing years despite of better performance of CESC. Similarly the Hon'ble Commission also in case of Stakeholder has set AT&C Loss target of 11% for FY 2015-16 despite of 10.56% actually achieved during FY 2013-14. Therefore the Utility should be incentivized for its actual performance in case it has already achieved the target. Accordingly the Hon'ble Commission may adopt the trajectory as specified by MoP for setting of distribution loss levels may be modified as under:

> *"154. Target for Distribution Loss reduction shall be fixed for a control period in the Business Plan Order based on MoP guidelines."*

7.4 Stakeholder has submitted that:

a) Commission has specified only few of the un-controllable factor however Delhi is the National Capital and there are multiple land owning agencies i.e. DDA/ MoUD, so considering the various specific problems i.e. paucity of land in Delhi, ROW problems (Congested areas, Railways, PWD, other utilities etc.), VIP areas, etc. following may also be considered as Uncontrollable factors:

A. Delay in execution of the project on account of contractor, supplier or agency of the utility.

B.

1. Land acquisition
2. ROW clearance
3. Forest Deptt. Clearance
4. Flood Control & Irrigation Deptt. Clearance.
5. MCD Clearance
6. Land Dispute
7. NGT Clearance
8. ASI Clearance

Any other Unforeseen Factors

b) Truing up of O&M Expenses due to extraordinary expenditure occurred on first time or which were not parts of base year expenses approved by DERC subject to prudence check shall also be considered.

c) Provision of the Midterm review of Business Plan.

d) Actual Capitalization details being submitted every year to DERC so Provisional true up on the basis of the same may be done by Hon'ble Commission.

Commission's Views

7.5 **Over/under achievement of Distribution Loss:** The Commission is of the view that if a Distribution Licensee Over/under achieves the Distribution Loss target, then there will be proportionate decrease/increase in the Power Purchase quantum by them in order to meet the demand. This can be illustrated as follows:

1. Sales (A) = 1000 MU
2. Distribution Loss Target (B) = 10%
3. Power Purchase to be allowed by the Commission in Tariff Order [C=A/(1-B)] = 1111.11 MU
4. Actual Distribution Loss (D) = 12% <u>(Under-achievement)</u>
5. Actual Power Purchase done by the Distribution Licensee [E=A/(1-D)] = 1136.36 MU
6. The Distribution Licensee has under-achieved the Distribution Loss target from 10% to 12% resulting into procurement of additional 25.25 MU (E-C). Such additional quantum of Power procurement should be knocked off with the trued up average Power Purchase rate.

The relevant Regulation of the Tariff Regulations, 2017 is as follows:

" 159. The financial impact on account of over or under achievement of Distribution Loss target shall be computed as under:

Incentive or (Penalty)=Q1(L1-L2)*P*10^6*

where,

Q1 = Actual quantum of Energy purchased at Distribution periphery in MU;

L1 = Distribution Loss Target in %;

P = Trued up Average Power Purchase Cost (APPC) per unit at Distribution periphery in Rs./kWh;

*L2 (Actual Distribution Loss in %)=[1-Q2/Q1]*100;*

Q2 = Actual quantum of Energy Billed in MU.

160. Any financial impact on account of overachievement with respect to Distribution Loss target shall be shared between the Distribution Licensee and the consumer in the ratio as specified in the Business Plan Regulations."

7.6 The Commission has observed that various SERCs also follow similar principle for over/underachievement of Distribution Loss. For instance, Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2009 specify similar principle in the said Regulations and its treatment in the True up Order as follows:

> *"113. Distribution Losses*
>
> *...*
>
> *(5) The gains arising out of higher loss reduction than the target fixed for any year by the Commission and the losses on account of distribution licensees' failure to achieve the target set by the Commission be shared in the ratio specified under Regulation 10 for sharing of gains and losses on account of controllable factors.."*

7.7 Based on the above mentioned Regulations, RERC has recently trued up ARR for FY 2013-14 vide its Order dtd. 22/09/2016 of Distribution Licensees and disallowed power purchase cost for 1512.98 MU of excess purchase on account of under achievement in distribution loss target, as follows:

" 3.11. As per Regulation 113 (5) of RERC Tariff Regulations, 2009, the losses on account of distribution licensees' failure to achieve the target set by the Commission be shared in the ratio specified under Regulation 10 for sharing of gains and losses on account of controllable factors.

3.12. The Regulation 10 (2) of RERC Tariff Regulation, 2009 is reproduced below:

10(2) The approved aggregate loss to the Applicant on account of controllable factors shall be dealt with in the following manner:

(a) 50% of the amount of such loss may be passed on as an additional charge in tariffs over such period as may be specified in the Order of the Commission under; and

(b) The balance amount of loss shall be absorbed by the Applicant.

From the reading of Regulation 10(2) above, it is clear that it is at the discretion of the Commission to pass on 50% of such losses as an additional charge in tariffs. In the past, the Commission has allowed the sharing of losses. However, looking into the losses which are not reducing despite huge investment, the Commission has decided not to allow sharing of the high losses as done before. The Commission also does not want to burden the consumer on account of Discom's inefficiency. As such, the ***Commission disallows 100% of such excess purchase, i.e., 1512.98 MU from actual purchase of 19917.47 MU****. Accordingly energy requirement allowed shall be 18404.49 MU.*

...

3.15. Details of power purchase cost as approved by the Commission is given in table below

Table 3: Power purchase cost of JdVVNL approved for FY 2013-14

Sr. No.	Particulars	Units (MU)	Amount in Crores	Average Rate
	Energy approved by Commission:			
1	*Total Energy Purchased by Discom (A)*	*19917.47*	*7044.28*	*3.54*
2	*Less: Disallowed short term sources (B)*	***1111.79***	***352.61***	***3.17***
3	*Total Energy from approved sources C=A-B*	*18805.68*	*6691.67*	*3.56*
4	*Less: Disallowed approved sources (D)*	***401.19***	***142.76***	***3.56***
5	***Power Purchase Cost Allowed E=(C-D)***	*18404.49*	*6548.91*	
6	*Add: Transmission and SLDC charges (F)*		*850.46*	
7	***Total Power purchase cost allowed (E+F)***		*7399.37*	

3.16. While disallowing the excess purchase of 1512.98 MU by Discom, the Commission has first considered the power purchase of 1111.79 MU from short term sources and the rest 401.19 MU has been considered from approved sources. Thus, the Commission has allowed the gross energy requirement of 18404.49 MU corresponding to the allowed sales.:"

7.8 RERC has also included similar mechanism in its Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 as follows:

"76. Distribution Losses & Collection Efficiency

...

(5) The gains arising on account of distribution losses being lower or the losses arising on account of distribution loss being higher than the target fixed for any year by the Commission, shall be shared in the ratio of 50:50 between the distribution licensee and the consumers."

7.9 Gujarat Electricity Regulatory Commission has also indicated similar mechanism in its Tariff Order dtd. 31/03/2016 Paschim Gujarat Vij Company Limited as follows:

" 4.2 Distribution Losses

...

Commission's Analysis

PGVCL has submitted that the actual distribution losses are 24.61% for FY 2014-15, as against 24.00% considered in the MTR order dated 29th April, 2014, for FY 2014- 15. The Commission considers distribution losses as controllable, as per GERC (MYT) Regulations, 2011. Accordingly, the Commission considers the distribution losses of 24.00%, approved in the MTR Order for the truing up of FY 2014-15, as shown in the Table below, for computation of gain/(losses) due to variance in distribution losses

Table 4.3: Distribution Losses considered for truing up for FY 2014-15

(%)

Particulars	FY 2014-15 (Approved in MTR Order)	FY 2014-15 (Actual)	FY 2014-15 (Considered in True-up)
Distribution Losses	24.00	24.61	24.00

4.4.1 Gains/(Losses) due to distribution losses

...

Commission's Analysis

The Commission had approved the distribution loss at 24.00% in the MTR order, against which the actual distribution loss of PGVCL is 24.61% for FY 2014-15.

The total Gains/(Losses) on account of higher distribution loss are computed in the Table below:

Table 4.10 (b): Gains/ (Losses) on account of distribution losses for FY 2014-15

Sl. No.	Particulars	Unit	Actuals submitted for FY 2014-15	Considered for computation of Gains/(Losses) for FY 2014-15
1	Energy Sales	MUs	19957.71	19957.71
2	Distribution Losses	MUs	6514.91	6302.43
		%	24.61%	24.00%
3	Energy Requirement	MUs	26472.62	26260.14
4	Los due to Distribution Losses	MUs	(212.48)	(212.48)
5	Average Cost of Power Purchase	Rs. / kWh	3.17	3.17
6	Gains/(Losses) Due to Distribution Losses	Rs. Crore	**(67.36)**	**(67.36)**

The total Gains/(losses), on account of higher distribution losses, as submitted by PGVCL is Rs. 67.36 Crore and the same computed by the Commission is also Rs. 67.36 Crore. Wt. Avg. rate of power purchase approved by the Commission in the MTR Order.

While computing the gains/losses due to change in distribution losses, the Commission has considered the distribution losses 24.00%, as approved in MTR order to arrive at change in energy requirement at the distribution periphery compared to the actual losses of 24.61%. To arrive at gains/(losses) due to change in energy requirement, the Commission considered Wt. Avg. rate of power purchase, as approved in the MTR Order."

7.10 **Merit Order Dispatch Principle and Additional deviation Settlement Mechanism:**

The Commission has already dealt up these issues in the earlier paragraphs of this SOR.

7.11 **Contingency limit on UI transactions:** The Commission is of the view that UI mechanism cannot be treated as a trading platform & mode of transaction to Sale/Purchase of Power. UI Charges under Availability Based Tariff (ABT) mechanism were incorporated to maintain Grid Discipline and benefit those entities which support Grid and penalize those which hamper Grid so as maintain Grid frequency very near to 50Hz. CERC vide its Order dtd. 4/01/2000 has dealt up the reason for implementation of UI Charges under ABT mechanism as follows:

> *"…Apart from the two charges, a third charge contemplated in the ABT scheme is for the unscheduled interchange of power (**UI charges**). The UI charges are payable/receivable depending upon who has deviated from the schedule and also subject to the grid conditions at that point of time.* ***This is the element, which is expected to bring about discipline in the system****."*

The sale of power under UI is linked to real time frequency of the Grid which cannot be 100% avoided due to dynamic power system. However, there has to be certain contingency limit for deviation from the schedule resulting into disposal of surplus power in UI. Such mechanism will enable Grid discipline resulting into system security.

7.12 **Overlapping in Banking & Bilateral Transactions:** It was observed during the Technical Validation Session for True up of power purchase cost that there was overlapping in import and export of Banking Transactions. There were time slots where the power was procured and sold through Import and Export of Energy in the same time slot and the contract had been signed for both Import and Export of Energy by the Distribution Licensees within a period of less than three month. The Commission is of the view that the Distribution Licensees shall review the total available power including future contracted import and export banking transactions of the time slots at the time of entering into fresh contract to avoid such overlapping. These overlapping transactions are resulting into additional expenses on account of Trading Margin and Transmission Charges on the consumers. Therefore, the provision has also been made part of Tariff Regulations, 2017 to avoid overlapping in import and export of Banking and bilateral Transactions and the relevant extract is as follows:

"(c) Variation in short term power purchase quantum and cost of the distribution licensee based on projected short term power purchase quantum and cost vis-a-vis actual short term power purchase quantum and cost:

Provided that Trading Margin, Transmission Charges and Transmission Losses incurred on Forward And Reverse transaction in the same time slot executed within three months for

Forward / Reverse power procurement/sale through Banking And Bilateral shall not be allowed in the Power Purchase Cost of the Distribution Licensee;"

7.13 **True-up of Working Capital:** The Commission is of the view that components involved during computation of Working Capital are un-controllable in nature (Power Purchase), therefore, true up of Working Capital shall be carried out by the Commission for the relevant Financial Year. The relevant extract of the Tariff, Regulations, 2017 is as follows:

" 152. True up of ARR for Distribution (Wheeling & Retail Supply) Licensee shall be conducted on the following principles:

...

(f) interest on working capital loan shall be trued up every year based on the working capital requirement as specified in Regulation 85 of these Regulations."

7.14 **Regulatory Asset :** The Commission is of the view that the liquidation plan for amortisation of accumulated revenue gap submitted before Hon'ble Supreme Court is already in place since FY 2014-15. Accordingly, the provision of carrying cost applicable on accumulated revenue gap has also become part od Tariff Regulations, 2017 as follows:

"REGULATORY ASSETS

154.The accumulated revenue gap, if approved by the Commission in the relevant Tariff Order shall be treated as Regulatory Assets:

Provided that such revenue gap shall be computed on the basis of excess of ARR over Revenue approved after true up of the relevant financial year.

155. Carrying cost on average balance of accumulated revenue gap shall be allowed to the Utility at carrying cost rate approved by the Commission in the ARR of the relevant financial year:

Provided that average balance of accumulated revenue gap shall be determined based on opening balance of accumulated revenue gap and half of the Revenue Gap /Surplus during the relevant year."

8. MISCELLANEOUS

Views of the Stakeholders and Commission's Analysis

Stakeholder's Comments

8.1 Stakeholders have suggested that the word "Practice" should be deleted and if there is necessity to issue direction impacting the Licensee it should be done by following due process of law as per mentioned in various DERC guidelines/conduct of business regulations etc. The modified regulation should be as "Subject to the provision of the Act and these Regulations, the Commission may, from time to time, issue Orders and directions by following due process of law in regard to the implementation of these Regulations and procedure to be followed on various matters, which the Commission has been empowered by these Regulations to direct, and matters incidental or ancillary thereto."

8.2 Further, a new clause may be inserted as : Notwithstanding anything contained in these Regulations, the Commission shall have the authority, to determine the tariff of any Licensee:

(i) either suomotu in the event the licensee despite repeated opportunities granted in that regard fails to file ARR Petitions;or

(ii) Any interested person shows requisite cause necessitating the determination of Tariff by the Commission.

Provided that the Licensee shall be granted prior opportunity of hearing and representation in any such proceedings if so initiated by the Commission.

Regulation empowers the Ld. Commission to issue such directions to any of the stakeholders which may be required to remove the difficulties which might arise in giving effect to any of the Regulations. However, in light of the stakeholders working within the set of Regulations and the Ld. Commission having the sole power and discretion to pass such an order, it is of utmost importance that any difficulty in implementing the regulations which is brought to the notice of the commission by Licensee, must be seriously considered by the commission. In light of this, Stakeholder proposes the insertion and revision in the regulation as follows:

If any difficulty arises, either in giving effect to or in implementation of any of the provisions of these Regulations, the Commission may, after giving due opportunity to the Licensee to make a representation , personal hearing as deemed fit, , by a general or special order, not being inconsistent with the provisions of these Regulations, the Act, or any other Regulations, do or undertake to do things or direct the Licensee to do or undertake such things which appear to be necessary or expedient for the purpose of removing the difficulties:

Provided that any such order passed on removal of difficulties must be a speaking order.

8.3 It is submitted that the CERC Regulations provide the following as under:

The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person. Such a Regulation allows for the Ld. Commission to become aware of the concerns of the concerned parties and also allows for any concerned party to bring forth its concerns and be able to represent its reservations or suggestions. Therefore Stakeholder seeks to propose the clause which is in consonance with the Regulation of the Ld. Central Commission, which allows for better representation and inclusivity to the stakeholders. Moreover in the present proposal the commission has limited the exercise of its powers merely where public interest is involved. Sincerely the term public interest has wide ramifications, it is suggested that one of the grounds for relaxation of provisions must include " any difficulty highlighted by the Licensee which arises out of implementation of the regulations or being in conflict with CERC Regulations , Delhi electricity reforms act 2000, DERA transfer scheme rules 2001.Furthermore, the Hon'ble Appellate Tribunal in 2007 ELR APTEL 7, in the case of NTPC Ltd. vs. Madhya Pradesh State Electricity Board has held as under:

"It must be held, that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations".

8.4 In light of this, Stakeholder seeks to propose (I) adopt CERC regulation on relaxation (ii) considering the comments made herein review and adopt the following revised provision:

The Commission may, relax any of the provisions of these Regulations on its own motion or on an application made before it by the utility or any interested person.

Provided that the Commission shall consider the application of the Licensee if the same, prima facie, brings out any implementation problems, constraints, conflict with CERC Regulations, conflict with DERA 2000, transfer scheme rules 2001.

167(i) Interpretation: If a question arises relating to the interpretation of any provision of these Regulations, the decision of the Commission shall be final.

167(ii) any person seeking a clarification, interpretation of the provision(s) of the regulations may file a petition before the commission in accordance with the DERC conduct of business regulations 2001.

The commission shall decide the said petition as expeditiously as possible.

8.5 The draft Regulations may provide for right of hearing to the entity in accordance with principles of natural justice before issuing any direction on the interpretation of the regulations.

Further it is proposed to include also the following clause: “The words and expressions used in these Regulations and not defined herein, but defined in the Act, shall have the meanings assigned to them under the Act.”

8.6 It is submitted that the aforementioned Regulation is not comprehensive in terms of defining the time period for which these Regulations shall be applicable. In light of this, Stakeholder takes this opportunity to propose the following addition to the clause.

Saving of Inherent Powers of the Commission: Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

Provided that, all the events which have taken place during the operation of the control period as defined by the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011, which were extended to FY-2015-16, including, but not limited to, the True up for FY-14-15 and 15-16, shall be subject to the 2011 Regulations.

8.7 Stakeholders have suggested that in accordance with the provisions of the Conduct of Business Regulations read with DERC Transaction of Business Regulations 2011, suggested Provision: All enquiries, investigations and adjudications under these Regulations shall be done by the Commission through the proceedings in accordance with the provisions of the Conduct of Business Regulations and to be read with DERC transaction of Business Regulations 2011

8.8 Stakeholders have suggested that the Commission, for reasons to be recorded in writing and also to provide for grant of an opportunity to utilities beforehand to submit their views on proposed modification and thereafter if deems fit may at any time vary, alter or modify any of the provision of these Regulations by amendment.

8.9 Stakeholders have suggested that the exercise of determination of tariff requires ascertaining the figures, data, information relating to the licensee and any suo-motu exercise of determination of tariff ought to be an exception. ATE in Judgment OP 1 of 2011 has directed that the State Commission must initiate the proceedings for tariff determination in case the Licensee does not file application even after 1 month of scheduled date of submission of the Petition. Hence, the following modification to the existing provision may be considered:

"In the event an application for determination of tariff is not filed within one month of the directive of the Commission shall have the authority, either suo motu or on a Petition filed by any interested or affected party, to determine the tariff of any Licensee."

8.10 Further, this Regulation is contrary to law because as per the ratio laid down by the Supreme Court in PTC India vs CERC the validity of the Regulations can be tested under the writ jurisdiction of the courts and is subject to a judicial review . Therefore, if a question arises relating to the interpretation of any provision of these Regulations, the decision of the Commission cannot be final. Hence, this Regulation ought to be omitted as it will be against the law of the land.

Commission's Views

8.11 The Commission is of the view that in order to implement Tariff Regulations, 2017, the Commission may issue practice directions which are not envisaged at the time of finalisation of the Regulations. Therefore, the word practice should not be deleted as suggested by the stakeholder. Further, the timeline for filing of Tariff Petition by the utilities have already been defined in Tariff Regulations, 2017. Therefore, there is no need for provision of repeated opportunity to be added in the Tariff Regulations, 2017 for the purpose of initiating suo-moto proceedings of tariff determination in absence of the petition to be filed by the utilities.

8.12 It is clarified that to remove difficulties in implementation of the provisions of these Tariff Regulations, 2017, the Commission may remove such difficulties by a general or a special order, not being inconsistent with the provision of these Regulations or the Act.

8.13 Further, Tariff Regulations, 2017 has already provisions for power of relaxation, interpretation, power to amend and saving of inherent power of the Commission with wider scope than as proposed by the stakeholders.

Sd/-
Surendra Edupghanti
Secretary

ANNEXURE-I

List of stakeholders which have submitted their comments/suggestions on draft uploaded on 18/12/2015

S.N.	Name	Organisation
1	Mr. Saurabh Gandhi	URD
2	Mr. A.K. Dutta	Individual
3	Mr. B.B. Tiwari	Individual
4	Mr. A.C. Agrawal G.M.(C & RA)	DTL
5	Mr. A.C. Agrawal G.M.(C & RA)	DTL
6	Mr. J.K. Sinha HoD Regulatory	TPDDL
7	Mr. Jagdish Bhartiya	Taigore Garden Residents Welfare Association
8	Mr. Saurabh Gandhi	URD
9	Mr. Kapoor	RWA(Maurya Enclave, Pitam Pura)
10	Mr. Atul Mehra	RWA-Tagore Garden
11	Mr. M.L. Jain	RWA-Dilshad Garden
12	Mr. B.S. Sachdev	Akhil Bhartiya Grahak Panchayat
13	Mr. Khairati Lal Juneja	Individual
14	Mr. R.Y. Varma	Gen. Secretary, RWA Shakti Vihar A Block
15	Mr. C.L. Yadav	Vice President, RWA Shakti Vihar A Block
16	Pradhan,Prince Colony D-Block Jankalyan Samiti, Hari Nagar Ext. Part III, New Delhi(Regd.)	
17	Mr. Dushyant Kumar	Vice President, RW Harsh Vihar
18	Mr. Rajesh K. Mediratta	Director(B.D.) IEX
19	Mr. Ompal Singh	President, RWA, Chhattarpur Ext, New Delhi
20	Mr. Ashok Bhasin	North Delhi Residents Welfare Federation
21	Mr. Ashok Prabhakar	General Secretary, Sahyog
22	Mr. Jatinder Singh	General Secretary, NIA CETP Society
23	Mr. Rajiv Kakria	Individual
25	Mr. Atul Goyal	President,URD
28	Mr. Anil Chandi	Maharana Pratap Bagh, RWA
29	L.G. Office	
30	CMA Vijendera Sharma	Chairman Professional Development Committee, ICAI
31	Sh. Rajeev Chaudhary	BRPL
32	CA Manish Iyer	ICAI
33	CMA Sanjay Gupta	Sanjay Gupta & Associates
34	Mr. Umesh Sagta	Individual
35	Mr. A.C. Agrawal G.M.(C & RA)	Individual
36	Mr. J.K. Sinha, HoD Regulatory	TPDDL

ANNEXURE-II

List of stakeholders which have submitted their comments/suggestions during Public Hearing on 06/05/2016

S.N.	Name	Organisation
1	Mr. Ompal Singh Ahlawat	Individual
2	Mr. Ashok Bhasin	Individual
3	Mr. Satyavir Singh	Individual
4	Mr. Saurav Gandhi	RWA
5	Mr. Sanjay Gupta	Individual
6	Mr. H.M. Sharma	Individual
7	Mr. B.B. Tiwari	Individual
8	Mr. A.K. Dutta	Individual
9	Mr. Anil	Stakeholder
10	Sh. Anish Garg	GoNCTD
11	Sh. K.K. Verma	
12	Various representatives of	BRPL
		IPGCL\PPCL

ANNEXURE-III

List of stakeholders which have submitted their comments/suggestions on Revised draft Regulations uploaded on 05/12/2016

S.N.	Name	Organisation
1	Mr. Sai Prabha	BRPL
2	Mr. A.k. Dutta	Individual
3	Mr. Ashwini Chitnis	Prayas
4	Mr. B.B. Tiwari	Individual
5	Mr. Jagdish Kumar	IPGCL & PPCL
6		DTL
7	Various representatives of	BYPL
8		Stakeholder
9	Mr. H.M. Sharma	Individual
10	Mr. Rajiv Kakria	Individual
11	Mr. Sanjay Gupta	Individual
12	Mr. Saurav Gandhi	Individual
13	Mr. Shyam Mendiratta	Individual
14	Mr. Sudhir Aggarwal	Individual