Before the Maharashtra Electricity Regulatory Commission

IN THE MATTER OF

Application by Torrent Power Limited for Grant of Distribution Licence for Palghar, Thane and adjoining areas

Case No. 1 of 2023

Submission by Prayas (Energy Group), Pune *6th February, 2023*

Prayas (Energy Group)'s submission is in response to the public notice dated 5th January 2023 seeking public comments on the petition. Torrent Power Limited has filed an Application before the Commission for grant of Distribution License for the Palghar, Thane and adjoining areas. Torrent Power Limited has also filed for grant of licence for Pune in Case 2 of 2023. Thus together, Torrent Power has applied for licence in three adjoining revenue districts.

Torrent Power Limited plans to lay down distribution network to supply to consumers using its own wires under Section 14 and 15 of the Electricity Act. **The provision of license for such a large area where, along with MSEDCL there are multiple existing deemed licensees and potential for new load growth should be approached with caution.** In a cost plus framework, network rollout and power procurement decisions, which account for significant cost burden and investment lock-ins will be passed onto consumers. Without clarity provided for several aspects and the provision of a clear framework for operation of multiple distribution licensees in parallel, there could be underutilization of assets, resource lock in due to poor planning and the possibility of cherry picking of consumers. Some of these risks have already been identified by the Commission itself in other matters.

The need for a deliberate and cautious approach, in public interest is all the more critical given recent changes in the policy frameworks at the national level and the significant number of players planning to apply as 2nd (or 3rd) license in areas across Maharashtra. There are already applications for parallel licensing for Navi Mumbai, Pune, Palghar, Thane and Nagpur before the Commission. Collectively this accounts for parallel licence operation in areas where 42% of MSEDCL HT sales takes place. It must be noted that AENML and TPL are both seeking parallel licenses in Thane Municipal corporation area which would also lead to serious risks related to network duplication and network rollout.
Given that no other licence has been issued of this nature yet, this matter is bound to become a precedent for other such applications in the state and the impact on MSEDCL's business model would be significant.

To safeguard the right to reliable, affordable supply for the millions of low tension and small consumers in the area of supply, it is critical that these risks are deliberated and measures are taken to mitigate these risks **before** the license is granted.

Our submission articulates some of these dangers and urges the commission to stipulate a framework to mitigate risks, consider issues with current proposal and larger sector development and take proactive steps to enhance consumer choice and provision of competition options to consumers. These are detailed below:

1 Need for a regulatory framework to address modalities and risks for multiple licensees in a common area of supply before license is granted

With new license application, there is an opportunity to set framework to mitigate several risks **before grant of license**. The framework should be uniform rather than specific to the conditions of the license to provide a level playing field to all applicants. The framework can address risks and implementation challenges that the Commission had identified in the past. These include:

- **Projecting demand growth in the face of uncertainty**: Annual and quarterly projections based on past annual growth trends and thumb-rule approach are going to be ineffective going forward especially with the several consumers having options to procure power via open access, captive and behind the meter systems. As demand projections for consumers of multiple licensees and non-DISCOM sales would be critical for network and power procurement planning, a uniform framework for reporting, forecasting and consolidating projections in the area of supply, over multiple time horizons (weekly, annual, 5 year, 10 year rolling plans) is crucial. Currently, there is no such framework.

- **Optimising network investment and utilisation**: Given the cost plus framework for tariff determination and with uncertainty in demand growth there is a substantial risk of network duplication, under utilisation of assets and siting/planning of networks being skewed towards areas with more commercial and industrial consumers. These have been challenging to monitor for existing licensees[1]. Measures to reducing possibilities of overcapitalization and siting based on consumer cherry picking by the licensee need to be put in place. These can range from stricter frameworks for cost past through as well as processes for approval/ monitoring of network rollout in an integrated, consolidated manner and cost optimal manner for the larger interest of the area of supply. **There could also be considerations of substantially reducing guaranteed return on equity provided in areas with multiple licensees so as to promote competitive operations. RoE could also be lower in areas where cherry picking is a possibility.**

[1] As the Commission notes in Case 111 of 2019, beyond prudence checks, even gross reporting and violations of license conditions are challenging to monitor. In the order, MERC observes that *"In spite of being aware that its License area is likely to reduce based on its own application, NUP went on developing its distribution assets in the entire area. It is difficult to understand as to how such act of NUP was in consumers' interest."*

There might even be a need to **mandate submission and approval of detailed disaggregated plans at the sub-division/ feeder level to aid planning and monitoring.**

- **Power procurement and meeting resource adequacy requirements:** Power procurement planning for each individual DISCOM in the area of supply would be challenging and so would the process of assessing prudence of power procurement plan. The challenge would be substantial if Resource Adequacy requirements as proposed in Amendments to the IEGC[2] and the Electricity Rules[3] as well as CEA guidelines[4] in the matter are finalised. It would be more challenging if resource adequacy targets are mandated as per the proposed amendments to the Electricity Rules as there are penal provisions in place for non-compliance to the targets. With multiple licensees, such measures could contribute to over-investments leading to NPAs or under-investments leading to losses/load shedding.

- **Metering, energy accounting and consumer quality of supply:** Clarity on measures for loss accounting, installation of check meters, procedures for metering and loss apportioning would be beneficial. The requirement of a Distribution System Operator and their role can also be considered. With multiple licencees providing services to one consumer, mechanisms to fix accountability for quality of supply issues and electricity safety issues is required. For example, in case of interruptions, fixing accountability for line outages, DT failure, generator outages, coal shortage and taking appropriate measures is necessary. This would become a complex exercise in coordination, reporting, recording and taking appropriate action when there are substantial number of parallel licensees operating across Maharashtra. Therefore, specific frameworks and measures to fix this accountability is required prima facie.

- **Tariff determination and revenue recovery:** The basis for determination of ceiling tariff is unclear. If the possibility of appropriate ceiling tariff for the area of supply is considered to encourage competition, it is not clear how prudent cost recovery is to be ensured. In addition, tariff design to manage cross subsidy, applicability of regulatory asset surcharge and estimation of wheeling charge should be clarified. DISCOMs also have been demanding increasing fixed charges to reflect fixed costs incurred. The framework and the necessity for this, given that separation of wires cost and supply cost takes place on a notional basis should also be clarified.

These aspects are not covered in an adequate and comprehensive manner in the existing regulations of MERC including the General Conditions of Distribution License Regulations, 2006[5], Multi Year Tariff Regulations, 2019[6] and the Approval of Capital Investment Schemes

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[2] https://cercind.gov.in/2022/draft_reg/Draft-IEGC-07062022.pdf
[3] https://powermin.gov.in/sites/default/files/Seeking_comment_draft_electricity_date_extended.pdf
[4] https://cea.nic.in/wp-content/uploads/irp/2022/09/Draft_RA_Guidelines___23_09_2022_final.pdf
[5] https://merc.gov.in/wp-content/uploads/2022/07/General-Condition-Distribution-Licence-Reg.2006-English.zip
[6] https://merc.gov.in/wp-content/uploads/2022/08/MYT-Regulation-2019_English.pdf

Regulations, 2022[7]. Regulation 11 of the Approval of Capital Investment Schemes Regulations pertains only to existing parallel licensees in sub-urban Mumbai.

The Commission has recently notified guidelines for uniform voltage-wise allocation of assets and costs[8] based on a public consultation process[9]. Such a process to articulate a uniform framework on several aspects would be required to provide a level playing field to all subsequent licensees going forward and to mitigate planning, investment and tariff risks associated with the arrangement.

As there are likely to be similar proposals for multiple areas in Maharashtra, in the spirit of accountability and providing a level playing field for competition it is critical that a clear and uniform framework be stipulated by MERC in its regulations for all new parallel licensees in the state.

The Supreme Court in its judgement in **Civil Appeal No. 1933 of 2022[10], has underscored the regulatory mandate of the Commission under Section 61 and Section 181 to provide a clear framework towards tariff determination and fostering competition and efficiency. The Apex court highlights that in the absence of clear policy framework at the Central/ State level, it is critical that the Commission exercise their mandate to provide necessary clarity.**

In this case, the Commission should therefore first provide a uniform framework on particular aspects of operationalizing multiple distribution licensees in a large area without such a pre-existing arrangement before considering this present petition.

2 Clear framework to encourage and promote consumer choice, competition

Large commercial and industrial consumers already have the option under the Act to choose their supplier using the open access route. Further, with increasingly economic viability of modular and scalable RE technologies, it is also becoming worthwhile for such consumers to obtain supply by investing in captive, group captive and behind the meter options. Recognizing these technology-driven changes, the Commission can promote retail competition across the state by furthering open access. This can be done by:

Reducing eligibility limit for open access to 100 kW by 2025: It has been about 15 years since MERC has operationalised open access for consumers with contracted demand exceeding 1 MW. With this move, several large commercial and industrial consumers have had the option of choosing their own generators, traders for provision of supply. To further this choice, Open Access Regulations of the Commission can be amended to mandatorily provide open access to all with contracted demand greater than 100 KW within say, five years of notification of the

[7] https://merc.gov.in/wp-content/uploads/2022/07/Gazatee-Notification.pdf
[8] https://merc.gov.in/wp-content/uploads/2022/08/Guidelines-on-voltage-wise-asset-allocation.pdf
[9] The issue itself was identified by a utility who identified variation in practices without the presence of a uniform guideline in Case No. 133 of 2020. https://merc.gov.in/wp-content/uploads/orders_data/2020/Order%201607509413586.pdf
[10] https://main.sci.gov.in/supremecourt/2022/7499/7499_2022_1_1501_39982_Judgement_23-Nov-2022.pdf

amendment. The Green Open Access Rules, notified in 2022 already provides for such a framework to extend open access for green power consumed by those with connected load greater than 100 kW[11].

Regulatory frameworks regarding metering, scheduling, reporting, application procedures can be separately stipulated for 100-500 kW, 500 to 1 MW and >1 MW consumers for ease of implementation. It can also include appropriate and strong measures to discourage short-term open access which makes power procurement challenging for DISCOMs.

Providing clarity and certainty in open access charges while also compensating DISCOMs fairly for costs incurred: Fixing the surcharge at Rs.2.5/ unit till FY27 will provide certainty to investors and consumers and provide revenue certainty to distribution companies. Further, limiting its levy to the medium term also provides a fixed timeline for DISCOMs to shift to a viable revenue model[12] which accounts for sales migration.

Without such a measure, consumers may be limited competitive choice and without competitive pressures to increase efficiency, the distribution licensees operating under a cost plus framework may not have any incentive to reduce cost of supply.

3 Legal tenability of single rather than separate licence application for three adjoining revenue districts

As per the recently notified amendments to Explanation in Rule 3 Sub-Rule 2 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005:

For grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within either a Municipal Corporation as defined in article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply.

It is clear from the explanation for the rules that the applicant has to apply for three adjoining revenue districts together. Separate applications for three adjoining revenue districts would qualify as separate licenses and thus Torrent Power's application can be legally rejected unless it is for a single licence.

From a business model perspective as well, it is vital that there is a single licence for three districts rather than separate licenses for three. This will ensure, greater spread of network rather than network concentration in select pockets, better scrutiny of integrated network rollout plan and overview of integrated business operations of TPL in the three adjoining districts.

[11] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1875269

[12] More details on the transition related possibilities for the DISCOMs are detailed here: https://www.prayaspune.org/peg/publications/item/377

4 Need to establish legal tenability for eligibility of license in SEZ areas

The recently notified amendments to Explanation in Rule 3 Sub-Rule 2 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 should also be seen in the context of whether parallel licence application can take place in SEZ areas.

Special Economic Zones are autonomous special planning authorities. Given that infrastructure provision, taxation and administrative rules pertaining to these SEZs are different, it is not clear if they fall under the purview of the revenue districts. Within the proposed parallel license area, there are several SEZs which should be clearly listed and clarity should be provided whether the petitioner can legally supply to these areas under the same license. In such a case, the utility should ideally apply for a separate license for each SEZ provided the State Government notifies each of these SEZ/ SPAs as a minimum area of supply.

Besides issues with legal tenability, one license for all these jurisdictions could make implementation challenging.

5 Underestimation of capital expenditure requirements in submissions

TPL has a 5 year network rollout plan for covering the entire licence area and meeting its USO. In a five year period, TPL plans to invest Rs. 6.059 crores and to cater to 20% of energy requirement in the proposed area of supply. However, for the ambitious plan of meeting its USO in a five year period the investment as well as the capital works proposed seem to be substantially underestimated. Without detailed cost break-up and disaggregated reporting of planned capital works, the plan is inadequate and licence should not be granted on its basis, given significant risk of cost increase, poor network planning etc.

6 Requirement of additional information from all parallel licencees

Torrent Power Limited has submitted a business plan but it is challenging to ascertain investments planned and revenue potential from the petition. Many of the formats in the application format as prescribed in the MERC General Conditions of Distribution Licence Regulations, 2006 have not been filled. This includes Revenue Potential (Point 4 of Part C: Format for Assessing Competence of Applicant) and Baseline information on existing network in proposed area of supply (Point 6 of Part C: Format for Assessing Competence of Applicant). The following information should also be submitted as part of the business plan:

- Category-wise projections for demand and expected revenue
- Strategy for AMR/AMI and consumer smart metering
- List of necessary clearances envisaged from local authorities and developers which could affect network rollout
- Power procurement plan to justify assumption for Rs. 5/kWh cost and 3% year on year increase
- Capitalization trajectory
- Proposed strategy for network rollout in TMC where AENML is also planning to operate

Submission of such information would also have aided detailed deliberations on the petition. Detailed data provision such as this can be stipulated in the regulations/ framework for all applicants.

Given all these challenges we urge the Commission to keep in abeyance the present petition and all such petitions regarding applications for parallel licensing till:

- **Clear Uniform Regulatory Framework is notified by MERC** for addressing implementation challenges and addressing specific risks pertaining to multiple distribution licensees in the same area of supply. These should be finalised based on widespread stakeholder consultations.
- **Open access regulations** are amended to provide consumer choice to a wider set of consumers

Unless such an extensive uniform regulatory framework is put in place and competition through open access is broadened and deepened, there is a serious and real danger that multiple/parallel distribution licenses would lead to increased operational and regulatory complexity and litigation. In light of the cost-plus nature of the distribution license, this would negate the benefits of cost-competitive electricity supply to consumers, especially small consumers, within the parallel license areas as well as in areas being served by the state-level licensee.

Considering the current legal provisions regarding license revocation, takeover, surrender, and change of license area, are inadequately tested, there is another risk of the creation of NPAs, non-recovery of investments etc., in case parallel licenses are issued without a clear regulatory framework.

Given the critical nature of this petition, it is paramount that there is informed and widespread participation from consumers. Hence, we request the Commission to conduct physical public hearings in multiple locations in the state on the issue.

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