BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

13th floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai-400 005

IN THE MATTER OF

Comments and Suggestions on draft Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022.

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The Maharashtra Electricity Regulatory Commission (MERC) has prepared the Draft Maharashtra Electricity Regulatory Commission ((Approval of Capital Investment Schemes) Regulations, 2022 and sought public comments on the same.

Having such a comprehensive and extensive set of regulations is integral in ensuring that major capital investments go through appropriate prudence checks and are truly a step towards more efficiency and better planning in the sector. Many aspects of the proposed regulations such as indicative lists for what qualifies to be capex scheme, specific data formats, codified asset replacement procedure, treatment of sister concerns or group companies in competitive bidding processes and having a web-based portal for approval and tracking major capital investment projects is welcome.

However, with the significant investments expected in the future especially with transition related techno-economic changes, it is crucial that the regulations clearly specify, reiterate and codify the critical role of the commission in approval of investment plans, selection of appropriate investments, monitoring of capitalization and post-facto impact assessment. Transparent sharing of information and public consultation would also need to be emphasised given the impact on tariff, cost of supply and supply and service quality to consumers.

In this context, this submission provides comments and suggestions on provisions where more clarity is needed or some measures that could be further improved.

1 Scrutiny of DPR and non-DPR schemes

The requirement to revise the value limit for projects that require in principal approval and submission of DPRs from Rs. 10 crores to Rs. 25 crores will help streamline processes for investment approval. With the change in limit, additional steps would be need to provide legitimacy to the process of scrutiny.

Change in DPR value limit only through amendment of regulations: Draft regulation 4.20 mentions that the Commission may review the value limit for consideration as DPR scheme once in every three years through separate Order. As the in-principal approval process hinges on this value limit, any reconsideration should come as an amendment to the regulation and should not be allowed through a separate order. Thus, it is suggested that this provision be deleted.

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

Empanelment of experts for DPR scrutiny: For in-principal approval, the establishment of the CISC and the process specified for approval would help better scrutiny. To assist the Commission as well as the CISC, it is suggested the Commission empanel a set of independent experts to aid detailed scrutiny of projects. The process of empanelment and appointment should be specified in these regulations.

Availability of approved DPRs in public domain: Given critical nature of projects, substantial investments, potential cost impact and need for increased accountability, all approved DPRs should be made available in the public domain on the Commissions website, along with the presentations by the application to the CISC or the Commission.

2 Clarity regarding Pollution Control Equipment, similar investments

Clarity in objectives: Regulation 3.1 specifies objectives that need to be fulfilled by schemes in order to be considered for approval. The objectives focus on efficiency, supply quality improvement and techno-economic considerations given growing demand. However, it makes no space for investments needed under in order to comply with statutory requirements and obligations. Installation of pollution control equipment may be needed to revised emission norms under the Environment (Protection) Amendment Rules, 2015 but may not improve efficiency, supply quality etc. It is suggested that the following (in italics) be added to the objectives as Regulation 3.1 (l):

Compliance with statutory requirements, obligations and norms in a timely, cost-effective manner

Capital investment approval for Section 63 projects: Regulation 12.1 specifies that in the case capital investment is needed for projects under Section 63, only final approval maybe sought only under conditions of Force Majeure or Change in law and only when there is a dispute between the procurer and developer.

Investments for compliance with environmental norms, though necessary in many cases, will increase the cost of operation for the developer and the cost of power for the procurer. Thus, there will seldom be disputes and thus no scrutiny of such crucial investments by the Commission. To address this, it is suggested that proviso to draft Regulation 12.1 is replaced by the following:

Provided that where capital investment has been undertaken under force majeure or change in law, cost passthrough by beneficiaries should be allowed only after prudence check and investment approval by Commission.

3 Smart Meters

Draft Regulation 3.13 states that smart meters/ pre-paid meters may be implemented under Total Expenses or TOTEX model. However, the regulations do not provide a framework for approval of cost passthrough under TOTEX model. This is crucial as the framework for this approval is not part of the Standard Bidding Guidelines for smart metering and neither is it part of the provisions under the RDSS scheme. Prior to large scale roll-out the framework for the following should be specified in the Commissions regulations:

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

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

4 Need to increase regulatory scrutiny of transmission projects

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

Thus, the process before the Commission for a DPR based transmission project should be the same as any other DPR based non-transmission capital investment project.

In compliance with Regulation 13.2.3 and 13.2.4 of the Grid Code, STU should evaluate plans and provide due consideration for financial implications of investments.

However, the Commission should not relegate its duty and legal mandate to ensure detailed scrutiny of these projects[1].

Thus, it is suggested that draft regulation 4.18 be **deleted and draft regulation 4.14 be amended as follows:**
For **all** Capital Investment Schemes ~~of Generation Business and Distribution Business~~ of a value exceeding Rupees Hundred crore, the Applicants shall make a presentation to the Commission on the salient features of the Capital Investment Scheme in order to facilitate better understanding of the Scheme.

5 TBCB route for transmission projects to be approved by MERC, not STU

As specified in the Grid Code, the role of the STU may be limited to providing suggestions for projects which could be considered under Section 62 or Section 63 for the Commissions consideration. However, in the interest of consumers, cost-optimal planning and timely completion, it is the Commission's responsibility to take the recommendation under due consideration and approve TBCB for projects.

The Commission should **specify the investment threshold limit above which projects shall be developed through TBCB**. This will be in line with the regulatory actions of SERCs in Haryana, Punjab, Telangana, Assam, Bihar etc.

This is also in line with the recommendation in Para 5.3 of the National Tariff Policy, 2016:
"The tariff of all new generation and transmission projects of company owned or controlled by the Central Government shall continue to be determined on the basis of competitive bidding as per the Tariff Policy notified on 6thJanuary, 2006 unless otherwise specified by the Central Government on case to case basis.
Further, intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above a threshold limit which ***shall be decided by the SERCs (emphasis added)****."*

Additionally, it is also consistent with the Commissions observations in Case 190 of 2020:

[1] The observations of APTEL in Appeal no. 280 of 2021 are relevant in this context to highlight why MERC should play a significant role in project approval and scrutiny: "The conduct of STU has indeed been far from satisfactory. Its flip-flop vis-à-vis the technology (HDVC versus HVAC), reflective more of indecisiveness than anything unholy, has been the cause of delay and a whole lot of confusion. Not that, the changes in the scheme made at its instance over the period were wholly wrong. The change of point of inter-connectivity from Nagothane to Kudus would have resulted in substantial savings in terms of effort, work, money, *et al*. Be that as it may, the Commission has undertaken an intricate examination of critical aspects (availability of necessary land, know-how, experience, capability – financial and otherwise, etc.) for implementation of the transmission project in an efficient and timely manner to accord the final approval for the respondent AEMIL as the project developer.

"The Commission will be separately deciding on the Threshold Limit to be considered for undertaking projects through the TBCB route, after seeking inputs from the stakeholders. The Commission will also have to decide on the conditions/exceptions to the Threshold Limit, keeping the requirements of the State in mind, as well as factors such as delineability of the Project, scope for fixing clear responsibility for project execution, applicability to new Projects vs. system strengthening or augmentation Projects, etc., based on objective criteria, so that the scope for subjectivity in decision making is minimised. Timely completion of projects is also one of the important criteria which needs to be considered. In the meantime, in the absence of any defined Threshold Limit decided by the Commission, the Tariff Policy provisions in this regard cannot be given effect."

It is suggested that Draft Regulation 18.5 **be deleted**. In its stead, the Commission should specify that all transmission projects with investment value more than Rs. 100 crores will be through TBCB. The Commission should also stipulate objective criteria to determine exceptions to the threshold limit in the regulations.

6 Creating space for future investments

The draft regulations 3.5, 3.11 and 3.8 should also include investments require to provide ancillary services to enable cost-optimal power utilisation and reliability. This will also make space for investments in storage technologies.

Similarly, the Area Load Dispatch centre investments suggested for SLDC in draft regulation 3.20 is welcome. In a similar fashion, investments to enable better communication and strengthening role of REMCs can also be included.

7 Operationalising the Cost-benefit monitoring framework

While 'cost benefit' monitoring is defined as the process of periodic comparison of actual cost benefit, considering both tangible and intangible benefits; it is not clear how such costs and benefits would be computed on a post facto basis. Better guidance is needed here, perhaps in terms of an explicit format.

The draft regulation 9.4 says that cost-benefit monitoring of 'selected' Capital Investment schemes shall be done by the Commission on an on-going basis. This is certainly a good measure, especially for very large CAPEX schemes undertaken, but the regulations should clearly specify the basis on which certain schemes would be selected for on-going monitoring. Further, how would this on-going monitoring be carried out remains unclear.

It is suggested that a framework for post-facto monitoring be submitted along with the DPR by the applicant which should be approved by the Commission. Implementation and measure benefits can be submitted to the Commission on a periodic basis. The submissions and Commissions observations on implementation benefits should be recorded in a separate order for 'select' projects.

8 Approval of Rolling Plan through consultative process

The regulations specify that all Regulated Power entities should come out with a five-year rolling plan, of which the first three years are to remain concrete. Yet, since this plan is not made mandatory, and is not to be approved by the Commission, the plan may just remain ineffective on-paper.

The draft regulation 7.7 mentions that the plan shall neither be approved in-principle by the Commission, nor shall it be construed as approved by the Commission. Since the subsequent DPR and Non-DPR schemes shall be scrutinised on the basis on this Rolling Plan, it is of utmost importance that this plan is approved by the Commission, following due public process. The approved plan can also be released as a separate order.

This way, the Commission can also ensure that there is consistency across the rolling plans. Also, some broad checklist or criteria for the Rolling Plan should be specified in the regulations.

9 Public process for in-principal approval

As the DPR schemes would be filed for in-principle approval every April and October, it is necessary to create a space for public consultation, before granting the approval to these schemes. The Commission should also come out with an order while providing approval that includes the purpose, details and relevant data of the approved DPR schemes.

10 Web based portal

It is notable that the Commission will now have a web-based portal for submission and periodic updates of DPR schemes. This is a welcome step. Regulation 19.2 mentions that all applicants are required to provide regular updates on a half-yearly basis on status of implementation of all Capex schemes. Therefore, the portal should publish a summary report, with the status of implementation of all approved DPR schemes, bi-annually. This report should be made available in the public domain.

11 Need for more clarity

In some instances, there is reference to a competent agency (regulation 3.2) and third-party (regulation 8.2 (2u), 9.2 (16), 10.2 (7)) for certification and verification. An indicative list of who qualifies to be a competent agency or a third party would be more effective.

Regulation 4.6 makes a reference to ‘emergency works’; but it is not clear what qualifies as an ‘emergency’. The regulations can specify certain parameters on the basis of which the scope of work can be defined as ‘emergency’ or not.

From the definition of ‘Project’, Small Hydro power generating stations have been excluded, but the rationale for the same is not clear and is also missing from the Explanatory Memorandum.

12 Capital Investment Information to be available in public domain

Data sought from the Applicant during in-principal and final approval by the Commission should be available in the public domain along with the petition of the applicant before the Commission.

Additionally, for all new investments the GIS co-ordinates of the assets (including for each DT, sub-station, 11 kV feeder, HT/LT poles should be made available in the public domain. This will aid physical verification of assets, at least for new infrastructure. This is a reasonable expectation for new assets given that the Commission. The Commission has already directed MSEDCL to provide a detailed action plan in Case No. 322 of 2019 which also included:

Feeder-wise mapping of consumers (AG and Non-AG) and indexing/geo-tagging of consumer data to DTC and feeder and regularly updating (not later than one month) it in case of shifting of load from one DTC/feeder to another.

It is urged that the Commission takes steps towards better planning, scrutiny of investments, monitoring implementation and sets up processes in these regulations to enable this such that detailed scrutiny of utility performance in this crucial area is possible.

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