

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 182 of 2014

In the matter of

**Petition of Tata Power Company Ltd. for approval of Revised Network Rollout Plan in
compliance of directions in Case No. 90 of 2014 relating to grant of its Distribution
Licence**

Coram

**Smt. Chandra Iyengar, Chairperson
Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member**

The Tata Power Company Ltd.

Petitioner

Appearance

Petitioner

Shri. Amit Kapoor (Advocate)
Shri. Ashok Sethi
Shri. Bhaskar Sarkar

Reliance Infrastructure Ltd.

Shri. J. J. Bhat (Advocate)
Shri Kapil Sharma

BEST Undertaking

Shri. Harindar Toor (Advocate)
Shri. Patsute

Maharashtra State Electricity Distribution Co. Ltd.

Shri.Khandait
Shri.Harindar Toor (Advocate)

Consumer Representative

Shri. Ashok Pendse, Thane-Belapur Industries Association

INTERIM ORDER

Dated: 9 November, 2015

1. The Commission, vide its Order dated 14 August, 2014 in Case No.90 of 2014, had granted Distribution Licence No. 1 of 2014 to the Tata Power Company Ltd. (TPC-D) for 25 years from 16 August, 2014, and directed TPC-D to submit a revised Network Rollout Plan separately for approval. In compliance of that direction, and also of the Specific Conditions in Part II of its Distribution Licence, TPC-D has submitted a Petition on 10 October, 2014 for approval of its Revised Network Rollout Plan.
2. The main prayers of TPC-D are as follows:

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 - a) *To approve the revised Network Rollout Plan;*
 - b) *Condone any inadvertent omissions / errors / shortcomings and permit Tata Power to add / change / modify / alter this filing and make further submissions as may be required at a future date.*
 - c) *Pass any other such directive as that the Hon'ble Commission may deem appropriate in the facts and circumstances of the case.”*
3. In its Order in Case No. 90 of 2014, the Commission had asked TPC-D to submit its Rollout Plan. The Commission did not find it to be adequate, and directed TPC-D to submit a more comprehensive one keeping in view the comments made by the Commission in its Order dated 14 August, 2014. However, during the pendency of the present Petition, the Appellate Tribunal for Electricity (ATE) disposed of Appeal Nos. 229 and 246 of 2012 by its Judgment dated 28 November, 2014, returning certain findings, observations and directions. These were the cross-appeals filed by TPC-D and Reliance Infrastructure Ltd. (RInfra-D) challenging the Commission's Order dated 22 August, 2012 in Case No. 151 of 2011.
4. In view of the observations and directions of the ATE in its Judgment dated 28 November, 2014, TPC-D further revised its Network Rollout Plan and submitted it to the Commission on 12 February, 2015.
5. ***Features of TPC-D's Network Rollout Plan***
 - 5.1. In its Network Rollout Plan, TPC-D has considered a period of 7 years for network development, from FY 2014-15 to FY 2020-21.

5.2. For identifying appropriate network components and finalizing a suitable network design, TPC-D has analyzed the following critical parameters:

- A. Load profile
- B. Existing network
- C. Consumer mix and
- D. The landscape of the area where power is to be supplied.

5.3. The following philosophy is adopted by TPC-D for Network Development:

Key Issue-1: Governing framework for distribution network philosophy:

As per TPC-D, the distribution network planning and development shall be guided by following:

- a. MERC (Electricity Supply Code and other conditions of supply) Regulations, 2005 ('Supply Code')
- b. MERC (Standards of Performance (SoP) of Distribution Licensees, period for giving supply and determination of compensation) Regulations, 2005 ('SoP Regulations')
- c. CEA (Technical standards for construction of Electrical Plants and Electrical Lines), Regulations, 2010.
- d. Directions given by the ATE in its Judgment in Appeal Nos. 229 and 246 of 2012.

Key Issue-2: Scope of Network rollout to cover creation of distribution backbone:

The scope of Distribution Sub-station (DSS)-based distribution backbone would cover the following components:

- a. *33 kV line/cable from Receiving Station (RSS) to DSS (~ 5 km with 3 feeders of 33 kV):-* Under the standard DSS configuration, TPC-D envisaged that around 3 incoming 33 kV feeders shall be feeding power into 3 power transformers at DSS, either from the same RSS or different RSS sources, depending on location. For the purpose of this Network Rollout Plan, TPC-D presumed that the necessary outlets at respective RSS for feeding power into the DSS would be made available by the Transmission Licensee.
- b. *DSS and associated equipment:* A typical DSS comprises power transformers, station auxiliaries, bus-bars, (33 kV/11 kV) panels, circuit breakers, foundation, earthing, automation, etc.

- c. *11 kV main ring for distribution:* Under the standard DSS configuration, it is envisaged that 11 kV main ring network comprising rings (2 km x 2 km) would be developed. Total line length/cable length for 11 kV feeders under the proposed arrangement works out to around 32 km per DSS.

Key Issue-3: Establishing last-mile connectivity from 11 kV Ring Main Grid to Consumer Sub-station (CSS):

TPC-D highlighted that, as per the SoP Regulations, if the supply to a consumer requires installation of a new sub-station, the applicant will have to make available space for installation of the sub-station and associated equipment within its premises. With this arrangement in place for creation of backbone infrastructure, last-mile connectivity can be accomplished within the time period outlined under the Regulations.

6. The Commission also issued Notices to the Brihanmumbai Electric Supply and Transport Undertaking (BEST) and Reliance Infrastructure Ltd. (RInfra-D) (both Distribution Licensees overlapping parts of the Licence area of TPC-D) and the Authorized Institutional Consumer Representatives. Thereafter, and also in furtherance to the ATE Judgment in Appeal Nos. 229 and 246 of 2012, both BEST and RInfra-D have made detailed submissions in the present proceedings which are set out in subsequent paragraphs.
7. Vide its submission dated 29 July, 2015, BEST stated the following:

TPC-D does not have any distribution network for supply of electricity in retail, residential or commercial, in the area of supply common with BEST. It is only recently that TPC-D, due to developments of erstwhile mills and /or the mill land areas in the Island City of Mumbai, has been or is attempting to lay its distribution network for distribution of electricity. TPC-D is attempting to “cherry-pick” lucrative commercial and residential electricity consumers in the newly developing or developed mill land and other areas in the Island City of Mumbai.

- 7.1. The Revised Network Rollout Plan submitted by TPC-D is necessarily required to be examined in a Technical Validation Session (TVS), notified thereafter to the general public for objections, if any, and then decided after public hearing.
- 7.2. The Revised Network Rollout Plan is inadequate, not conducive to a level playing field and genuine competition, and also does not address or comply with the directions in the Commission’s Order in Case No.90 of 2014 and the ATE Judgement in Appeal Nos. 246 and 229 of 2012.

- 7.3. TPC-D has planned a capacity addition of 540 MVA with only 22 DSS in its entire licensed area in phases over a period of 7 years. However, such installed capacity is inadequate for meeting even 50 % of the projected load demand in the entire licensed area of TPC-D, nor even sufficient to meet 50% of the current load demand of the Island City of Mumbai.
8. Vide its submission dated 29 July, 2015, RInfra-D stated the following:
- 8.1. In terms of the ATE directions, TPC-D's Rollout Plan has to be considered in accordance with the following:
- a. The Rollout Plan should show that there are no practical or physical constraints in laying down the network.
 - b. If the Rollout Plan seeks to duplicate any part of the network already existing, it should demonstrate that the existing network is not reliable and laying down of parallel network would improve the reliability of supply and benefit the consumer.
 - c. The network proposed to be developed as per the Rollout Plan cannot be selective.
 - d. How the proposed capitalization of activities as per Case No.50 of 2015 is subsumed within the Rollout Plan is to be shown.
 - e. Extension of connectivity to consumers seeking connection from TPC-D.
- 8.2. As per the ATE Judgment, Licence conditions are required to be amended for the Distribution Licensee.
- 8.3. None of the submissions of TPC-D complies with the directions of ATE. None of the submissions show the exact locations where the network Rollout is intended to be undertaken, how the existing network in the area is unreliable, how laying down of parallel network would improve reliability of supply and benefit the consumers - existing or new - and how the network laying is not selective.
- 8.4. The issue of Rollout Plan is inextricably interlinked with the issue of protocol for 'switch-over' of consumers from one Licensee to another. These issues cannot be dealt with separately, but have to be dealt with compendiously after hearing all parties.
9. At the hearing on 30 July, 2015, TPC-D highlighted the background of the Petition and elaborated the directives in the ATE Judgment dated 28 November, 2014. RInfra-D

contended that the network Rollout Plan submitted by TPC-D is not adequate and does not cover important aspects such as improvement in the network reliability, physical constraints, high cost involved, etc. TPC-D needs to furnish additional details with area-wise expansion and reliability in the existing network. BEST contended that the Rollout Plan does not provide details of proposed network in BEST's area of supply, and also that it is not complying with principles set out in the ATE Judgment. The Commission directed TPC-D to submit additional data in support of its network Rollout Plan.

10. In compliance of the Daily Order dated 30 July, 2015, TPC-D made the following additional submission vide its letter dated 6 August, 2015:

10.1. TPC-D has interpreted the ATE Judgment and provisions of the EA, 2003 as follows:

- Protection of consumer interest is paramount in terms of the statutory framework. The consumer has the choice to elect both the source and mode of supply.
- There are no restrictions on the Distribution Licensee in the laying or development of network, where:
 - ✓ Such network is required to supply to new consumers, including those in redeveloped premises;
 - ✓ Demand made by an existing consumer and development is in consumer interest;
 - ✓ Substantial investment is already made and the network needs to be loaded for enhanced economic use;
 - ✓ The reliability of the existing network is low.
- The Distribution Licensee is required to maintain an efficient, coordinated and economical distribution system. Duplication of network should be avoided if:
 - ✓ There is a reliable distribution network of a Licensee existing in a particular area;
 - ✓ There are physical constraints in laying down any new network;
 - ✓ There is a very high cost involved in laying down such parallel network, which is not in consumer interest.
- A consumer is free to choose supply either in terms of Section 42 or 43 of the EA, 2003. The Commission has been directed to lay down a detailed protocol after hearing the parties.

- The ATE Judgment has clarified that, should the Commission require, it may amend the Licences of the Distribution Licensees to give effect to it. Amendment of Licence is not a pre-condition for approving the Rollout Plan.

10.2. For the purpose of Network Rollout, the load growth in Mumbai is classified into 3 different growth patterns:

- *'Yellow field' Areas:* Saturated areas with limited potential of growth in next 5-7 years. These areas are unlikely to see any substantive developments considering that there are a number of heritage structures, and are already congested with minimal possibility of redevelopment during the network Rollout Plan period.
- *'Brownfield' Areas:* Areas having considerable growth potential in terms of redevelopment of existing properties. These areas are assessed based on the existing land base with high density of slums, MHADA chawls and the presence of erstwhile mill lands, as identified in the Municipal Corporation of Greater Mumbai (MCGM)'s proposed Development Plan (2013-2034) and inputs from various developers.
- *'Greenfield' Areas:* Areas having significant potential for new growth in near future (next 5-7 years). These are areas where development is expected to commence based on proposed amendments in land usage permissions, e.g. salt pan lands, Mumbai Eastern Coast development, etc. These could also include areas presently in the No Development Zone and likely to be relaxed in due course.

10.3. In the absence of available data regarding the existing network developed and planned by other Distribution Licensees and data on reliability parameters of their networks, it becomes difficult to arrive at a fool proof, realistic network Plan.

11. Vide its submission dated 11 August, 2015, BEST stated as follows:

11.1. The present Case is in continuation of and part and parcel of the earlier Case No. 90 of 2014, and is required to be examined through a TVS and thereafter decided through public hearing.

11.2. In order to comply with the ATE requirements, it is necessary to first amend the Licence granted to TPC-D. The ATE Judgment is neither applicable nor relatable to BEST's area of supply.

12. At the hearing on 12 August, 2015, TPC-D submitted that the scope of the present proceedings is limited to approval of the network Rollout Plan which has been submitted in compliance of the Commission's directives in the Distribution Licence read with the ATE Judgment. BEST submitted that the ATE Judgment is not applicable to BEST's area of supply. In BEST's area of supply, the Rollout Plan of TPC-D needs to be in accordance with the Specific Conditions of Distribution Licence granted by the Commission. The Commission observed that the right of Open Access is not available for distribution networks of BEST. Hence, the two areas, i.e. area common with BEST and area common with RInfra-D, need to be treated differently. The Commission directed TPC-D to review its proposal for the BEST area.
13. At the hearing, TPC-D contended that, in spite of its request, the data necessary for ascertaining distribution constraints and reliability of the existing network was not made available by RInfra-D. RInfra-D responded that data available in the public domain has been provided to TPC-D. Both parties suggested that the Commission needs to first decide on the necessity of data, and then the parties may be asked to provide it. The Commission nominated its Director (Electrical Engineering) to liaise with the parties with regard to such information.
14. During the hearing, RInfra-D contended that TPC-D is violating the ATE Judgment by allowing consumers to switch-over to its network. It claimed that, post the ATE Judgment, TPC-D has switched over around 1100 consumers.
15. The Commission asked whether approval of a network Rollout Plan is still necessary after the ATE Judgment, which has laid down the principles of setting up a network. In reply, both parties have made submissions justifying the requirement of some kind of a network Rollout Plan. However, RInfra-D submitted that, as per the ATE Judgment, TPC-D can lay its network only in case of green field areas or for increasing reliability of network. TPC-D opposed such interpretation. It contended that, if laying of network is beneficial for the consumer, then it should be allowed to do so in any area. Both parties requested the Commission to provide guidance for implementing the ATE Judgment.
16. The Commission directed the parties to submit the following for assisting the Commission in interpretation of the ATE Judgment:
 - a. Difference between the terms '*observation*', '*finding*', '*ruling*' and its legal implications.
 - b. Meaning of '*new connection*' mentioned in the ATE Judgment and its implication for network laying.
 - c. Situation-specific scenarios for network laying.

17. TPC-D made a revised submission on 19 August, 2015 with respect to the Network Rollout Plan for the BEST area. TPC-D also made the following submission on 20 August, 2015:

17.1. During the hearing, the Commission had directed the parties to submit the difference between certain terms and its legal implications for assisting the Commission in interpretation of the ATE Judgment. To explain TPC-D's position, it relied on the settled principles of law with regard to the doctrine of precedent and difference between '*ratio-decidendi*' (reason of decision) and '*obiter dicta*' (general observations/fleeting references).

17.2. It is a settled principle of law that an '*obiter dicta*' as distinguished from a '*ratio-decidendi*' is an observation by the Court on a legal question suggested in a Case before it but not arising in such manner as to require a decision. The '*obiter dicta*' does not have a binding precedent.

17.3. Protection of consumer interest is paramount in terms of the statutory framework. The consumer has to ultimately decide the Distribution Licensee from whom he wishes to avail supply.

17.4. The ATE finds that a parallel network should be laid only if:

- a. There is no reliable existing distribution network of a Licensee in a particular area; and
- b. There are no physical constraints in laying any new network; and
- c. It is in consumer interest; and
- d. It improves reliability of the supply.

17.5. There is no restriction on laying of a parallel network, if such network is laid:

- a. To supply to a new consumer/connection.
- b. To cater to the demand made by an existing consumer; or
- c. In consumer interest.

18. Vide its further submission dated 24 August, 2015, TPC-D also stated as follows:

18.1. The term 'New Consumer'/'New Connection' includes:

- (a) Any person who has made an application for supply of power and whose premises is, for the time being, not connected to the works of a Distribution Licensee for receiving supply of electricity, and also includes a person whose premises have been permanently disconnected by a Licensee.

- (b) Any person who has made an application for supply of power and whose premises is, for the time being, connected to the works of a Distribution Licensee only for receiving temporary supply of electricity;
- (c) Any other person/premises as may be decided by the Commission from time to time.

18.2. The interpretation of the term ‘New Connection’ and ‘New Consumer’ requires satisfying two basic elements, being:

- (a) Any person who has made an application for supply of power; and
- (b) Not permanently connected, for the time being, to the works of the Licensee for the purpose of receiving supply of electricity.

18.3. In case of redevelopment, the existing premises or structure is demolished and a new structure or premises is erected. In effect, there is a change in premises. The owners or occupiers of such new premises amount to ‘New Connection’ and ‘New Consumer’.

19. In another submission dated 2 September, 2015, TPC-D submitted its analysis of optimistic, realistic and pessimistic scenarios in the network Rollout Plan, stating that, while doing so, it has maintained the original principles intact along with comparative analysis of reliability data.

19.1. With the above framework, TPC-D’s Network Rollout and Capital expenditure (Capex) Scenario Analysis as follows:

Network Components	Optimistic Scenario	Realistic Scenario	Pessimistic Scenario
DSS of 40 MVA (Nos)	10	9	8
33 kV Cable Network (km)	100	90	80
11 kV cable Network (km)	320	228	256
CSS (Nos)	409	365	321
LT Cable Network (km)	499	499	499
(Rs in Crore)			
Network Capex	Optimistic Scenario	Realistic Scenario	Pessimistic Scenario
DSS of 40 MVA	254	229	203
33 kV Cable Network	74	67	59
11 kV cable Network	264	237	211
CSS	241	215	189
LT Cable Network	182	182	182

Total Capex Projected	1015	930	845
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19.2. Phasing of Network Rollout Plan:

Particulars		Year						
		1	2	3	4	5	6	7
DSS - 20 MVA	Nos	1 to 2						
DSS - 40 MVA	Nos	1 to 3						
CSS - 0.5 MVA	Nos	38 to 47						
CSS - 1.0 MVA or more	Nos	66 to 76						
Additional CSS	Nos	33 to 42						
33 kV Cable network	Kms	30 to 36						
11 kV Cable network	Kms	78 to 91						
LT Cable network	Kms	117 to 128						

Phasing of Capex:

(Rs. Crore)

Particulars	Year							
	1	2	3	4	5	6	7	Total
DSS - 40 MVA	20 to 80	331 to 381						
DSS - 20 MVA	10 to 30	102 to 127						
CSS - 0.5 MVA	10 to 20	104 to 130						
CSS - 1.0 MVA	30 to	274 to						

	50	50	50	50	50	50	50	315
Additional CSS	3 to 6	28 to 35						
33 kV Cable network	20 to 30	156 to 186						
11 kV Cable network	60 to 80	448 to 527						
LT Cable network	40 to 47	299 to 328						
Capex in Mumbai city (rounded values)	240 to 290	1740 to 2030						

TPC-D submitted that the overall capital expenditure over a period of 7 years would be in the range of Rs. 2200 crore.

20. Vide its submission dated 5 September, 2015, RInfra-D stated as follows:

20.1. The Commission has to ascertain the executable or implementable part of the ATE Judgment, and the indicia or factors laid down in it on the basis of which it requires to be implemented. Para. 80 of the Judgment gives a clear summary of its findings and categorically states what is directed by it to be implemented.

20.2. The directions in paragraphs 58 to 61 of the Judgment are premised on two findings: (i) that a reliable distribution network of RInfra-D is already existing in the area; and (ii) practical difficulties in laying down a new network, as stated by TPC-D itself.

20.3. Based on these dual premises, it has first to be ascertained whether a reliable network of RInfra-D exists in the area in which TPC-D, by its proposed Rollout Plan, desires to lay down its network.

20.4. Further, TPC-D should not be allowed to maintain its right to lay down its distribution network selectively even in areas where a reliable network of RInfra-D exists. TPC-D can extend its network only to a new consumer provided it benefits the consumer and improves reliability and not otherwise.

20.5. Consumers' interests would not be benefited where laying of a parallel network by TPC-D in the vicinity where a reliable network of RInfra-D already exists would entail additional expenditure which will ultimately be loaded on consumers and would be contrary to the principles of an efficient, economic and coordinated network.

21. In its submission dated 7 September, 2015, TPC-D proposed establishment of an ‘Appellate Technical Council’, a separate institutional structure for scrutiny and recommendation of a new distribution infrastructure in the city.
22. Vide its submission dated 07 September, 2015, BEST stated the following:
 - 22.1. The revised network Rollout Plan submitted by TPC-D under its additional submission dated 2 September, 2015 ex-facie:-
 - (a) Does not provide for an adequate or timely rollout of its distribution network.
 - (b) Does not provide equal access to all categories of consumers and create a level playing field.
 - (c) Is not sufficient to fulfil its Universal Service Obligation (USO) and duty to supply on demand in case of existing consumers.
 - 22.2. The proposed Rollout is neither adequate nor timely, but is a coloured device to cherry pick consumers of electricity in the Island City of Mumbai.
23. At the hearing on 8 September, 2015, TPC-D made a presentation highlighting different scenarios of releasing connections to new and existing consumers based on availability and reliability of the distribution network of parallel Licensees. It also presented a comparative study of reliability and loading of TPC-D’s and RInfra-D’s distribution network. As the presentation required some modification/ clarification, TPC-D submitted that it would submit a modified presentation. TPC-D had made a proposal to BEST for utilizing its network, on payment of charges, for supplying power to TPC-D’s consumers. However, it has not yet received any response from BEST. TPC-D and RInfra-D also presented their views on the interpretation of the ATE Judgment. RInfra-D, inter alia, contended that, as per the ATE Judgment, choice of supply is available to existing consumers, but not the option of choosing the network. TPC-D responded that such interpretation would be against competition and consumer choice.
24. Vide its submission dated 15 September, 2015, TPC-D stated that:
 - 24.1. As per the directions in the Daily Order dated 8 September, 2015, TPC-D has submitted a modified presentation, and its plan for improving reliability of the distribution network.
 - 24.2. In its modified presentation, TPC-D has evolved 5 Scenarios for connecting consumers, which are:
 - a) *Scenario 1*: New consumer approaching Distribution Utility/Licensee having adequate 33/11 kV DSS infrastructure in the vicinity.

- b) *Scenario 2:* New consumer approaching a Distribution Utility whose network would get overloaded and needs augmentation - In this case, Utility 2 having an under-loaded network provides a connection on behalf of Utility 1.
- c) *Scenario 3:* New consumer approaching Distribution Utility 1 which does not have adequate 33/11 kV DSS infrastructure in the vicinity - In such case, the other Utility provides a connection on behalf of Utility 1.
- d) *Scenario 4:* New consumer approaching Utility which does not have DSS in the vicinity, but provides space for DSS - In this case, Detailed Project Report (DPR) for in principle approval of the required capex shall be approved by the Commission.
- e) *Scenario 5:* Existing consumer of Utility 1 seeks migration on the network of the other Distribution Utility having adequate DSS/CSS in the vicinity – If the other Utility has adequate spare capacity to cater to the consumer load, then Utility 1 will permanently disconnect the supply of consumer to make way for the other Utility. The process is to be approved by the Commission.

24.3. TPC-D has suggested a ‘Distribution Coordination Committee’ (DCC) for scrutinizing and recommending network development in Mumbai. The Commission may develop a mechanism (e.g. a web-based tool) providing information about loading of DSS of all Utilities in Mumbai.

24.4. TPC-D has proposed the following principles for network Rollout for improving reliability:

- (a) The loading on the power transformer and distribution transformer should be considered as the key parameter to determine reliability of a network.
- (b) Wherever a Distribution Licensee’s transformer is loaded above 60 % of its rated capacity, and the other Distribution Licensee has its transformer/ sub-station in the vicinity which is under-loaded, then the other Distribution Licensee should be permitted to lay down a downstream parallel network to service the consumers and improve the reliability of the existing network.
- (c) Where a Distribution Licensee (Utility 2) has laid down its own network which is under-loaded, and where the network of the other Distribution Licensee (Utility 1) in the same area is constrained/ overloaded - the existing loads of Utility 1 may be shifted onto the network of Utility 2 either in the “change-over”

mode or the “switch-over” mode to optimize the network and/or enhance the reliability.

24.5. TPC-D has presented 3 Scenarios for network development for improving reliability of an existing network.

Scenario	Particulars	Remark
<p><u>Scenario 1</u></p> <p>Network of Utility-2 exists in the vicinity and is under-loaded</p>	<p>a) The downstream network of Utility-2 shall be laid and used to improve reliability.</p> <p>b) Utility-1 will not be required to incur any capital expenditure to augment its network till the network of Utility -2 gets optimally loaded to 70 %.</p>	<p>1. TPC-D has identified 48 of RInfra-D’s RSS locations where loading is more than 60% and where, in the same vicinity, there is under-loaded TPC-D RSS and DSS capacity.</p> <p>2. To enable use of this spare TPC-D capacity for improving reliability, capital expenditure of Rs. 245 crore is required for extending / establishing 11 kV network over and above the Rollout Plan.</p>
<p><u>Scenario 2</u></p> <p>Network of Utility -2 does not exist in the vicinity</p>	<p>Utility- 1 shall be allowed to augment its network to improve its reliability.</p>	<p>1.RInfra-D may be allowed to continue its network development in such areas, to address network reliability issues.</p> <p>2.In the present Rollout Plan, TPC-D has not planned any network for this scenario.</p>
<p><u>Scenario 3</u></p> <p>Utility-2 has network in the vicinity but is optimally loaded / also needs augmentation</p>	<p>The Utility which provides a cost-competitive solution which neutralizes the impact on wheeling charge shall be allowed to develop/ augment the network.</p>	<p>1.There is no situation in Mumbai Suburban Area where the network of both Utilities are optimally utilized/ overloaded.</p> <p>2.In the Rollout Plan, TPC-D has not planned any network for this scenario.</p>

25. At the hearing on 22 September, 2015, RInfra-D made a presentation on its interpretation of reliability and definition of ‘new consumer’. Further, RInfra-D highlighted possible scenarios of releasing connections to new and existing consumers based on availability and reliability of the distribution network of parallel Licensees.

TPC-D underlined the intent of the EA, 2003 with reference to allowing a parallel Licensee to supply a consumer through its own network. BEST urged that the proposed network Rollout Plan be rejected in view of non-adherence to Licence conditions as stipulated in the Commission's Order in Case No.90 of 2014. BEST also informed that TPC-D's proposal of sharing BEST's network is under consideration. The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) requested additional time for filing its Reply.

26. In pursuance of the Commission's directive during the hearing on 22 September, 2015, RInfra-D submitted a revised presentation on 26 September, 2015. In response, TPC-D filed its submission on 29 September, 2015 stating as follows:
 - 26.1. The present proceedings are with regard to the approval of the network Rollout Plan as directed by the Commission vide its Order in Case No.90 of 2014, and not with regard to the issue of cherry-picking and selective network Rollout sought to be highlighted by RInfra-D.
 - 26.2. Physical constraints of laying network in Mumbai City are experienced by all Licensees, and hence there should not be any bar on TPC-D laying its network based on any such physical constraints. The Commission may evolve a mechanism to deal with the issue and create a level playing field for all Utilities.
 - 26.3. RInfra-D's submission relating to switch-over of consumers is erroneous. From a perusal of the ATE Judgment it is evident that there is no restriction imposed on switch-over of consumers. On the contrary, ATE has set aside the restrictions on switch-over that had been imposed by the Commission vide its Order in Case No.151 of 2011.
 - 26.4. RInfra-D's plea that existing consumers do not have a choice of network is devised to perpetuate its monopoly and deny choice to consumers, which is not in accordance with the provisions of the EA, 2003 as well as the principles laid down by the ATE.
 - 26.5. RInfra-D's cluster-wise development approach may not be the right approach to ensure the reliability of network. Loading of power transformers and distribution transformers are crucial for ensuring reliability.
 - 26.6. The Scenarios proposed by RInfra-D are premised upon the following:
 - The consumer does not have a choice of electing its mode of supply.
 - Cost optimization is the only criterion to be considered while approving TPC-D's Rollout Plan.

- Wherever RInfra-D's network exists, TPC-D is not permitted to lay down its network. In other words, RInfra-D has a monopoly in laying or augmenting its network in its Licence area.
- These premises on which RInfra-D has proposed its Scenarios are not only in contravention of the provisions of the EA, 2003 but also against the principles set out by the ATE.

27. In its further submission dated 1 October, 2015, RInfra-D submitted the following:

- 27.1. The ATE Judgment was passed in the context of the peculiar situation of Mumbai, its primary and fundamental basis being that TPC-D was facing difficulty in laying network in its area of supply in Mumbai as there were various constraints, including physical constraints. Now TPC-D has completely changed its stand and has made a totally new argument that there are no physical constraints for it to lay its network. This point was never raised by TPC-D; in fact, the stand of TPC-D was to the contrary.
- 27.2. The ATE categorically directed that, in order to protect consumer interest, the existing consumers of RInfra-D should be served using the network of RInfra-D only. The ATE also found that, in case switch-over of consumers from the RInfra-D network to the TPC-D network is allowed, the wheeling charges of RInfra-D would increase due to reduction in its consumer base. Further, the wheeling charges of TPC-D would also increase due to increase in the cost incurred to duplicate the network. Therefore, such network duplication will not be in the interest of either RInfra-D's consumers or TPC-D's consumers. The very underlying basis of the ATE Judgment is the existence of physical constraints as contended by TPC-D.
- 27.3. TPC-D is claiming that a consumer connected to RInfra-D's network can surrender its connection and connect to TPC-D's network. According to TPC-D, that is not contrary to the ATE Judgment. It is obvious that TPC-D does not wish to implement the Judgment of the ATE in the manner directed, and wishes to keep the choice of network development with it so that it can play that card in the "consumer choice" from time to time to develop the network selectively and connect consumers as it chooses.
- 27.4. Reliability of Utilities' networks cannot be compared simply on the basis of the Reliability Indices due to huge differences in the respective customer base, Customer Density, Load Density, spread of the networks, etc. RInfra-D is today serving more than 29 lakh consumers on its network, whereas TPC-D is serving only 75,000 consumers on its network in its entire area of supply common to RInfra-D as well as BEST. RInfra-D's network spread of 11,000 kms (HT+LT) is almost four times that of TPC-D. RInfra-D's network connects to all unorganized dwellings (slums) in its area of supply and is predominantly serving LT connections, whereas TPC-D's network is mainly connecting HT consumers, let alone being spread out in any slum. Hence, due

consideration needs to be given to these variations in Customer Density/Load Density, type of network (LT or HT) and spread of network while comparing Reliability Indices.

- 27.5. There is no question of allowing any additional Capex towards reliability improvement to TPC-D as part of its Rollout Plan as it would amount to unnecessary burdening of consumers. Even if the Commission perceives any issues related to reliability of RInfra-D's network, it would be in the consumer interest to first evaluate the marginal cost of RInfra-D to undertake improvements for better reliability as, in most situations, RInfra-D is likely to be better placed to take advantages offered by economies of scale.
- 27.6. Cluster-based approach adopted by RInfra-D helps in maintaining (n-1) reliability across its entire area of supply. Cluster-wise planning philosophy also helps RInfra-D to take advantage of diversity of load in case of any forced outage, and helps in faster restoration of supply. Further, cluster-wise planning minimizes Capex to maintain (n-1) reliability for all the sub-stations within that cluster, as against maintaining the same for individual sub-stations.
28. The Commission observes that MSEDCL is also a Licensee with whom TPC-D has a small common area of supply. The Notice for the present proceedings was issued to MSEDCL on 17 August, 2015. However, MSEDCL only entered appearance on the last date of hearing, i.e. on 22 September, 2015, and sought time to make additional submissions. Vide Daily Order dated 22 September, 2015, the Commission granted MSEDCL one week's time to file its submissions, which it failed to do.
29. The Commission has heard the matter at length and, vide Daily Order dated 22 September, 2015, reserved the Case for Order. The Commission is of the view that the physical Rollout of TPC-D's network is also dependent upon various other factors discussed in subsequent paras and that, therefore, it would be appropriate at this stage to pass an Interim Order inter-alia deciding certain issues raised for the Commission's consideration, and also giving certain directions which would enable the Commission to finally approve the Rollout Plan, subject to various modalities and conditions precedent, in accordance with the mandate of the EA, 2003 and the ATE Judgment.
30. The present Petition has been filed for the approval of the Rollout Plan of TPC-D subsequent to the Distribution Licence granted to it in Case No 90 of 2014. TPC-D has been granted a second Distribution Licence in the distribution area common with BEST and RInfra-D in the Mumbai Island City and Suburban Mumbai respectively (and a small area outside Mumbai common with MSEDCL). The Rollout Plan of TPC-D is to be approved in terms of the directions issued by the Commission in Case No. 90 of 2014, and also in consonance with the ATE directions.

31. Insofar as TPC-D's common distribution area with BEST is concerned, the Commission is cognizant of the fact that it is a 'Local Authority' not obliged to allow other Licensees or consumers use of its wires through Open Access under the EA, 2003 (as explained below). Therefore, the Commission will deal with the Rollout Plan of TPC-D separately in two parts, i.e. Rollout in the case of area of supply common with RInfra-D (and MSEDCL), and Rollout in the case of common area of supply with BEST.

32. As for approving the Rollout Plan in the area common with BEST, the Commission observes that BEST, before various forums, has contended that, since it is a Local Authority, no other Licensee is permitted to operate within its area. However, the Supreme Court in its Judgment dated 8 May, 2014 in Civil Appeal 4223 of 2012 has held that no such special right has been vested with a Local Authority as was claimed by BEST:

“25. It is therefore, difficult to accept the extreme position taken by the appellant that if local authority is a distribution licensee in a particular area, there cannot be any other distribution licensee in that area without the permission of such a local authority. Not only such a contention would negate the effect of universal supply obligation under Section 43, it will also amount to providing an exception which is not there either in Section 43 or Section 14 of the Act namely to treat local authority in special category and by giving it the benefit even that benefit which is not specified under the Act.”

33. From the above, it is clear that TPC-D's Licence to operate as a Distribution Licensee in the area of supply common with BEST is in accordance with the scheme of the EA, 2003. This brings us to the next question, i.e. whether the ATE Judgment in Appeal Nos. 229 and 246 of 2012 can provide a via media to TPC-D to use the existing wires of BEST to supply to its consumers in the area of supply common to both. The Commission observes that the ATE Judgment is not applicable that area for the following reasons:

(a) BEST, admittedly being a Local Authority, has the right to refuse non-discriminatory Open Access to the second Distribution Licensee. That has also been vehemently contended by BEST in its submissions. Therefore, unlike RInfra-D, BEST cannot be directed or compelled to grant Open Access (use of its wires/network) to TPC-D for its consumers.

(b) Unlike the common area of supply with RInfra-D, where TPC-D has a right to seek Open Access from RInfra-D, no such right exists in the case of BEST as, under Section 42 (3) of EA, 2003, it is exempted from the obligation of granting such non-discriminatory Open Access.

- (c) In any case, the ATE Judgment was specific to the area of supply common between RInfra-D and TPC-D, and the directions in that Appeal cannot be specifically enforced between TPC-D and BEST.
34. Further, vide its submission dated 23 October, 2015, BEST has stated inter-alia that its challenge to the grant of TPC-D's Licence is pending before the ATE and the Supreme Court and that, therefore, at this juncture BEST is not in a position to decide upon TPC-D's request for Open Access permission. BEST further urges that TPC-D should separately approach the Commission for the area of supply common with BEST, and that BEST would submit its recommendations or suggestions then.
35. At this stage, the Commission is not approving the Rollout Plan of TPC-D in the area of supply common with BEST. In this Interim Order, the Commission is constituting a Committee to make certain recommendations, the details of which are set out in subsequent paragraphs. BEST shall participate in its proceedings as an Invitee and give its views and suggestions. The Committee would make recommendations which will be considered by the Commission, giving due opportunity to all the parties, other stakeholders and the public.
36. As for the approval of TPC-D's Rollout Plan for the area common with RInfra-D, the Commission notes that the term 'Rollout Plan' per se has not been defined in the EA, 2003. However, the main object behind consideration and approval of a Rollout Plan is to ensure that TPC-D, which has been granted a Distribution Licence, is in a position to supply to consumers within its distribution area as per the time period specified under Section 43 of the Act and relevant Regulations. The reason for imposing such a condition was to ensure that TPC-D, within a reasonable period, is able to comply with its USO as required under Section 43. However, after the grant of Licence and during the pendency of the present Petition, the ATE has issued certain directions which are now required to be considered in approving the Rollout Plan of TPC-D. The Commission notes that the ATE Judgment was in relation to a Licence which has expired on 15 August, 2014. However, the directions in that Judgment also have a bearing on the Licence of TPC-D granted in Case No. 90 of 2014, which will be accordingly considered by the Commission.
37. The Commission observes that the TPC-D's Rollout Plan for the area common with RInfra-D will have to be considered in accordance with the guidelines and directions contained in the ATE Judgment. Both RInfra-D and TPC-D, in their arguments, have condensed these into the following issues:
- i. What is the scope or meaning of the term 'new consumer', and what impact does it have on the Rollout Plan of TPC-D to be approved in terms of the ATE Judgment?

- ii. What is scope and meaning of the term ‘reliability of the existing distribution network’, and what impact does it have on the Rollout Plan required to be approved?
 - iii. What shall be the mode and manner in which physical Rollout of the TPC-D network shall be approved after considering issues (i) and (ii) above?
38. The Commission notes that the ATE Judgment was in relation to Case No. 151 of 2011, which was associated with a Licence which expired on 15 August, 2014. However, the principles enunciated are equally applicable to the present Licence and Rollout Plan. The Commission will, therefore, be guided by the ATE directives, while factoring in the reality that the earlier Licence was a deemed Licence which expired on 15 August, 2014, but that the current Licence is for 25 years. Hence, the Commission at this stage would only decide on the principles of the physical Rollout Plan of TPC-D, and will also consider the scope and meaning of the ATE Judgment and its impact on the parameters of the Rollout to be undertaken by TPC-D in the years to come.
39. TPC-D has submitted that there are no restrictions on the Distribution Licensee in laying or development of the network, where:
- i) Such network is required to supply to new consumers, including new consumers in redeveloped premises;
 - ii) Demand is made by an existing consumer/consumers, and physical laying of the network is in the consumer interest; or
 - iii) Substantial investment is already made and the network needs to be loaded for enhanced economic use; or
 - iv) The reliability of the existing network is low.
40. On the other hand, RInfra-D has contended that, as per the ATE directions, where there is a reliable distribution network of RInfra-D, it would be in the interest of consumers of both Licensees that the change-over consumers continue to get supply from TPC-D on RInfra-D’s network, with liberty to migrate back to RInfra-D in case its Tariff becomes more attractive. Laying of a duplicate network would entail physical constraints and high costs, which cannot be in the overall interest of consumers. Even in respect of new consumers, TPC-D cannot lay down its network indiscriminately. To the extent possible, TPC-D would be compelled to use the existing network of RInfra-D.
41. With regard to whether a redeveloped premises constitutes a ‘new consumer’, RInfra-D has submitted that such premises cannot be treated as new connection as the RInfra-D network is already providing supply to the existing building. If TPC-D is allowed to

supply to such redeveloped building, it would amount to duplication of network by TPC-D under the guise of 'new connection'. Even if any augmentation needs to be done to cater to redeveloped premises, the cost of such augmentation for RInfra-D would only be incremental over its existing network and hence much lower, as against TPC-D which will have to lay its backbone network to reach such premises.

42. RInfra-D has submitted further that a new consumer is necessarily one in whose premises there does not exist any network at all, and only in such circumstances can a Distribution Licensee lay down its network to effect supply. TPC-D's interpretation of 'new consumer' also means that every existing consumer in the RInfra-D area is a new consumer once it approaches TPC-D by surrendering his existing connection, which is contrary to TPC-D's own definition of switch-over consumers, and such an interpretation by TPC-D would render the ATE Judgment otiose.
43. In its submission dated 26 September, 2015, TPC-D submitted that there is a difference between the term 'switch-over' and the term 'new connection/ consumer'. A 'new consumer' means a person who has made an application for supply of power and whose premises are for the time being not permanently connected to the works of a Distribution Licensee. On the other hand, a 'switch-over' consumer may make an application while he is still connected to the network of a Distribution Licensee.
44. The Commission is of the view that the submissions made by the parties have to be tested against the directions of the ATE. The relevant portions of its Judgment read as follows:

“58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment

in the licence condition of Tata Power, after following due process as per law. The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers. In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfra.

59. *However, where Tata Power has already made considerable investment in constructing the distribution system in pursuance of the directions of the State Commission, it should be allowed to be commissioned and capitalized, to feed the consumers as decided by the State Commission. Tata Power may submit a proposal to State Commission in this regard which the State Commission shall consider and decide after hearing the concerned parties including RInfra.*
60. *Where Tata Power has already laid down its network and some consumers have switched over from RInfra to Tata Power, these consumers can remain with Tata Power. However, they can choose to switch over to RInfra in future on RInfra's existing network as per the switch over protocol to be decided by the State Commission.*
61. *In view of above, Tata Power is directed to submit its Rollout Plan as indicated above for approval of the State Commission. In the meantime, Tata Power is restrained to lay down its distribution network in the area common to RInfra till further orders of the State Commission on its Rollout Plan as per the directions given in this Judgment. However, Tata Power can supply power to the existing consumers of RInfra irrespective of category of consumer on the request of the consumers only through RInfra's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. However, there shall be no restriction on Tata Power or RInfra to lay network for supply to new connections. The State Commission shall consider to give approval for laying down of network by Tata Power only in areas where there are distribution constraints and laying down of a parallel network by Tata Power will improve reliability of supply and benefit the consumers, only after hearing RInfra and the consumers. Similarly, RInfra shall not lay network in any area where only Tata Power's network is existing and use Tata Power network for changeover of consumers, if any, till further orders by the State Commission, except for extending supply to new connections. The State Commission is directed to devise a suitable protocol in this regard after following due procedure. This may require change in licence condition of the licensees which the State Commission shall decide after following due procedure as per law."*
45. From the directions of the ATE set out above, the following observations emanate for the consideration of this Commission:
- (a) Mumbai city is unique as it would not be physically and economically viable for TPC-D to create a parallel distribution network for the entire area of its supply common with RInfra-D.

- (b) TPC-D cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra-D exists.
 - (c) TPC-D should be restricted to laying its network in areas where such parallel network would improve the reliability of supply and benefit the consumer.
 - (d) TPC-D can extend supply to new consumers who seek connection from it.
 - (e) The Rollout approval may require amendment of the TPC-D's Licence.
 - (f) The Rollout should be done after following due process of law and after hearing RInfra-D and consumers.
 - (g) Where TPC-D has made considerable investment in constructing its distribution system in furtherance of the earlier directions of the Commission, such system should be commissioned and capitalized.
 - (h) Where TPC-D has already laid down its network and some consumers have switched over from RInfra-D to TPC-D, such consumers can remain with TPC-D.
 - (i) Till such time as the Commission approves the Rollout Plan, TPC-D is restrained from undertaking supply to new consumers through the switch-over mode.
46. These directions make it clear that the ATE in its Judgment has sought to promote consumer choice through a via media to ensure that there is choice of Licensee to all consumers within the parallel area of supply. The Commission has also been directed by the ATE to approve the Rollout of TPC-D in a manner which promotes consumer choice, which is economical for all consumers, and in which there is no wastage of national resources.
47. The Commission granted a new Licence to TPC-D vide Order in Case No. 90 of 2014. However, subsequent to this, the ATE passed its Judgment in Appeal No. 229 and 246 of 2012 and passed certain observations which overlap both Licences. While granting a Licence to TPC-D, the Commission was strictly guided by the letter of Section 43 of the EA, 2003:

“(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the

electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.”

The Commission observes that the ATE Judgment lays down certain restrictions for valid reasons in the special circumstances of the case. However, throughout its Judgment, the ATE has held that the object of granting a parallel Licence is the supremacy of consumer choice coupled with economics of the cost of supply, as such factors are material for fixation of the tariffs of Licensees. Therefore, the enforcement of Section 43 will have to be done taking into account the guidelines issued by the ATE in Appeal Nos. 229 and 246 of 2012.

48. The Commission notes that it has granted the parallel Licence to TPC-D under Section 14 with the objective to promote competition and give choice to consumers. The Commission is of the view that the clear intent of the ATE Judgment is the same, namely to enable choice to consumers. However, both TPC-D and RInfra-D have argued that the method of supply of power should be a paramount consideration in approving the Rollout Plan of TPC-D.
49. The Commission is of the view that consumers' choice of Licensee triumphs over the method of supply. A consumer may seek supply from one or the other Licensee based mainly on considerations such as a comparison of quality of service and tariff, and would not be concerned in the manner in which the supply is made. In an ideal scenario, both parallel Licensees would be required to maintain a robust distribution network. However, in the present case, one of the Licensees (TPC-D) has been unable to lay such an extensive network owing to difficulties in Suburban Mumbai of delay in cable-laying, digging and other approvals, and physical difficulties in laying the network and due to congestion and the geography of the area (and having been largely only a bulk supplier rather than retail supplier in the past). Therefore, in these circumstances, the Licensees have been directed by the ATE to use each other's existing wires (excluding the BEST area) to effect supply to consumers within their area of supply.
50. The Commission notes that the EA, 2003 defines 'consumer' as any person who is supplied with electricity for his own use by a Licensee engaged in the business of supplying electricity to the public under the Act, and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee. Therefore, in terms of the EA, 2003, the Consumer is anyone

who is either supplied by a Licensee or is connected to the works of a Licensee. The ATE Judgment nowhere redefines this meaning of the term ‘consumer’.

51. That being said, the focus of the ATE Judgment is to ensure that supply of electricity to consumers is done with minimal wastage and duplication of resources, optimum utilization of public funds, and using the existing network of either Licensee wherever possible. In this light, the Commission is, therefore, of the view that consumer choice is a primary consideration, and also that it is the responsibility of the Licensees and the Commission to ensure that the mode of supply opted for is the most cost effective and avoids duplicating or wasting national resources.
52. The Commission observes that the interpretations given by TPC-D or RInfra-D do not do true justice to the mandate envisaged by ATE. If TPC-D’s interpretation is accepted, then in effect TPC-D has the right to lay its lines and supply to any consumer seeking such supply within its distribution area. If the definition of RInfra-D is accepted, then TPC-D does not have any right to lay its own lines so long as RInfra-D is present in the vicinity, barring a situation in which a completely new area is developed in the area of supply common to both Licensees. The Commission believes that the mandate actually given by the ATE is to find a via media by which consumer interest is protected and the existing network is used to its maximum potential, and new lines are only laid when reliability and adequacy, and economic viability along with consumer demand require it to be done.
53. The Commission is of the view that one of the issues that needs to be addressed in this Case is the responsibility of the Licensees, especially TPC-D, towards consumers who apply for a connection. This would arise in the following Scenarios:
 - (a) Location, Municipal Ward or other area which is completely covered by one Licensee, but consumers within such area still wish to shift from their existing provider to the other Licensee;
 - (b) Location, Ward or other area which is completely covered by both Licensees, but consumers within such area wish to shift from their existing provider to the other Licensee;
 - (c) Locations, Wards or other areas where neither Licensee is presently supplying power through its wires;
 - (d) Locations, Wards or other areas where either or both Licensees are present, and where the projected growth could considerably increase the number of consumers wishing to avail supply from either Licensee.

54. As far as Scenario (a) is concerned, it is clearly just a question of wheeling of power to the consumer through the network of the Licensee whose network is available in the area. Therefore, it is a matter of adjusting payments between such consumer and the concerned Licensee or between the Licensees. The existing system of accounting already deals with the situation, and therefore no modification to it is called for at present.
55. As far as Scenario (b) is concerned, where both Licensees have an existing robust distribution network available, if a consumer requests a shift from one Licensee to the other, the second Licensee would be permitted to supply to that consumer directly through its own wires.
56. As for Scenario (c) above, both Licensees are at liberty to approach the Commission for in-principle approval of their capex proposals (if required under the Guidelines of the Commission for such approval) for servicing those consumers in such areas who have sought or are likely to seek supply from them.
57. However, with regard to Scenario (d), which the ATE has also considered in its Judgment, it is obvious that the existing reliability and adequacy of the system coupled with economics and mode of supply will have to be considered. Wherever a Licensee desires to lay lines to supply consumers in such areas, this would have to be assessed on parameters such as the adequacy of the existing network coupled with the cost of augmentation (which may eventually be passed on to all the consumers of that Licensee in future tariffs). The Commission observes that a Licensee who is already present may be in a better physical and economical position to augment its network to supply to additional consumers. In some other cases, however, the other Licensee may be in a position to augment its nearby network and provide last-mile connectivity to such area in a more advantageous manner. Thus, the Commission is of the view that whether or not TPC-D will be permitted to lay its network to cater to specific areas and/or consumers will depend on the adequacy of its existing network in the vicinity and also upon the economics of such extension or augmentation. However, both Licensees are obligated to supply on request to all consumers within their area of supply regardless of the manner or method of supply which may be agreed or decided upon. Needless to say, the above directions are also applicable to RInfra-D in terms of the ATE Judgment.
58. The Commission is of the view that both Licensees need to see beyond the scope of 'change-over' and 'switch-over'. With a Distribution Licence comes the responsibility to discharge a USO, which has to be observed in letter and spirit. Questions may arise as to the mode and manner of supply to a consumer, but not on whether a consumer is to be supplied or not. The ATE by its Judgment has given a mandate to both Licensees to use each other's wires, where available, to effect supply.

59. The ATE has directed that TPC-D must be restricted to lay its network only in areas where laying of a parallel network would improve the reliability of supply and benefit consumers. Therefore, the Commission is of the view that it is necessary to understand the scope and meaning of the expression ‘reliability of the existing distribution network’, which would entitle either Licensee to lay or augment its network in case such reliability is found to be inadequate, in the context in which it has been used in the ATE Judgment.
60. Reliability of a network is a factor of technology, factors such as loading and aging, environmental factors, demographic movement, population change, etc. Both Licensees have got a Distribution Licence for 25 years. It is obvious that both technology and the servicing environment will undergo changes during this period. Even the present constraints in laying network in congested areas of Mumbai may not be as relevant in the course of time, with technological and other developments. Reliability is, therefore, a dynamic concept and cannot be ascertained by a single indicator.
61. The existing technical parameters of reliability have been provided in the Commission’s SoP Regulations, 2014. These are subject to revision or amendment from time to time. As pointed out above, in the context of this Case such technical reliability has to be looked at in a dynamic context extending over a longer period of time. It also has to be ensured that the extension or augmentation undertaken by either Licensee is in the best interest of consumers. ‘Reliability’ as defined in the SoP Regulations provides an index related to consumer interruptions and their period and frequency. However, the Commission is of the view that, in the context of the ATE Judgment and the circumstances of Mumbai, the term ‘reliability’ has to be understood more broadly to mean the adequacy of a network and infrastructure to feed existing and new consumers. As far as consumer supply interruptions are concerned, most areas in Mumbai have a relatively reliable distribution network. However, the system needs continuous augmentation and improvement to match growing demand. Thus, the adequacy of existing networks in specific locations or areas is an important consideration in determining the Rollout Plan, its modalities and the methodology for dealing with consumer demand. Parameters such as loading of network, ageing of network, obsolescence of technology, etc. determine the adequacy of the network. The Commission is of the view that such adequacy needs to be assessed for deciding augmentation or addition to the network for the purpose of supplying electricity at the least cost to consumers.
62. While granting the Licence to TPC-D in Case No. 90 of 2014 the Commission had found the Rollout Plan proposed by TPC-D to be inadequate and therefore had directed TPC-D to furnish a revised Plan. The Commission envisaged such a Plan as phased development of TPC-D’s network that would enable it to supply existing consumers and any future applicants using its own wires within a reasonable and realistic period of time. However, the subsequent ATE Judgment permits a Licensee

to effect supply through the wires of the other Licensee (where they are in place, but excluding BEST which is not statutorily obliged to provide Open Access) in the area common to both in order to meet its USO. The ATE Judgment has also laid down certain other principles and parameters considering which supply to an applicant from one or the other Licensee is to be effected. The Commission is of the view that, therefore, the term 'Rollout Plan' has now also to be understood in a wider sense to encompass the nature of the response required to such applications for supply in different scenarios mentioned above, which may or may not involve laying or augmentation of network by one or the other Licensee or consideration of an extensive, area-wise physical master plan except perhaps in respect of the BEST area.

63. The Commission notes that TPC-D's right to develop its existing network where it has already made investments for creation of distribution assets is undisputed in terms of the ATE Judgment. TPC-D has already filed a Petition in this regard in Case No. 50 of 2015, on which the Commission will pass appropriate Orders separately.
64. The ATE in its Judgment has also provided a solution for dealing with immediate consumer requests which will have to be honoured by directing TPC-D to supply using RInfra-D wires in cases where they are present and there is no TPC-D network. The same principle is applicable to RInfra-D (as well as to MSEDCL) and vice versa.
65. In order to further address and finalise the operational specifics of the matter, the Commission deems it appropriate to constitute a Committee which would make recommendations on the key aspects, as set out in broader sense in Para 62 of this Order, which would be considered by the Commission thereafter while approving TPC-D's Rollout Plan.
66. The Committee shall comprise the following:
 - (a) Director (Electrical Engineering) of the Commission – Convener
 - (b) Consumer Representative(s) (to be nominated by the Commission)
 - (c) Technical Consultant(s) (to be nominated by the Commission)
 - (d) Representatives of TPC-D, BEST, RInfra-D and MSEDCL - as Invitees

The nominations referred to above shall be made separately by the Commission after the issue of this Interim Order, and notified on its websites.

67. The Committee shall provide recommendations on the following matters, in relation to TPC-D's Rollout Plan:

- The protocol and procedure in terms of which any migration of consumers shall take place in the scenarios set out at para. 53 above so that it is cost-effective, swift and consumer-centric;
 - The institutional mechanism which may have to be put in place to operationalise the above in terms of deciding how consumer applications received or expected from time to time are dealt with;
 - The practicable, operational criteria and methodology which may be used for assessing the adequacy of the network of one or the other Licensee in an area from whom a consumer may approach the either Licensee for supply, and the manner in which the most efficient and cost-effective option for providing it may be determined;
 - Inputs on TPC-D's physical Rollout Plan for the common area of supply with BEST and its phasing, including the procedure to be followed for migration of consumers between the two Licensees, keeping in view USO requirements.
68. The Commission proposes to undertake the following process before passing its final Order in this Case:
- a. The Committee shall submit its recommendations to the Commission within 90 days of its constitution;
 - b. The Commission shall consider the recommendation of the Committee for approval and if it considers necessary, direct TPC-D to revise its Rollout Plan in terms of the approved recommendations of the Committee;
 - c. The revised Rollout Plan and the Committee's recommendations shall be made available in the public domain for comments, suggestions and objections, and the Commission shall also hold a Public Hearing.
69. The Commission in its final Order will decide on continuation or re-constitution of the Committee for scrutinizing the future capital investment schemes submitted by the parallel Licensees in accordance with the Capital Investment Guidelines in their common area of supply.
70. After the Commission's Daily Order dated 22 September, 2015, Shri Harishchandra Govalkar has approached the Commission with an Application dated 19 October, 2015 seeking public hearing of the matter, inter-alia placing reliance on the observations made in the ATE Judgment in that regard. That Application has been numbered as

Miscellaneous Application (MA) No.10 of 2015. The Applicant also states that he had earlier approached the ATE in DFR No. 2068 of 2015, which was disposed of vide Order dated 16 October, 2015 as follows:

“We must note that the Applicant/Appellant has filed an application seeking leave to file the appeal and an application praying for waiver of court fee. We have not considered the merits of these applications. At this stage, learned counsel for the Applicant/Appellant states that the grievance of the Applicant/Appellant is that the State Commission has not given hearing to the Applicant/Appellant. Counsel states that he has instructions to withdraw the appeal and approach the State Commission requesting the State Commission to give the Applicant/Appellant a hearing. The Applicant/Appellant, if so advised, may do so. Needless to say that in case such an application is filed the State Commission shall consider the same in accordance with law. The State Commission shall consider all issues including the maintainability of such application. However, we make it clear that we have expressed no opinion on any aspect of the case including the aspect of maintainability.”

As explained at para. 68 above, the Commission will give an opportunity of hearing to all, including the Applicant in MA No.10 of 2015, at a subsequent stage of the proceedings in this Case and before the final Order is passed. Therefore, MA No.10 of 2015 is disposed of in this Interim Order with liberty to the Applicant to approach the Commission with his views when the Commission undertakes the process of public consultation.

Sd/-

(Deepak Lad)
Member

Sd/-

(Azeez M. Khan)
Member

Sd/-

(Chandra Iyengar)
Chairperson