

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai - 400 005  
Tel. No. 022 22163964/65/69 – Fax 022 22163976  
E-mail [mercindia@mercindia.org.in](mailto:mercindia@mercindia.org.in)  
Website: [www.mercindia.org.in](http://www.mercindia.org.in)

**Case No. 151 of 2011**

**In the matter of**

**Petition of M/s. Reliance Infrastructure Ltd (Distribution) seeking relief on account of certain issues affecting Reliance Infrastructure Limited (Distribution) and its financial viability**

**Shri. V.P. Raja, Chairman**  
**Shri. Vijay L. Sonavane, Member**

Reliance Infrastructure Ltd. (Distribution) ...Petitioner

V/s

The Tata Power Company Ltd. (Distribution) ... Respondent

**ORDER**

**Dated: August 22, 2012**

M/s. Reliance Infrastructure Ltd. (Distribution) (“RInfra-D”) submitted a Petition under affidavit on October 21, 2011, seeking relief on account of certain issues affecting RInfra-D and its financial viability. This petition is said to be filed under Section 43 of the Electricity Act, 2003 (“EA 2003”).

2. RInfra-D made the following prayers in its Petition dated October 21, 2011:

“

- a) *that this Hon’ble Commission may be pleased to withdraw and /or cancel the Order dated 15th October 2009 inasmuch as RInfra- D is compelled to withdraw its consent to the same by reason of acts and omissions of TPC-D which have caused severe prejudice to RInfra- D as well as its consumers.*
- b) *That this Hon’ble Commission may be pleased to restrain TPC-D from further utilizing RInfra-D’s network under the Order dated 15th October 2009 in*

*respect of consumers who propose to migrate after the filing of the present Petition;*

- c) That TPC be directed to pay to RInfrac its dues insofar as it remained unpaid from consumers who have migrated from RInfrac to TPC network.*
- d) That pending hearing and final disposal of the petition TPC-D be restrained by an order of this Hon'ble Commission from utilizing RInfrac's network;*
- e) For such further and other reliefs as the nature and circumstances of the case may require;*
- f) Pass any other Order as may be appropriate under the circumstances."*

3. RInfrac-D also filed an Interim Application dated October 21, 2011 and prayed that pending hearing and final disposal of the present Petition:

“

- (i) This Hon'ble Commission may be pleased to restrain TPC from further utilizing RInfrac-D's network under the Order dated 15th October 2009 in respect of consumers who propose to migrate after the filing of the present Petition;*
- (ii) TPC-D be restrained by an order and injunction from connecting on its network any new consumer in RInfrac's area of supply or existing consumers connected to RInfrac network, till TPC-D complies with its Universal Service Obligation by laying its network within RInfrac's licensed area of supply;*
- (iii) That pending hearing and final disposal of the petition, TPC-D be restrained by an order of this Hon'ble Commission from utilizing RInfrac's network.*
- (iv) Pass such other or further orders as this Hon'ble Commission may deem fit in the facts and circumstances of the present case. ”*

4. RInfrac-D, vide its submission on affidavit dated December 8, 2011, pursuant to the Daily Order dated December 5, 2011 passed by the Commission, amended its Prayers in the Petition as under:

“

- a) that this Hon'ble Commission may be pleased to modify and/or clarify the Order dated 15th October 2009, by holding and/or providing that the said Order dated 15th October 2009, and the protocol contained therein shall operate and be applicable on the condition that TPC-D does not connect its own network to any existing consumers of RInfrac-D or any new consumers in RInfrac's area of supply till TPC-D complies with its Universal Service Obligation by laying its network within TPC-D's licensed area of supply that coincides with RInfrac's licensed area of supply.*

b) *In the alternative to the aforesaid and in the event of the modification/clarification prayed for in prayer (a) above not being granted, this Hon'ble Commission may be pleased to withdraw and/or cancel the non-adversarial Order dated 15<sup>th</sup> October 2009;*

c) *Pending the hearing and final disposal of the Petition/Case, TPC-D may be restrained by an order and injunction of this Hon'ble Commission:*

i. *from connecting on its own network any existing consumer of RInfra-D; or*

ii. *from connecting on its own network any new consumer in RInfra's licensed area of supply;*

*in the alternative to prayer (c)(i) and (ii) above the operation of the Order dated 15<sup>th</sup> October 2009 be stayed;”*

5. RInfra-D, vide the aforesaid submission on affidavit dated December 8, 2011, also amended its prayers in the Interim Application as under:

a) *Pending the hearing and final disposal of the Petition/Case, TPC-D may be restrained by an order and injunction of this Hon'ble Commission:*

i) *from connecting on its own network any existing consumer of RInfra-D; or*

ii) *from connecting on its own network any new consumer in RInfra's licensed area of supply;*

b) *in the alternative to prayer (a)(i) and (ii) above the operation of the Order dated 15<sup>th</sup> October 2009 be stayed;”*

6. In its Petition dated October 21, 2011, RInfra-D submitted as under:

(a) The facts leading to filing of the present Petition are as follows:

(i) The Hon'ble Supreme Court, vide its Judgment dated July 8, 2008, in the case of Tata Power Company Limited vs Reliance Energy [(2008) 10 SCC 321] ruled on the licence of Tata Power Company.

(ii) In December 2008, in Case No. 113 of 2008 in the matter of TPC-D's Petition for Truing Up for FY 2007-08, Annual Performance Review for FY 2008-09 and Tariff Determination for FY 2009-10, TPC-D proposed its distribution network rollout plan and, inter alia, submitted that the same

was to be divided in two phases on the basis of load projections and Town Planning. The First Phase contemplated laying down of network during the period from FY 2008-09 to FY 2011-12, comprising the complete distribution system only in nine Wards of Municipal Corporation of Greater Mumbai (MCGM), with presence in other MCGM Wards and the area administered by the Mira Bhayandar Municipal Corporation (MBMC) based on consumer requirements, with anticipated capital expenditure of Rs. 1127 Crore. The network rollout in the balance MCGM Wards and balance area administered by MBMC amounting to Rs. 1000 Crore was to be completed in the Second Phase upto FY 2014. The Commission, vide its Order dated June 15, 2009 held that TPC-D cannot pick and choose the Wards wherein it shall supply electricity. Further, the Commission also observed that TPC-D needs to explore the option of using the distribution network of the other Distribution Licensee.

(iii) The Commission, vide its Order dated June 15, 2009 in Case No. 121 of 2008, issued the Tariff Order for RInfra-D. Subsequently, the Commission issued the Clarificatory Order on July 22, 2009, thereby determining Wheeling Charges on per unit basis. Under the Clarificatory Order, the Commission referred to the Order dated June 15, 2009 in Case No.113 of 2008, and opined that the consumers in Mumbai licence area could be benefited from the parallel licence situation, and shifting of consumers from one Licensee to another needs to be facilitated. Further, in order to implement the Hon'ble Supreme Court's Judgment in letter and spirit, the Commission directed the Utilities to not only enable the consumers to exercise their choice easily but also facilitate the same proactively, by allowing the use of their distribution network to the other Distribution Licensee.

(iv) Subsequently, both Parties agreed on certain terms/aspects of draft of the Protocol (which emerged after discussion between the two Parties) relating to migration of consumers to TPC-D on RInfra-D network, however, for resolving certain areas of disagreement, on August 31, 2009, TPC-D filed a Petition (numbered as Case No. 50 of 2009), praying that the Protocol set out in the said Petition be permitted with such modification as the Commission may deem necessary. RInfra-D, vide its letter dated October 6, 2009, filed its suggestions in the matter. RInfra-D also commented on the issue of duplication of network and avoidance of wastage of infrastructure. The Commission, vide its Interim Order dated

October 15, 2009, in Case No. 50 of 2009, approved an interim Protocol under Section 94(2) of the EA 2003. The Commission clarified that certain issues such as recovery of Regulatory Assets as well as Cross-Subsidy Surcharge have wider implications and would be dealt with separately.

- (v) The Commission issued its Order in Case No. 72 of 2010 on July 29, 2011 in the matter of RInfracorps's Petition for truing up for FY 2008-09, Annual Performance Review for FY 2009-10 and tariff determination for FY 2010-11, wherein the Commission permitted in-principle recovery of Cross-Subsidy and Regulatory Assets from the existing consumers of RInfracorps (Group I), as well as consumers who are using RInfracorps's wires but receiving supply from TPC-D (Group II). The Commission held that the consumers who were originally receiving supply from RInfracorps but were no longer receiving supply from RInfracorps and were also not connected to the network of RInfracorps would not be liable to pay Cross-Subsidy Surcharge.
- (vi) The Commission, in its Order dated September 9, 2011 in Case No. 43 of 2010, determined the Cross-Subsidy Surcharge. TPC-D and Mumbai International Airport Limited (MIAL) have filed Appeals against the Orders dated July 29, 2011 and September 9, 2011 before the Hon'ble Appellate Tribunal for Electricity (ATE).
- (vii) The Commission's Order dated October 15, 2009 is an interim Order, and the Commission has not issued the final Order in Case No. 50 of 2009. TPC-D, on the basis of the Hon'ble Supreme Court's Judgment, Commission's Order dated June 15, 2009 in Case No. 113 of 2008 and Order dated October 15, 2009 in Case No. 50 of 2009, has taken away sizeable number of consumers, who were receiving supply from RInfracorps on its wires and were not connected to TPC-D network as in respect of such premises TPC-D had not connected its network. As per the Commission's Order dated July 29, 2011, approximately 5,031 consumers out of the total changeover consumers have been connected to TPC-D network.
- (viii) MIAL now proposes to shift entirely to TPC-D network having clandestinely shifted two 11 kV feeders. Similarly, HDFC Bank in respect of its premise at Narayan Properties, Chandivali, has unauthorizedly migrated to TPC-D network on February 26, 2011 without paying outstanding dues amounting to approximately Rs. 18,00,000/-. As a result, RInfracorps's meters and CT's have been left idle.

- (ix) TPC-D, since its inception, was not interested in laying its own network in its entire area of supply, which included the common area of supply of BEST as well as MBMC area.
- (x) The network laid by RInfra-D till date is spread over 384 sq.km area and caters to 28 Lakh consumers. Further, the network is augmented to the extent necessary to reach approximately one Lakh additional consumers per year.
- (xi) Out of the aforesaid 28 Lakh consumers, approximately 2,21,664 consumers have migrated to TPC-D. RInfra-D tabulated the category-wise breakup of such consumers along with their total consumption in units since the changeover date. RInfra-D summarised the effect of the migration in terms of sales as given in the Table below, and stated that there would not have been much impact of migration, if the mix of consumers migrating to TPC-D was same as that of the pre-migration consumption mix, i.e., 56:44. However, the migration is skewed towards majority subsidising sales (90%) rather than subsidized sales (10%). As a result, after migration, cross-subsidising sales of RInfra-D have reduced to 41% whereas the subsidized sales has increased to 59%.

	<b>Before Migration</b>		<b>Migrated breakup</b>		<b>After Migration</b>	
Subsidising Sales (MU)	4849	56%	2374	90%	2475	41%
Subsidised Sales (MU)	3827	44%	249	10%	3578	59%
<b>Total</b>	<b>8676</b>	<b>100%</b>	<b>2623</b>	<b>100%</b>	<b>6053</b>	<b>100%</b>

- (b) The present Petition is being filed, inter-alia, for the purpose of seeking modifications/clarifications to the Order dated 15<sup>th</sup> October 2009 in Case No. 50 of 2009.
- (c) Section 43 of the EA 2003 requires the observance of Universal Service Obligation (USO) by a Distribution Licensee. The MERC (General Conditions of Distribution Licence) Regulations, 2006 also stipulate such requirement. The Commission has stipulated the requirement of the said USO by TPC-D in TPC-D's Tariff Order dated June 15, 2009 in Case No. 113 of 2008. In spite of the fact that TPC-D had a distribution licence for

over a hundred years, the USO was not met, as TPC-D was satisfied with supplying in bulk.

- (d) As an interim and interregnum measure, till TPC-D laid its distribution network and complied with its USO, it made an Application before the Commission for Open Access in accordance with the MERC (Distribution Open Access) Regulations; however, as an afterthought TPC-D claims that the same was made under Section 23 of EA 2003. The object of the said Application was clearly that TPC-D, to comply with its USO, would use RInfra-D's network in totality.
- (e) The Order dated October 15, 2009 was passed after a consensual process. Though in law, the Order dated October 15, 2009 could not have been passed had RInfra-D not agreed to such a course of action, the said Order came to be passed even in the absence of TPC-D complying with its USO through its own network.
- (f) RInfra-D agreed to the course of action whereby TPC-D was permitted to use the distribution network and system of RInfra-D, as it was clearly desirous of furthering the oft repeated objective of the Commission to supply cheaper electricity to the consumers. It was perceived that after using RInfra-D network, the cost of power supply to the consumers would be still cheaper, even after payment of a reasonable amount of Cross-Subsidy Surcharge and allocation of Regulatory Assets.
- (g) It was always understood that the use of RInfra-D network was to enable TPC-D to fulfil its USO through the network of RInfra-D only till TPC-D was able to fulfil its USO by laying out its entire distribution network to fulfil its USO. In other words, either TPC-D fulfilled its USO by utilizing the entire network of RInfra to supply energy to changeover consumers or laid out its own entire network and started fulfilling its USO. It was never intended that TPC-D could cherry pick consumers to be supplied through RInfra-D's network and consumers to be supplied through its own network.
- (h) A situation has now emerged where TPC-D is selectively laying its distribution network to high end consumers of RInfra who were originally consumers of RInfra and switched over to TPC supply on the distribution network of RInfra. Such consumers would have been required to pay Cross-Subsidy Surcharge and a share of the Regulatory Assets. By selectively laying network to such consumers, there is an obvious attempt to take them out of the category of consumers liable to pay Cross-Subsidy Surcharge and Regulatory Assets, thereby not only rendering the distribution network of

RInfra-D idle but also completely negating a level playing field and equality before law to RInfra and its consumers.

- (i) Selective laying of network by TPC has not only resulted in loss of cross-subsidy but also RInfra-D's distribution network has been rendered redundant and uneconomical, as only high per-capita consumers have been selectively taken out of RInfra-D network. This cost would have to borne by the remaining consumers of RInfra, who are by their very nature, subsidized consumers, thereby giving an undue advantage to the high-end consumers and completely defeating the objective of the EA 2003. The entire scenario would have been balanced, if the existing distribution system of RInfra-D was directed to be utilized by TPC-D till it lays its entire distribution network. A letter dated October 15, 2011 addressed by RInfra-D to TPC sets out the various issues (as summarised below) that have arisen on account of RInfra-D giving its No Objection Certificate (NOC) to TPC and also certain contentions, which have resulted in considerable financial loss to RInfra-D thereby resulting in additional burden on their consumers.
- Miscommunication on surrender of Connection
  - Upcoming Developments having supply from RInfra
  - Billing for the changeover consumers
  - Replacement of L&T meters
  - Assessment units on account of faulty meters
  - Changed over consumers using unauthorised load
  - Unauthorised extension of load
  - Wastage of RInfra's manpower
- (j) RInfra-D has filed the present Petition to prevent TPC-D from acting illegally and from not complying with the provisions of law taking undue advantage of the gesture of consent given by RInfra-D in good faith.
- (k) The Protocol contained in the Order dated October, 15, 2009 was expressly agreed to by RInfra-D on the premise that TPC-D would be using the network of RInfra-D for supply to its consumers who have migrated from RInfra-D to TPC-D and who are receiving supply from TPC-D. Such arrangement was in the light of the observations made by the Commission and the Judgment of the Hon'ble Supreme Court, whereby it could be inferred that such an arrangement would desist TPC-D from laying down its network selectively. As is apparent from paragraph 6.3(f) of the Order dated July 29, 2011 passed in Case No. 72 of 2010, TPC-D has taken advantage of the said Order and used RInfra-D's network. TPC-D has also, at least in

respect of approximately five thousand consumers, selectively laid down its own network contrary to the various Orders passed by the Commission. The course of action followed by TPC-D, apart from being contrary to the interim basis on which the arrangement/Protocol was agreed to as well as to various Orders of the Commission, has put RInfra-D to grave prejudice.

- (l) RInfra-D has lost its consumers (mostly subsidising consumers) to TPC-D, without TPC-D having its network and/or setting its network, which it would have had to do, under the relevant provisions of applicable laws.
- (m) TPC-D, apart from nullifying the Orders of the Commission, is also depriving RInfra-D by further tilting the level playing field in favour of TPC.
- (n) The Commission may be pleased to modify/clarify the Order dated October 15, 2009 inasmuch as RInfra-D is compelled to withdraw its consent to the same by reasons of acts and omissions of TPC-D, which have caused severe prejudice to RInfra-D as well as its consumers [*who propose to migrate after the filing of the present Petition.*]
- (o) *TPC-D be directed to lay down its network in its licensed area of supply within a period of six months from the date of the present Petition by following the prescribed procedure.*
- (p) *TPC-D is indulging in a practice by selectively laying down network so as to shift the consumers from RInfra-D to TPC-D network without even insisting in the realizing RInfra-D legitimate dues, which is causing severe prejudice to RInfra and it is denied it valuable and legitimate rights including to disconnect supply. In such circumstances TPC-D be directed to pay such dues of RInfra which remain unpaid from such consumers who have migrated from RInfra-D to TPC-D, particulars whereof RInfra crave to leave to produce before the Commission when required.*
- (q) *Pending hearing and final disposal of the Petition TPC-D be restrained by Commission's Order from utilizing RInfra-D network.* [The part in brackets has been removed in the amendment to the Petition made by RInfra-D]

7. The additional submissions made by RInfra-D in the Interim Application dated October 21, 2011 are as under:

- (a) The present Application has been filed inter-alia for seeking interim reliefs on the ground that a critical situation has emerged wherein owing to the acts and omissions of TPC-D, grave and severe prejudice has been caused to RInfra-D.
- (b) Despite the observations/rulings of the Commission regarding TPC-D picking and choosing its Wards and selectively laying its network, TPC-D still continues to (i)

selectively lay its network, and (ii) abate unauthorised migration of consumers (dehors the interim protocol as agreed by the Parties in the Interim Order dated October 15, 2009).

- (c) One of RInfra-D's consumers, Mumbai International Airport Limited (MIAL), has clandestinely shifted to TPC-D on the pretext that supply be disconnected for carrying out maintenance activities.
- (d) HDFC Bank, which had two connections in respect of the premises at Narayan Properties, Chandivali, has shifted to TPC-D in an unauthorised manner, without paying its outstanding dues amounting to Rs. 17,88,160. The same was noticed by RInfra-D's representative during September 2011 billing wherein HDFC Bank Ltd. had removed the load wires from the switch fuse unit, which has resulted in RInfra-D meters and CT's being left idle.
- (e) The issue pertaining to consumers migrating on TPC-D network without paying RInfra-D's legitimate dues and other charges would not have occurred without the active connivance and support from TPC-D.
- (f) RInfra-D has a prima-facie strong case on merits in so far as the challenge to the Interim Order dated October 15, 2009 is concerned, and is entitled to interim reliefs.

8. The Commission vide its Notice dated November 3, 2011, scheduled a hearing in the matter on December 5, 2011 and directed RInfra-D to serve a copy of its Petition along with its accompaniments to the Respondent and authorised Consumer Representatives.

9. TPC-D, vide letter dated November 4, 2011 addressed to the Commission, under Regulation 8.6.8 of the MERC (General Conditions of Distribution Licence) Regulations, 2006, intimated that RInfra-D, vide its letter dated October 15, 2011 addressed to TPC-D has conveyed RInfra-D's unilateral decision to defer the Joint Meter Reading (JMR) activities with immediate effect pending resolution of certain alleged 'open issues' raised by RInfra-D. TPC-D further stated that the unilateral withdrawal of RInfra-D from JMR activities was in clear violation of the Commission's Order dated October 15, 2009. TPC-D stated that it has already requested RInfra-D to forthwith resume JMR activities in order to process changeover cases so as to avoid inconvenience to consumers. TPC-D stated that in view of the intransigent stand taken by RInfra-D, TPC-D has been constrained to carry on the changeover process in the presence of a Notary Public so as to mitigate the obstruction caused by the unilateral withdrawal of RInfra from JMR activities and in the greater interest of changeover consumers. TPC-D added that the intransigent conduct of RInfra also hinders TPC-D's efforts to meet its obligations as a Distribution Licensee and serve its consumers.

TPC-D also submitted the copies of its correspondence with RInfra-D in this regard, as Annexures to this letter.

10. TPC-D, vide its letter dated November 14, 2011 addressed to the Commission, informed that RInfra-D has further raised objections to the JMR process being carried out by TPC-D in the presence of a Notary Public. TPC-D stated that it has come to know about letters issued by RInfra-D to all such consumers who have either already changed over or have consented to the changeover using the Notary Public to authenticate the JMR, contending that RInfra-D would not accept the JMR done in the presence of Notary Public and it would continue considering these consumers as its own and would also continue raising electricity bills on these consumers and failure to pay its bills would lead to disconnection of supply. TPC-D submitted that the aforesaid conduct of RInfra-D was clearly motivated to halt the entire changeover process, and under the circumstances, it was becoming extremely difficult to process the Changeover Applications and meet the timelines under the SOP Regulations.

11. RInfra-D submitted its further affidavit on November 15, 2011, to bring on record the correspondence between the Parties subsequent to the filing of the Petition. RInfra-D submitted that the present Petition had been filed for recalling the Order dated October 15, 2009. RInfra-D added that though several critical issues, which vitally affect RInfra-D's financial viability are pending before the Commission, TPC-D has continued to unilaterally carry out JMR purportedly in the presence of a Notary Public by following a process that it has unilaterally evolved, to the detriment of RInfra-D. RInfra-D submitted that the Commission may be pleased to grant RInfra-D the interim reliefs as prayed for in the Petition as well as in the Interim Application, for the reasons more particularly set out by RInfra-D in letters to TPC-D and for reasons and on the grounds set out in the Petition.

12. On December 2, 2011, Mumbai International Airport Pvt. Ltd. (MIAL) submitted its Application for Intervention in the matter. MIAL, in its Application, stated that it is situated in the Licence Area common to both RInfra-D and TPC-D, and therefore, both RInfra-D and TPC-D are authorised and thus engaged in supplying of electricity as the area distribution licensee in the area where the Applicant is situated. MIAL submitted that pursuant to the Commission's Interim Order dated October 15, 2009 and in compliance with the conditions prescribed therein, MIAL migrated from RInfra-D to TPC-D for getting electricity supply with effect from November 1, 2009. Since then, MIAL is receiving supply from TPC-D and has been paying the applicable tariff including Wheeling Charges to TPC-D. MIAL added that it has filed an Appeal against the Order of the Commission in Case No.

72 of 2010, wherein the Commission held in principle that changeover consumers who have changed over to TPC-D using RInfra-D wires would continue to be liable to RInfra-D for its past Regulatory Assets and are also liable to bear the cross-subsidy losses of RInfra-D. MIAL, in its Application, stated that it is understood that RInfra-D has levelled certain specific allegations against MIAL in its Petition. RInfra-D has contended that MIAL proposes to shift entirely to the network of TPC-D having clandestinely shifted two 11 kV feeders. RInfra-D has contended that TPC-D is colluding with their consumers, including MIAL, to migrate unauthorisedly from the distribution network of RInfra-D. MIAL submitted that in view of the specific averments made by RInfra-D against MIAL, it is only fitting that MIAL may be allowed to intervene in the present Petition, to defend such baseless allegations. MIAL added that it is the biggest changeover consumer from RInfra-D to TPC-D and was one of the principal contesting parties in all the related Petitions and Appeals. Therefore, any decision in the matter would vitally affect the interests of MIAL. MIAL further added that it has conducted the changeover procedure to TPC-D as per the Order of the Commission, and if the Order is withdrawn/cancelled, it may prejudicially affect MIAL's vested rights and interest. MIAL submitted that therefore, MIAL has a substantial interest in the present Petition, and hence, it may be allowed to intervene in the present Petition and be made a Party to it.

13. TPC-D, vide its submission on affidavit dated December 5, 2011, objected to the maintainability of the Petition and opposed the interim reliefs sought by RInfra-D in the Petition. TPC-D submitted as under:

A. Preliminary Objection to the Maintainability of the Petition

- (i) Under the EA 2003 and the MERC (Conduct of Business) Regulations, 2004, the Commission does not have any jurisdiction or authority to recall an Order that has been passed, except in review. The jurisdiction to recall an Order is distinct and different from review jurisdiction, and such a jurisdiction must be specifically provided for in the statute for it to be exercised by a Court. In the Case of *Asit Kumar Kar v. State of West Bengal and Ors. [(2009) 2 SCC 703]*, the Hon'ble Supreme Court has clearly laid down the distinction between recall and review. The present case is not a case where the Order has been passed ex parte without affording an opportunity of hearing. RInfra-D was a party to the proceedings in Case No. 50 of 2009 and the Order dated October 15, 2009, which is now sought to be recalled, was passed after hearing RInfra-D. Further, Courts have also held in a series of decisions that an Order may be recalled and set aside when (i) the Order has been obtained by fraud (ii) court is misled (iii) court itself commits a mistake. However, none of these grounds are applicable in the present case, which warrants

recall of the Order dated October 15, 2009. Further, the Petition is defective in terms of Regulation 47 of the MERC (Conduct of Business) Regulations, 2004, since the relevant provisions of law under which the Petition is filed have not been mentioned in the Petition, and is hence, liable to be rejected.

- (ii) Even if it is assumed that the Petition has been filed under the review jurisdiction of the Commission; such a claim is barred by limitation, since, the application for review has to be filed within 45 days of the date of such Order, whereas the Petitioner has chosen to impugn the Order dated October 15, 2009, after more than two years. Further, the Order dated October 15, 2009 has attained finality and has already been implemented with respect to a large number of consumers who have changed over supply from RInfra-D to TPC-D. Even otherwise, there is no error apparent in the Order dated October 15, 2009, and RInfra-D has also not produced any new and important matter, which was not to their knowledge or could not be produced at the time when the Order dated October 15, 2009 was passed. Therefore, there is no occasion for the Commission to exercise its review jurisdiction.
- (iii) The legality of consumers having the option to changeover to receive supply from TPC-D through the network of RInfra-D has been established time and again, starting from the Judgment of Hon'ble Supreme Court dated July 8, 2008. The protocol for changeover laid down by the Commission in the Order dated October 15, 2009, has to be read in context of the changeover scheme propounded by the Commission in the Order dated June 15, 2009, and subsequently explained in the Order dated July 22, 2009, which Orders have attained finality, and cannot be termed as Interim or ad hoc in nature. RInfra-D was in agreement with this arrangement at the time of these Orders and also issued an unconditional No-Objection Certificate (NOC) dated July 30, 2009 for facilitating consumers to changeover supply to TPC-D. The same is also reflected in RInfra-D's reply filed in Case No. 50 of 2009. The changeover arrangement initiated by the Commission is predicated on sharing of intervening distribution facilities of each other by the two Distribution Licensees operating in the same area of supply as provided in MERC (General Conditions of Distribution Licence) Regulations, 2006. This arrangement has been initiated by the Commission in furtherance of the objective of avoiding duplication of expenditure in retail supply and so as to optimize capital expenditure by the Distribution Licensees, which is very much within the domain of the Commission's power to regulate the distribution business. RInfra-D has accepted the correctness of the Orders and the prescribed changeover arrangement

and it is impermissible for RInfra-D to now turn around and blame the said Orders if RInfra-D is finding it difficult to carry on with its distribution business.

B. RInfra-D is not entitled to grant of interim relief

- (iv) The interim relief prayed for by RInfra-D is the same as its main prayer in the Petition in so far as RInfra-D is seeking to restrain TPC-D from utilizing RInfra-D's distribution network to supply electricity to consumers situated in the Common Licence Area. Such a prayer of RInfra-D militates against the settled position of law, as observed by the Hon'ble Supreme Court in case of *State of Uttar Pradesh and Ors. vs. Ram Sukhi Devi [(2005) SCC (L&S) 560]* that the interim relief, which practically gives the same relief as the principal relief sought in the Petition, cannot be granted by a Court. RInfra-D is therefore, not entitled in law to the interim relief prayed for. Further, RInfra-D has failed to make out a case for grant of interim relief, and the Petition does not satisfy the requirements laid down for grant of stay of an Order issued by the Commission. As held by the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Ltd. vs. Sri Sriman Narayan and Anr. [(2002)5 SCC 760]*, stay cannot be granted if the prerequisites for granting of stay are not met with. RInfra-D is seeking to recall the Order dated October 15, 2009 after elapse of more than two years and especially when the Order has attained finality and has been implemented with respect to large number of consumers who have changed over. RInfra-D has failed to demonstrate its bonafide and any urgency in the adjudication of the Petition. Therefore, no prejudice would be caused to RInfra-D if TPC-D is allowed to continue using the distribution network of RInfra-D for supplying electricity to consumers situated in the Common Area of supply.
- (v) If a Distribution Licensee is unable to run its business within the four corners of the EA 2003, solutions cannot be found outside and contrary to the provisions of the EA 2003 to keep the business of such Distribution Licensee going. If the revenue gap in the ARR of RInfra-D opens up the threat that RInfra-D may not eventually be able to carry on its business, then there are sufficient provisions in the EA 2003 to deal with such situation.
- (vi) All the 'open issues' raised by RInfra-D, based upon which RInfra-D is seeking to rescind the Changeover Scheme, are minor operational issues and can be easily sorted out between the Distribution Licensees in their day to day operations. Since, the Orders dated June 15, 2009, July 22, 2009 and October 15, 2009 have become final and are binding on the Parties, therefore, if at all there are any operational

issues, which are required to be resolved, then the solution to such issues has to be necessarily found within the ambit of the aforesaid Orders.

- (vii) TPC-D submitted its replies to the issues raised by RInfra-D in its letter dated October 15, 2011.
- (viii) As regards the repeated argument of RInfra-D that TPC-D should be required to lay down its network in its entire licensed area to service its consumers, and should not be allowed to use RInfra-D's existing distribution network in the interim, it is submitted that the issue of network development is distinct from the issue of network sharing. TPC-D, in the interim, continues the expansion of its network in its licensed area while continuing to service its consumers utilizing RInfra-D distribution network though the mutually agreed protocol. Each Distribution Licensee has the right to expand its distribution network subject to the confirmation by the Commission. Further, it is not practically possible for any distribution licensee coming into full fledged operation to set up its own distribution network instantaneously all at once. As a Distribution Licensee, TPC-D is free to roll out its network in the manner that suits its business. Further, USO cast upon a Distribution Licensee requires connecting a consumer who seeks connection, and it does not mean that TPC-D must put its distribution network in every nook and corner of the licensed area even before there is demand for connection by a consumer.
- (ix) As regards RInfra-D's allegation that TPC-D is cherry picking and selectively laying down the network, TPC-D has always been ready and willing to connect and supply to all and any consumer who wishes to receive supply from it. Further, TPC-D is duty bound to release new connections and supply to any consumer who seeks connection and supply from TPC-D.
- (x) The Changeover Scheme and Order dated October 15, 2009 does not impede TPC-D's obligation to lay down its network for releasing such new connections to consumers in its licensed area. It is up to the consumer situated in the Common Area of Supply to decide as to whether he wants to receive supply from TPC-D or RInfra-D, and through whose Wires, because the cost implications are different in both cases.
- (xi) RInfra-D is incorrect in alluding that the Order dated October 15, 2009 was predicated on RInfra-D's consent and is subject to RInfra-D agreeing to the changeover protocol laid down in the Order.
- (xii) TPC-D also objected to the contention raised by RInfra-D that it has lost its consumers to TPC-D due to various Orders passed by the Commission. The consumers are not captive to RInfra-D's distribution business. RInfra-D is a parallel

Licensee operating alongside TPC-D in the common area of supply, and in terms of Section 43 of the EA 2003, a consumer is legally entitled to choose either of the Distribution Licensees for receiving supply. Further, moving away of consumers from one Licensee to another Licensee offering lower tariffs in a situation of parallel Distribution Licensees, is very much an integral part of competition in retail supply, which the EA 2003 seeks to promote.

(xiii) TPC-D also submitted that though it has challenged the legal basis of Cross-Subsidy Surcharge and Regulatory Asset Charge detailed in the Order dated July 29, 2011 before the Hon'ble ATE, it has no relation to the legal option and right of changeover available to consumers.

(xiv) There is reason to believe that since the price of power in the short-term is likely to go down, RInfra-D once again finds incentive in supplying electricity to high end consumers.

14. During the hearing held on December 5, 2011, Shri. J. J. Bhatt, Advocate appeared on behalf of the Petitioner, RInfra-D. Shri. Sitesh Mukherjee, Advocate appeared on behalf of the Respondent, TPC-D. Shri. S. R. Nargolkar, Advocate appeared on behalf of the intervener, MIAL. Authorized Consumer Representatives, Shri. Rakshpal Abrol and Shri. N. Ponrathnam were also present.

15. During the hearing, the Counsel for RInfra-D presented the case and prayed that TPC-D should be directed to use the option of Open Access for giving power supply to the Changeover Consumers and selective laying of wires should not be allowed. The Counsel for TPC-D objected to the maintainability of the Petition and submitted its say on the Interim Application filed by RInfra-D. The authorized Consumer Representatives submitted that RInfra-D should immediately restart the JMR process, else it would amount to violation of the Commission's Order. The Intervener, MIAL submitted its Intervention Application during the hearing. In response to a specific query of the Commission regarding the prayers made out in the Petition, RInfra-D submitted that it is pressing only for prayer no. '(ii)' of its Interim Application dated October 21, 2011 and prayer no. '(b)' of its main Petition dated October 21, 2011. RInfra-D thereafter amended its prayers in relation to which it was pressing for relief. Accordingly, the Commission directed the Petitioner to amend its prayers and serve the copy of the same on the Respondent, authorised Consumer Representatives and the Intervener in this matter. The Intervener, MIAL was also directed to serve the copy of its Intervention Application on all the Parties.

16. RInfra-D, vide its submission dated December 8, 2011, carried out amendments to the Petition, thereby amending its prayers and paragraphs 1 and 6 of the Petition. Further, under the same submission, it also amended its prayers in the Interim Application.

17. The Commission, vide its Notice dated December 15, 2011, scheduled the next hearing in the matter on January 17, 2012.

18. Shri Rakshpal Abrol, representing Bharatiya Udhami Avam Upbhokta Sangh, an Authorised Consumer Representative, vide letter dated January 14, 2012 submitted that in Case No. 50 of 2009, both TPC-D and RInfra-D had mutually adopted the methodology agreed on September 30, 2009. He submitted the extract of RInfra-D's letter dated October 6, 2009 to the Commission, wherein it was stated that proposed arrangement not only avoided wastage of infrastructure but also allows the consumer to use the infrastructure for which he has paid through tariff to his existing Distribution Licensee. RInfra-D had added that the proposed arrangement enables a Distribution Licensee to meet its obligation to supply by using the distribution system of the other Distribution Licensee in the area against payment of Wheeling Charges and the consumer is also benefited as he has the choice of receiving retail supply from either of the two Licensees. Shri. Abrol submitted that the Petition filed by RInfra-D is premature and may not be entertained in view of the above mentioned clarification accepted by RInfra-D in their letter dated October 6, 2009.

19. RInfra-D, vide its submission on January 17, 2012, filed its reply on affidavit to TPC-D's affidavit dated December 5, 2011. RInfra-D's additional submissions are as under:

- (i) As regards maintainability of RInfra-D's Petition, reliance placed by TPC-D on the MERC (Conduct of Business) Regulations, 2004 is misplaced, as admittedly, the Commission's Order dated October 15, 2009 in Case No. 50 of 2009, is an interim arrangement and has been passed under Section 94(2) of the EA 2003, and also clearly states that the same shall stay in effect until formulation of the final scheme in the form of Regulations or otherwise. Hence, the Judgment of the Hon'ble Supreme Court reported in *[(2009) 2 SCC 703]* and Regulations 71 and 72 of the MERC (Conduct of Business) Regulations, 2004 are not applicable to the present case. There is no bar either in the EA 2003 or in the said Regulations against RInfra-D filing the Petition or the Commission granting relief as prayed for. Further, there is no question of RInfra-D not mentioning the relevant provisions of law, as TPC-D's Petition in Case No. 50 of 2009 was itself filed under the provisions of Sections 86 (1) (a) and 86 (1) (f) of the EA 2003. Moreover, the Case No. 50 of 2009 has not been disposed off.

- (ii) As regards TPC-D's contention regarding limitation, the Order dated October 15, 2009 being an interim Order passed under Section 94(2) of the EA 2003, there is no question of the above Petition being barred by limitation or the Commission becoming *functus officio*.
- (iii) As regards the legality of network sharing being well settled, the submission made by TPC-D that the Order dated October 15, 2009 cannot be termed as an interim Order is contrary to the said Order on which TPC-D has relied. The Commission's Orders dated June 15, 2009 and July 22, 2009 have been violated by TPC-D by selectively laying network.
- (iv) In view of the Order dated October 15, 2009 being an interim Order passed under Section 94(2) of the EA 2003, RInfra-D is entitled to interim relief. RInfra-D also denied that the Order had attained finality by itself or merely because two years have elapsed. Further, TPC-D's conduct affects not only RInfra-D but also its consumers and hence, it is entitled for interim relief.
- (v) RInfra-D denied that it is unable to run its business and submitted that the Petition has been filed on account of TPC-D selectively laying down its network to the detriment of the consumers of RInfra-D and also by reasons of TPC-D not complying with its USO. RInfra-D also denied that the operational issues are minor in nature. RInfra-D submitted its counters to the submissions made by TPC-D on the operational issues raised by RInfra-D.
- (vi) RInfra-D denied that the issue of network development is distinct from network sharing. The network is being used by TPC-D by reason of TPC-D not having a network rollout in its area of supply. The facilitation of network sharing is by reason of RInfra-D's consent and the conduct of TPC-D is hurting and causing prejudice to the consumers of RInfra. TPC-D has admitted that it is expanding its network, which is contrary to the philosophy adopted by the Commission that this would lead to duplicity of network and would result in incurring heavy capital expenditure. The Commission viewed use of the distribution network of another Licensee to optimize costs, which is followed more in breach by TPC-D. RInfra-D also denied that TPC-D is free to rollout its network in the manner that suits its business inasmuch as the network rollout plan is required to be approved by the Commission and to RInfra-D's knowledge, there is no such approval from the Commission.
- (vii) RInfra-D denied that TPC-D is not required to put its distribution network in every nook and corner of the licensed area as a part of its rollout. As per the Order dated October 15, 2009, obligation to release new connections and supply were

necessarily through RInfra-D's network and any action contrary thereto would be against the said Order.

- (viii) RInfra-D also stated that in the absence of a level playing field, there is no question of there being any incentive to supply electricity to high end consumers. TPC-D has taken undue advantage of the changeover procedure and also violated the same. Further, the changeover procedure is going contrary to fostering any alleged competitive environment.

20. TPC-D, on January 16, 2012, filed its Counter affidavit to RInfra-D's amended Petition. TPC-D's additional submissions are as under:

- (i) The prayers (a) and (c) sought by RInfra-D in the Amended Petition to the extent that it seeks to interdict TPC-D from laying down its network and connect to any consumer are patently illegal and contrary to law.
- (ii) RInfra-D is in effect seeking that TPC-D should not lay down its network so as to connect and give supply to any consumer in its licensed area of supply. This is contrary to law including Section 43, under which, TPC-D is mandated to release new connections and supply to any consumer who seeks connection and supply from him.
- (iii) The scheme for network sharing and changeover, which was mandated by the Commission in its Orders dated June 15, 2009 and July 22, 2009 have become final and binding, and both RInfra-D and TPC-D have accepted the same. RInfra-D is now indirectly asking for review of aforementioned Orders under the guise of clarification and/or modification and/or variation of the Order dated October 15, 2009, which is not permissible in law.
- (iv) RInfra-D is in effect seeking review of the earlier Orders, which have become final and binding on account of the fact that the Orders have reached finality, in the garb of the present Amended Petition labelled as one for 'modifications/clarifications'. TPC-D referred the case of *Pepsi Foods Limited v. Special Judicial Magistrate* reported at (1998) 5 SCC 749 wherein the Hon'ble Supreme Court observed that in order to determine the nature of an application, the court should not be guided by its label or the mention of a particular section of a statute at the cause title of such application but should find out what it contains.
- (v) Further, the Petition for modification/clarification touching the merits of the matter is not maintainable in law. The court can consider the matter, if at all, only upon a review application on limited grounds. With reference to the Hon'ble Supreme Court's case reported at *Ram Chandra Singh v. Savitri Devi and*

*Others, (2004) 12 SCC 713* and *State of Haryana v. M.P. Mohla, (2007) 1 SCC 457*, it is submitted that an application for modification/clarification is not maintainable by avoiding the rigour, which an application for review is subject to under law.

- (vi) RInfra-D has wrongly alluded that the Orders dated June 15, 2009 and July 22, 2009, which mandate the scheme for network sharing and changeover consumers, is based on or dependent on its consent. In order to operationalise such schemes formulated by the Commission in its Order dated June 15, 2009 and July 22, 2009, it was necessary to have detailed protocol in place. However, since the extant Distribution Open Access Regulations do not provide for situation of parallel Licensees, where a consumer seeks to avail electricity supply from one Licensee using the intervening distribution facilities of other Licensee in the Common Licence Area, the Commission laid down the detailed procedure based on TPC-D's Petition. The Commission further held that the interim protocol would be followed by a final scheme in the form of Regulations, which shows that the Order was passed in the exercise of its regulatory powers, which authorises the Commission to regulate the distribution businesses.
- (vii) In addition to issues of Cross-Subsidy and Regulatory Assets, as highlighted by RInfra-D, there were several other issues, which the Commission held to be irrelevant for the purpose of operationalising the scheme for network sharing and changeover, and were to be considered separately in appropriate proceedings.
- (viii) TPC-D referred to RInfra-D's letter dated September 5, 2009, wherein RInfra-D objected to TPC-D laying down of network, and insisted that in line with the Commission's Order dated June 15, 2009, TPC-D must utilize RInfra-D network to extend the supply to existing or prospective consumers in the common area of supply. Further, RInfra-D again offered to undertake the sole responsibility of network augmentation/development in the Common area of supply during the proceedings in Case No. 50 of 2009. Though RInfra-D's self claimed alleged exclusive right of network development is misconceived, it shows the eagerness of RInfra-D to embrace the changeover process, which at that time appeared to be aligned to RInfra-D's business interests.
- (ix) TPC-D has not committed any violation of the Order dated October 15, 2009. RInfra-D has been rejecting changeover requests for frivolous and extraneous reasons, and hence, acted in violation of the Commission's Order.
- (x) The scheme for network sharing and changeover formulated by the Commission in its Orders dated June 15, 2009 and July 22, 2009, and operationalized by the Order dated October 15, 2009 is not an interim and interregnum measure, as

contended by RInfracor. The scheme for network sharing and changeover is unique and has been introduced by the Commission in exercise of its regulatory powers to regulate the distribution business, with the objective to infuse competition in retail supply and foster consumer welfare by optimizing the capital expenditure by distribution licensees, therefore, the Commission rejected TPC-D request for approval of capital expenditure for laying down its own network and instead directed TPC-D to utilize RInfracor's network to supply to consumers situated in the Common Area of Supply.

- (xi) TPC-D filed a Petition in Case No. 50 of 2009 invoking Regulation 21 of the MERC (Distribution Open Access) Regulations, 2005, which deals with the Commission's power to remove difficulties in light of the fact that extant Distribution Open Access Regulations do not provide for a situation of parallel Licensees.
- (xii) The scheme for changeover was never questioned by RInfracor, and reference to Section 23 of the EA 2003 has been made by TPC-D to address the purely legal issues of the source of power of the Commission to lay down the scheme for network sharing and changeover, with a view to maintaining efficiency in supply and to promote competition.
- (xiii) TPC-D denied the contention of RInfracor that it was perceived that even after payment of reasonable amount of Cross-Subsidy and allocation of Regulatory Assets, the power to the changeover consumers would be still cheaper. At the time of laying down the scheme in Case No. 50 of 2009, no other charge except the Wheeling Charge was contemplated.
- (xiv) TPC-D denied RInfracor's contention that the use of RInfracor's network was to enable TPC-D to fulfil its USO though the network of RInfracor only till the time TPC-D was able to fulfil its USO by laying out its entire distribution network to fulfil its USO.
- (xv) The Orders dated June 15, 2009, July 22, 2009, and October 15, 2009 were passed in furtherance of the objective of avoiding duplication of expenditure and to foster consumer welfare by optimizing capital expenditure, and in effect the first two Orders negated the need for parallel distribution network to be set up by TPC-D.
- (xvi) The issues relating to payment of Cross-Subsidy Surcharge and Regulatory Assets by changeover consumers are already pending before the Hon'ble ATE in Appeal No. 132 of 2011, and RInfracor cannot re-agitate the issue before the Commission in the present proceedings.

- (xvii) The changeover of consumers has been working to the benefit of RInfracor, because it is leading to reduction in power purchase costs as the power purchase requirements of RInfracor are also getting reduced.
- (xviii) By referring the finding '*one of the objectives it sets out to achieve is to give the consumer an option to choose the distribution licensee from whom it wishes to receive supply of electrical energy*' at Para 103 in the Hon'ble Supreme Court's Judgment dated July 8, 2008, TPC-D stated that the Commission propounded the changeover scheme, so as to enable TPC-D to reach directly to all categories of consumers in the Common Area of Supply.
- (xix) TPC-D, while denying the contention of RInfracor that the changeover protocol was suggested only as an interim procedure, submitted that the protocol was interim but the scheme for sharing of network was always meant to be permanent and therefore, the same was not challenged by both the Parties, wherein it was held that the protocol would be followed by a final scheme in the form of Regulations.
- (xx) RInfracor objected to the need for another protocol for Operationalizing network sharing and changeover on the ground that Distribution Open Access Regulations was already available. RInfracor also differed with TPC-D on certain operational aspects of the changeover and contested TPC-D's case by contending that supply to consumers by TPC-D using RInfracor wires is Open Access.
- (xxi) The capital expenditure for all the network expansions undertaken by TPC-D in its licensed area have been approved by the Commission.
- (xxii) TPC-D submitted that in the case of MIAL and HDFC Bank, there was nothing incorrect, and RInfracor is deliberately mixing up the issue of migration of consumers to TPC-D's network with the scheme of network sharing and changeover.
- (xxiii) RInfracor may consider proposing a higher tariff for low-end consumers and a low tariff for high-end consumers in order to mitigate the purported imbalance caused between sales to subsidizing and subsidized consumers. Further, the Commission may also consider fixing a ceiling on retail tariff, which RInfracor may charge to its consumers.
- (xxiv) TPC-D denied that the Commission has turned down TPC-D's roll out plan given in 2008 for being selective and not in compliance with the applicable provisions of law.
- (xxv) Network expansion is a continuous process and USO is qua individual consumers, therefore, as and when a consumer wants supply, TPC-D is statutorily obligated to connect by laying down its own network, if the consumer wants so.

- (xxvi) While stating that there is no merit in R'Infra-D's contention that TPC-D, acting under the Order dated October 15, 2009 is tilting the level playing field against RInfra-D, TPC-D submitted that consumers moving away from one Licensee to other Licensee offering lower tariff in a situation of parallel Distribution Licensees is very much an integral part of the competition in retail supply, which the EA 2003 seeks to promote.
- (xxvii) While declaring RInfra-D's prayer seeking the Commission to direct TPC-D to lay down its network within a period of six months from the date of present Petition as misconceived, TPC-D averred that RInfra-D as a competing Distribution Licensee, does not have any locus standi to comment on the roll-out plan of TPC-D. Further, the Distribution Licensee is free to roll out its network in a manner that suits its business.
- (xxviii) TPC-D denied that it is selectively laying down network so as to shift the consumers from RInfra-D to itself without even insisting on realizing RInfra-D's legitimate dues. Further, as regards the alleged pending dues of RInfra-D against migrated consumers, this issue is between RInfra-D and such consumers, and does not concern TPC-D.

21. During the hearing held on January 17, 2012, Shri. J. J. Bhatt, Advocate along with Smt. Anjali Chandurkar, Advocate and Shri. R. R. Mehta appeared on behalf of RInfra-D. Shri. Sitesh Mukherjee, Advocate along with Shri. M. Shenbagam appeared on behalf of TPC-D. Shri. S. R. Nargolkar, Advocate appeared on behalf of the Intervener, MIAL. The authorized Consumer Representatives, Shri. Rakshpal Abrol, Shri N. Ponrathnam, and Shri. Sandeep Ohri were also present.

22. During the hearing, the Counsel for RInfra-D explained in brief RInfra-D's amended prayers. The Counsel for TPC-D objected to the maintainability of the Petition on the basis that reliefs sought in the Petition are in contravention to the provisions of the Electricity Act, 2003. The authorized Consumer Representatives submitted that the consumers should not suffer due to pending litigation between the two Licensees and requested that the process of JMR for changeover of consumers as stipulated in the Commission's Order dated October 15, 2009 needs to be restarted. The Commission opined that the present Petition is the outcome of alleged cherry-picking of the consumers by TPC-D, and therefore, it will be appropriate for TPC-D to address such allegations with documentary evidence. TPC-D agreed for the same. Accordingly, the Commission directed as follows:

- a. The Respondent TPC-D was directed to internally audit the processing of applications for supply under changeover process after the Commission's Order dated October 15, 2009. TPC-D was further directed to submit a certified copy of such a quantifiable (number of consumers, sales in MU, etc.) and verifiable Report, as mentioned above, to the Commission within three weeks time.
- b. The Petitioner RInfra-D was directed to continue with the process of JMR, as set out in the Commission's Order dated October 15, 2009 for changeover of consumers. The Petitioner cannot take any decision unilaterally.
- c. TPC-D was directed to serve a copy of the aforesaid Report on all the Parties and authorised Consumer Representatives in the matter, before the next date of hearing.

23. The Commission, vide its Notice dated January 25, 2012, scheduled the next hearing in the matter on February 9, 2012.

24. During the hearing held on February 9, 2012, Shri. J. J. Bhatt, Advocate appeared on behalf of RInfra-D. Shri. Suresh Mukherjee, Advocate appeared on behalf of TPC-D. Shri. S. R. Nargolkar, Advocate appeared on behalf of the Intervener, MIAL. Authorized Consumer Representatives, Shri. Ashok Pendse, Shri. Rakshpal Abrol, Shri N. Ponrathnam, and Shri. Sandeep Ohri were also present.

25. During the hearing, the Counsel for TPC-D explained in brief the procedure being adopted for preparation of the Audit Report on processing of changeover applications. He requested the Commission to grant additional time of one week for submission of the said Audit Report. The Commission granted the same. On specific query of the authorised Consumer Representative regarding compliance of directives issued by the Commission during the last hearing held on January 17, 2012, the Counsel for TPC-D and the Counsel for RInfra-D confirmed that JMR has been recommenced from February 4, 2012. During the hearing, the Commission noted that the interim Order dated October 15, 2009 is being implemented and operational since the last two years. Therefore, the Commission decided to take stock of the migration of consumers through the present Petition. The Commission opined that such stocktaking will suggest a way forward in the present matter. Therefore, the Commission directed RInfra-D and TPC-D to prepare a presentation showing change in number of consumers, consumption mix in MU, and power purchase cost, for the period prior to and after the Commission's Order dated October 15, 2009 till date. Further, it was clarified that both the Parties are free to include additional information for enhancing the

understanding of the matter. RInfra-D and TPC-D were directed to serve a copy of the aforesaid Report/presentation to all the Parties and authorised Consumer Representatives in the matter, before the next date of hearing.

26. The Commission, vide its Notice dated February 13, 2012, scheduled the next hearing in the matter on March 14, 2012.

27. TPC-D, vide its letter dated February 14, 2012, submitted a copy of the Internal Audit Report on processing of applications for supply under changeover process after the Commission's Order dated October 15, 2009, duly certified by their Internal Auditor, Chartered Accountant M/s Aneja Associates. The Scope of Work of the Internal Auditor, as mentioned in the aforesaid Report, included a review of the processes established by TPC-D with respect to:

- a) Acceptance of application forms for changeover at the Customer Care Centres;
- b) Processing of applications at the centralized application processing centre at Mankhurd;
- c) Acceptance/rejection of applications based on MERC guidelines;
- d) Upload of initial request for JMR on the document management system of RInfra and scheduling of JMR for changeover applications accepted by RInfra;
- e) Tracking status of applications to ensure adherence to SOP of 30 days as defined by the Commission.

28. The main observations made by M/s Aneja Associates in the Audit Report are as under:

- (i) About 2,41,924 applications for changeover were received between October 15, 2009 to December 31, 2011, of which about 1822 were rejected by TPC-D primarily due to non-availability of adequate documents from the consumers. Of the balance 2,40,102 applications, 3626 applications were reflected as rejected by RInfra-D due to various reasons such as arrears, vigilance, etc., whereas 7,508 applications were awaiting initial feedback from RInfra-D as on December 31, 2011.
- (ii) The category-wise share of applications received and complete applications sent to RInfra-D have been presented.
- (iii) Consequently, 2,29,164 changeover consumers were given supply during this period. The change in the sales mix and customer mix of TPC-D from October 2009 to October 2011 has been presented.
- (iv) The processes have evolved and matured since October 2009 and as far as possible, system support is used especially for monitoring the applications.

TPC-D has established procedures and guidelines for processing the applications, which are common across all categories of customers. Adherence to these processes was satisfactory.

- (v) The applications for new connections as well as for changeover are received through a network of twenty-one Customer Relations Centres of TPC-D. During preliminary review to confirm the availability of the documents in the application (both changeover as well as new connections), the incomplete applications forms are being returned to the customers. As the process is time consuming, appropriateness of the documents is not thoroughly verified at this stage.
- (vi) Software used for the processing of applications, which in turn generates a request, restricts generation of the request in case of availability of documents is not confirmed by ticking off each document in the software. Further, data fields such as First Name, RInfra-D Account Number, Sanctioned Load, PAN Card Number, Cheque details, Mobile Number, Landmark, Consumption, and Account Class are mandatory for creation of request.
- (vii) 1822 application forms were rejected at the stage of Quality Control, and not reprocessed further thereafter, till the date of review. It is observed that rejection of 1272 forms was primarily due to incomplete documents submitted by the customers. However, on random verification of about 72 of these cases, it is observed that all documents were indicated as received in the system. Documents collected were not available for review since these were returned to the customers.
- (viii) Category-wise summary of the rejections is given below:

<b>Category</b>	<b>Applications rejected by TPC-D</b>
Residential	1401
Commercial	324
Industrial	36
Advertisement & Hoardings	5
Crematorium & Burial Grounds	1
Temporary	0
Category details not available	55

- (ix) Of 2,40,102 applications submitted to RInfra-D, 5,083 applications were rejected by RInfra-D at the initial stage on account of reasons such as pending

arrears, customer disconnected, vigilance, etc.. Of these 3,821 were reprocessed and JMR eventually executed.

- (x) For applications approved in the initial list, request for scheduling JMR is then forwarded to RInfra-D. Out of 2,32,506 applications submitted, 13,182 applications were rejected for conduct of JMR by RInfra-D of which 10,694 were reprocessed and JMR executed.
- (xi) Rejections by RInfra-D at stages after approval of the initial list resulted in delayed changeover for several customers.
- (xii) In compliance with directions contained in the Order dated October 15, 2009 that 'both the Distribution Licensees shall give wide publicity to the choice of supplier available to consumers in their licence areas', TPC-D has initiated several initiatives to educate consumers regarding the changeover on which more than Rs. 5 Crore has been spent.
- (xiii) The month-wise details of applications processed for changeover supply has been given in the Report.

29. The Commission, vide its Notice dated March 12, 2012, postponed the hearing scheduled on March 14, 2012 to March 26, 2012.

30. During the hearing held on March 26, 2012, Shri. Kapil Sharma appeared on behalf of RInfra-D. Shri. Sitiesh Mukherjee, Advocate along with Shri V. H. Wagle appeared on behalf of TPC-D. S. R. Nargolkar, Advocate appeared on behalf of the Intervener, MIAL. Authorized Consumer Representatives, Shri. Rakshpal Abrol and Shri N. Ponrathnam were also present.

31. During the hearing, the representative of RInfra-D gave a presentation on the legal and operational issues involved in the changeover process. He mentioned that TPC is improperly allowing changeover to the consumers who are in arrears and have been disconnected by RInfra-D. TPC-D submitted that the legal and operational issues need to be dealt with separately and the Commission may give a separate hearing for operational issues. TPC-D requested that it may also be allowed to raise operational issues faced by it. Thereafter, TPC-D gave a presentation on changeover of consumers and sales mix.

32. TPC-D, in its presentation, submitted as under:

- (i) Facts that emerge
  - TPC-D's mix of sales to residential consumers has increased from 3% in FY 2008-09 to 15% in FY 2011-12 (till January 2012), due to the changeover,

with the share of residential consumption out of the total changeover sales increasing from 7% in FY 2009-10 to 26% in FY 2011-12 (till January 2012)

- TPC-D has put in all efforts to get residential consumers
  - The power purchase cost of TPC is now marginally lower than RInfra's power purchase cost; further, despite power purchase cost difference narrowing, Average Cost of Supply of RInfra has been steadily increasing from FY 2006-07 to FY 2010-11
  - TPC-D's consumer mix has also shifted from higher fraction of subsidising consumers to lower fraction
- (ii) The differential tariff between TPC-D and RInfra-D is not merely on account of higher power purchase cost but also on account of high fraction of RInfra network costs
- (iii) All sections, including residential customers, have benefited from changeover
- (iv) Audit Report submitted by TPC-D has confirmed that there is a robust process for receiving and processing changeover applications.
- (v) The consumers who have applied to TPC-D have been given supply within the stipulated period.

33. Additional points made by RInfra-D in its presentation are summarised below:

- (i) As regards selective acceptance, RInfra-D submitted that for new connection/changeover of low end consumers, TPC-D application has mandatory requirements, viz., First Name, RInfra Account Number, Sanctioned Load, PAN Card Number, Cheque details, Mobile Number, etc., though as per MERC Supply Code, any one of the following documents is required, viz., Ration Card, Voters ID, Passport, Photopass and Occupancy proof. Thus, it can be inferred that TPC-D is eliminating low end consumers by restricting the option of documents as per Supply Code and insisting on submission of documents not available with low end consumers.
- (ii) RInfra-D highlighted the following issues in the changeover process:
- Quality of TPC Meters
  - RInfra-D disconnected defaulters being supplied by TPC-D on their network
  - TPC-D promoting unauthorised use
  - Non billing by TPC-D
  - Unjustified HCC handling by TPC-D
- (iii) RInfra-D highlighted the following issues in the Changeover Order:
- Power Factor and Contract Demand Penalty Cases
  - Reduction of Load

34. The Commission directed both the Parties to submit copies of the presentations made by them on affidavit with a copy served on each other, the Intervener and the authorised Consumer Representatives. TPC-D was directed to look into the operational issues (particularly the connections given to consumers in arrears and disconnected consumers) raised by RInfra-D and resolve the same in a time-bound manner. TPC-D was allowed to raise operational issues with a copy served on all the Parties. TPC-D was further directed to submit tariff slab-wise details for changeover consumers in the Residential category. The Intervener submitted that if there were any adverse remarks on MIAL in the submissions made in this matter, which will form the basis of the Commission's ruling, then they will submit reply on the same. The Commission noted that the interim Order dated October 15, 2009 was the outcome of the non-adversarial approach of both the Parties and the Commission expects the same support from both the Parties. The Commission also directed both the Parties to file their submission on the possible solution for managing the transition, with a copy served on the other Parties. RInfra-D was further directed to submit zone-wise consumers and sales mix, with a copy served on the other Parties.

35. The Commission, vide its Notice dated March 27, 2012, scheduled the next hearing in the matter on April 13, 2012.

36. TPC-D, vide affidavit dated March 30, 2012, submitted the presentation made by it before the Commission during the hearing held on March 26, 2012.

37. RInfra-D, on April 4, 2012, filed its Affidavit in reply to TPC-D's Affidavit dated January 14, 2012. RInfra-D's additional submissions are as under:

- (i) TPC-D is bound to lay down its own distribution network in terms of Section 42(1) of the EA 2003. TPC-D, under the Order dated October 15, 2009, was permitted with the consent of RInfra-D to utilize the network laid down by RInfra-D in the common area of supply. Further, prayers sought by RInfra-D in the Petition do not in any manner mitigate against the obligation of TPC-D under Section 43, in view of interalia, the Order dated October 15, 2009, as alleged by TPC-D.
- (ii) The Petition filed by TPC-D in Case No. 50 of 2009 related to Open Access, and such Open Access has been granted by the Commission to TPC-D by the interim Order dated October 15, 2009. TPC-D has admitted before the Commission that the network of RInfra-D utilized by TPC-D is Open Access. Further, TPC-D's contention that the Commission has passed such directions as TPC-D is a parallel Licensee is contrary to TPC-D's own stand in various proceedings before the Commission as well as the Hon'ble ATE.

- (iii) TPC-D ought not to be permitted to approbate and reprobate under the Order dated June 15, 2009, in view of its conduct of cherry-picking RInfra-D's subsidizing consumers by laying down the network to such consumers, i.e., on the one hand selectively laying down the network and on the other hand utilizing RInfra-D's network where TPC-D chooses not to lay down its own network in compliance of its obligations under the EA 2003. This situation has led to moving of consumers from Group II to Group III as per the Commission Order dated July 29, 2011 in Case No. 72 of 2010, where they are not liable to pay Cross-Subsidy Surcharge and Regulatory Assets Surcharge despite having received electricity during the relevant period, and the consequent burden would be borne by the remaining consumers of RInfra-D.
- (iv) There is no question of such consumers reverting back to RInfra-D for receiving supply at a later date and hence, it is imperative that interim reliefs be granted.
- (v) RInfra-D is not seeking review of the Orders dated June 15, 2009 and July 22, 2009.
- (vi) In the Order dated October 15, 2009, the Commission has deferred the issue of RInfra-D's contention to undertake the responsibility of network augmentation.
- (vii) The Commission's Order in Case No. 50 of 2009, being an interim Order passed under Section 94(2) of the EA 2003, there is no question of RInfra-D's Petition being barred by limitation or the Commission becoming *functus officio*.
- (viii) The Petition filed by TPC-D under Case No. 50 of 2009 was filed under the Distribution Open Access Regulations. Further, RInfra-D denied TPC-D's contention that the Commission held certain issues as irrelevant; rather, the Commission held that the same would have to be decided in appropriate proceedings as they have wider implications.
- (ix) The tariff differential is also by reason of there being a difference in the consumer mix of both Distribution Licensees and RInfra-D having a large number of subsidized consumers.
- (x) TPC-D is not free to roll out its network in the manner that suits its business, as the roll out plan has to be first approved by the Commission. Further, it is denied that only the protocol was interim and the Scheme was meant to be permanent.
- (xi) TPC-D ought not to have laid the network when MIAL was already using RInfra-D's network, as TPC-D's actions have resulted in stranded assets for RInfra-D.
- (xii) Under the Order dated October 15, 2009, the network already laid down by RInfra-D was to be utilized by TPC-D, so as to effect TPC-D's compliance of USO immediately, as soon as application is made by a consumer to TPC-D for supply,

and there is no question of a consumer choosing as to whether he wants to receive supply from TPC-D or RInfra-D.

- (xiii) TPC-D wants to utilize the network of RInfra-D as and when it chooses and wants to lay its own network when it suits TPC-D, which is causing grave injustice to RInfra-D's consumers.
- (xiv) The Order dated October 15, 2009 categorically clarifies that a consumer who can be disconnected for payment default would not be allowed to migrate to the other Distribution Licensee without clearing his dues with the present Licensee. However, actions of TPC-D have led to losing of RInfra-D's right of disconnection under Section 56 of the EA 2003, and TPC-D further purports to contend that RInfra-D is free to take steps against such migrating consumers.
- (xv) RInfra-D denied that it is receiving payment for Wheeling Charges for its investments in the network inasmuch as its network is lying unutilized insofar as TPC-D is putting up its own network for some consumers. Further, TPC-D is seeking to confuse issues with regard to utilization of network and receipt of electricity supply.

38. RInfra-D, on April 4, 2012, filed its separate Affidavit, whereby RInfra-D submitted as under:

- a) The Audit Report submitted by TPC-D does not cover vital aspects vis-a-vis the Commission's Record of Proceedings dated January 17, 2012.
- b) Accordingly, RInfra-D engaged an independent Chartered Accountant, M/s. Malpani & Associates for the purpose of studying and providing comments/observations in respect of the Internal Audit Report prepared by M/s Aneja Associates and to opine on the compliance of the Record of Proceedings dated January 17, 2012
- c) The comments/observations of M/s. Malpani & Associates.
- d) The copy of the Power Point Presentation in support of the Petition.

39. Main observations made by M/s. Malpani & Associates on the Audit Report of M/s Aneja Associates, in their letter forwarded to RInfra-D, are as under:

- (i) Except for a graphical presentation (that too only in the covering letter), no data of Sales in MU has been given in the Report as well as for any of the months where supply has been given to changeover consumers.
- (ii) The Audit Report has failed to provide the source documents on which it has relied while validating the information as provided by TPC-D.

- (iii) Though the Report provides the analysis of accepted applications, the Report fails to provide any analysis of the Applications that have been rejected at Customer Relation Centres itself for incompleteness. Therefore, there is no analysis of applications, which have been returned at the first stage itself under the pretext of incomplete applications.
- (iv) Having a PAN or a landmark is one of the pre-conditions while complying with the application forms. As a result of this pre-condition, the low-end prospective consumers who do not have PAN or are unable to provide any landmark in slums are most likely to get rejected at the stage of submitting the application forms. Further, the likelihood of rejection of such instances would never be captured in the Customer Connect System.
- (v) The Report fails to comment on the total number of rejections and the adherence to the process of rejections, and also fails to comment whether the process of rejection of incomplete forms is as per the Standard Guidelines prescribed by the Commission for such processes.
- (vi) The basic categorization of the consumers on the basis of area where the consumer resides is not detailed in the Report, due to which it is not clear whether a universal approach has been adopted in the changeover process for all customers in an area.
- (vii) It would have been ideal to also report instances and cases of rejections of JMR initiated by TPC.
- (viii) The Report highlights delay in carrying out JMR on account of various reasons like RInfra-D personnel not available, rescheduled by RInfra-D, etc., however, it fails to demonstrate/highlight the instances of delay attributable to TPC-D.
- (ix) Exhibit 1 of the Report may give an incorrect picture of such comparison provided therein, as the FAC charges for RInfra have not been mentioned.
- (x) The Audit Report does not provide the total volume of applications for which changeover was provided and the total applications where the customers were shifted from RInfra-D network to TPC-D network out of the total applications received for changeover. This information would have been very vital when compared to the applications rejected or pending for change over in area where Network rollout has already been completed.

40. During the hearing held on April 13, 2012, Shri. J. J. Bhatt, Advocate appeared on behalf of RInfra-D. Shri. Sitesh Mukherjee, Advocate along with Shri. P. V. Joshi appeared on behalf of TPC-D. Authorized Consumer Representatives, Shri. Rakshpal Abrol and Shri

N. Ponrathnam were also present. TPC-D made a presentation on the concerns raised by RInfra-D in the previous hearing and operational issues involved in Changeover process.

41. While presenting its views on the present matter, TPC-D submitted that by Order dated October 15, 2009, the Commission has paved the way for introducing competition in the Mumbai Licence Area by allowing Licensees to share each other's network. Competitors can co-exist and should not indulge in malafide allegations against each other. Further, RInfra-D's approach is self contradicting, as on one hand, it has accused TPC-D of violating SOP by not laying its network and on the other hand alleging selective network laying by TPC-D. This is important as RInfra-D was primarily responsible for thwarting TPC-D from laying its network from the year 2003. TPC-D has been pursuing with RInfra-D for resolution for most of the operational issues through consistent communication with RInfra-D, however, RInfra-D's response has been evasive and non-cooperative. TPC-D responded to the issues raised by RInfra-D during proceedings held on March 26, 2012, as under:

- (i) Operational issues in changeover process
  - Quality of Meters installed by TPC-D
  - RInfra-D defaulters supplied by TPC-D on TPC-D's network
  - TPC-D promoting unauthorised use
  - Non billing by TPC-D
  - Unjustified HCC handling by TPC-D
- (ii) Operational issues in Changeover Order
  - Power Factor and Contract Demand Penalty Cases - TPC-D responded that revenue by way of such penalties are part of the Supply Business and do not in any manner affect the Wheeling Charge entitlement of RInfra-D.
  - Unilateral processing of Load Reduction applications by TPC-D - TPC-D responded that as the sole interface with the consumer, TPC-D is well within its rights to process such cases, especially when reduction in load does not affect RInfra-D either financially or impact RInfra-D's network reliability.
- (iii) Selective changeover/Acceptance of Consumers – TPC-D responded that it is willing to take any consumer, irrespective of their category, whosoever chooses to apply. TPC-D added that TPC-D does not discriminate and/or restrict any class or category of consumers, and that PAN Card is one of the optional documents among many others, that is being accepted as an identity proof. Further, changeover of supplier is a direct function of the economic benefit that can be derived by a consumer on changeover. Thus, the allegation of lopsided migration due to selective acceptance by TPC-D is misconceived and baseless.
- (iv) Selective duplication of network by TPC-D

- (v) Violation of SOP/Supreme Court Directive – TPC-D responded that the Changeover Order has attained finality and the changeover scheme is a permanent feature. TPC-D submitted that it is inconceivable as to why RInfra-D is stating that changeover consumers cannot be on RInfra's wires beyond a period of one year. Such a stand of RInfra-D is misconceived. Also, changeover consumer can be on existing Distribution Licensee's wires till the time he wishes to stay. TPC-D stated that a consumer has a right to choose his supplier and switch over supply to an Utility, which offers better benefits to him and RInfra-D's business, if at all suffering, cannot be a ground to restrict a consumer's right to choose a supplier of his choice.

42. TPC-D was directed to submit the copy of the presentation made by them on affidavit with a copy served on other Parties. The Commission opined that both the Licensees should formalize appropriate communication channels at senior management level for resolving operational issues in the Changeover process. RInfra-D agreed to look into the operational issues raised by TPC-D and resolve the same in a time-bound manner. The Commission directed TPC-D to submit details of frequency distribution of changeover consumers based on their Sanctioned Load, with least count of 0.1 MW. Further, such information should include consumption in MU terms for the respective slab. The Commission mentioned that protecting the interest of consumers is the paramount objective to be achieved. In order to resolve the grievances of migrated/changeover consumers, the Commission directed both the Parties to explore the legality of setting up joint Internal Grievance Redressal Cells (IGRC)/Consumer Grievance Redressal Forum (CGRF) for resolving consumer related grievances of changeover consumers. The Commission directed the Parties to file their submission on the possible solutions for managing the transition, with a copy served on the other Parties.

43. Authorised Consumer Representative, Shri Rakshpal Abrol, representing Bharatiya Udhami Avam Upbhokta Sangh, vide letters dated April 10, 2012 and April 17, 2012 submitted that issues raised in the Petition do not have merits, and the Petition may not be admitted as it is premature at the present state. He submitted that the Commission has not been empowered to create any level playing field between RInfra-D and TPC-D.

44. TPC-D, vide affidavit dated May 2, 2012, submitted the copy of the presentation made during the hearing held on April 13, 2012.

45. The Commission, vide its Notice dated May 4, 2012, scheduled the next hearing in the matter on June 6, 2012. The Commission, vide its Notice dated May 17, 2012, postponed the hearing scheduled on June 6, 2012 in the matter to June 27, 2012.

46. Shri N. Ponrathnam, authorised Consumer Representative, filed his submissions vide affidavit dated May 30, 2012. Shri. Ponrathnam's submissions in this matter are as under:

- (i) With the Commission's Order in Case No. 50 of 2009, no permission is required from RInfra-D for use of its existing network by TPC-D for wheeling of electricity to its consumers. The concept of Open Access is applicable to all Distribution Licensees. The Commission had the jurisdiction to pass an interim Order in Case No. 50 of 2009 and RInfra-D cannot disagree/object to the use of its network by TPC-D for wheeling of electricity to its consumers.
- (ii) The availability of space for installation and right of way to electrify any premise becomes a crucial parameter involving time. As per Section 43 of the EA 2003, the Commission has to specify the time-frame for electrification of this area.
- (iii) TPC has its transmission network running across the city and suburbs and it is possible to tap from the transmission network to provide supply to new consumers. Wherever network is not available TPC may tap RInfra-D network for economic and timely service to consumers. This will lead to compliance of USO.
- (iv) If the changeover consumers are to be considered as Open Access consumers, the Commission does not have jurisdiction to fix tariff of the changeover consumers. Hence, the Commission should reconsider its decision to consider the changeover consumers as Open Access consumers.
- (v) The protocol approved in the interim Order in Case No. 50 of 2009 does not comply with Distribution Open Access Regulations. If the Commission still persists and differentiates the changeover consumers as Open Access consumers, it will have to acutely look into and alter/create new Regulations.
- (vi) Separate Wheeling Charges should not be levied on changeover consumers.
- (vii) Changeover consumers are no longer consumers of RInfra-D, hence, RInfra-D's claim of Regulatory Asset Charge and Cross-Subsidy Surcharge is illegal.

47. TPC-D, vide letter dated June 21, 2012, complied with the directives given by the Commission during the hearing dated April 13, 2012, as under:

- (a) TPC-D submitted details of frequency of distribution of consumption of changeover consumers with a least count of 0.1 MW based on their sanctioned load for the month of March 2012. TPC-D further highlighted that majority of the changeover

consumers (98.96%) have sanctioned load in the range of 0-50 kW, who account for 45.34% of the total consumption by changeover consumers, further, even in this range, almost 95.53% of the consumers have sanctioned load in the range of 0-20 kW category accounting for 36.47% of the total changeover consumption. Hence, for better presentation, it is useful to show consumption of changeover consumers with Sanctioned Load in the above range, though they have a least count of less than 0.1 MW. Further, TPC-D has very few consumers with Sanctioned Load of greater than 1 MW, and for such consumers, the least count has been fixed at 1 MW.

- (b) TPC-D submitted that the scheme of the Changeover Order envisages extensive co-ordination between the two Distribution Licensees on different operational matters, and considering the nature of issues that arise, the grievances of changeover consumers would not be adequately addressed independently by the CGRF of the Supply Distribution Licensee or the Wheeling Distribution Licensee. This necessitates the exploration of the concept of a joint CGRF. TPC-D further submitted that a purposive interpretation of Section 42(5) of the EA 2003 leads to the conclusion that the CGRF contemplated under Section 42(5) would include joint CGRF. Further, a CGRF being the only Forum where the consumers may seek redressal of their grievances, Joint CGRF would be necessary to provide for effective redressal of grievances of changeover consumers. The EA 2003 affords the State Commission the flexibility to determine the nature, powers, jurisdiction and functions of a CGRF, in line with the purpose of setting up of CGRF as provides under the EA 2003. TPC-D recommended that the provision for joint CGRF mechanism should be introduced by the MERC in the exercise of its regulatory powers and not by way of a judicial Order, as a CGRF so established in accordance with the MERC Regulations would be a statutory body as envisaged under Section 42(5) of the EA 2003. Accordingly, the Commission should introduce provisions for joint CGRF/IGRC by way of amendment to the CGRF Regulations or by formulating separate Regulations to such effect.
- (c) TPC-D stated that it would shortly be submitting its submissions on the possible solutions for managing the transition.

48. TPC-D, vide submission dated June 22, 2012, filed its Affidavit in reply to RInfra-D Affidavit dated April 4, 2012. TPC-D's additional submissions are as under:

- (i) The Orders of the Commission including the Order dated January 17, 2012 do not contain any direction or stipulation permitting or requiring a third party to opine on the Audit Report submitted by TPC-D. Hence, observations submitted are

unsolicited and beyond the scope of the Order of the Commission, and the same should not be taken on record.

- (ii) The discrepancies and factual inaccuracies in RInfra-D's presentation have been highlighted in TPC-D's presentation dated April 13, 2012 before the Commission.
- (iii) The graphical presentation of the sales mix of changeover consumers clearly sets out the respective percentage of sales to each consumer category. Moreover, the information relating to actual sales in MU has also been submitted by TPC-D as part of the presentation.
- (iv) The graphical representations contained in the Audit Report represent a true and correct picture, and all relevant registers such as billing registers were made available by TPC-D to M/s Aneja Associates.
- (v) Possessing a PAN or indicating a landmark is only one of the requirements amongst many others, such as Passport, Voter's ID, Driving Licence, etc., for processing a changeover application. Further, applications are only rejected if they are incomplete, and it is impractical to maintain records of rejected applications. The processing of applications by TPC-D meets the requirements of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.
- (vi) TPC-D has not discriminated against any consumers on the basis of the area in which they reside.
- (vii) TPC-D's approval is not required for the purpose of JMR and hence, the Audit Report only states the instances of rejection of JMR by RInfra-D.
- (viii) The details of FAC charges of RInfra-D have not been mentioned because such charges constantly fluctuate and also, the said information has not been made available by RInfra-D.
- (ix) The Audit Report furnishes a detailed analysis of the processing of the changeover applications and the delays caused by actions of RInfra-D. Only relying on figures indicating the volume of changeover applications made and actual changeover would be meaningless and distort the true picture.

49. During the hearing held on June 27, 2012, Shri. J. J. Bhatt, Advocate appeared on behalf of RInfra-D. Shri. Sitesh Mukherjee, Advocate along with Shri. V. H. Wagle and Shri. M. Shenbagam appeared on behalf of TPC-D. Authorized Consumer Representatives, Shri. Rakshpal Abrol and Shri N. Ponrathnam were also present. TPC-D made a presentation covering the frequency distribution of changeover consumers, legality of joint IGRC/CGRF and proposed solutions for managing the transition, as under:

- (i) It is estimated that by FY 2012-13, there will be around 2,84,411 residential changeover consumers and around 2,00,000 switchover consumers.
- (ii) In order to increase the benefit for low end consumers, TPC-D proposed to 'switchover' consumers from RInfra-D to TPC-D network in phases through a cluster- wise development approach, which will lead to substantial switchover of consumers having lower consumption. TPC-D highlighted that even if the network development schemes are approved by the Commission, space availability to lay network in slum areas might be a challenge because of high density of structures and this may take substantial time, hence, TPC-D proposed an Option of taking over RInfra-D network from the LT CSS at book value (the valuation of assets for takeover may be discussed further) for slum areas, in order to switch over the consumers in these clusters in a speedy manner.
- (iii) Upto FY 2013-14, five clusters are proposed to be switched over to TPC-D network under this Option.
- (iv) TPC-D, under its slide on 'Cluster wise tentative plan to cover Mumbai Suburban area' submitted that it proposes to cover around 28 clusters spanning over around 322 sq.km area (at the rate of around 5 to 6 clusters spreading over 50-70 sq.km area) upto FY 2017-18.

50. During the hearing held on June 27, 2012, Counsel for RInfra-D submitted that the present Petition filed by RInfra-D is based on the limited issues that have arisen out of the Commission's Order dated October 15, 2009. RInfra-D reserved its comments on the issue of legality of setting up of joint IGRC/CGRF, and submitted that it will comment on the issue as and when the Commission initiates the process of amending the extant Regulations. RInfra-D added that the present process of considering various issues related to changeover consumers was beyond the scope of the present Petition and requested the Commission to close the present matter with an appropriate Order. RInfra-D further suggested that a suo-motu Petition may be initiated by the Commission, which can address all the issues. The Commission directed the Parties to make the following submissions before July 20, 2012:

- (1) TPC-D to serve a copy of the presentation made during the hearing to the Petitioner, Interveners and the authorized Consumer Representatives in this matter.
- (2) TPC-D to submit scheme-wise details of all capex schemes undertaken in the 'Common Area' of supply of TPC-D and RInfra-D, from September 2009 till date, along with the details of date of Commission's approval for the capex scheme. Details to be provided for both, DPR and non-DPR schemes.

- (3) TPC-D to clarify whether there is any Ward/area in the 'Common Area' of supply of TPC-D and RInfra-D, where the distribution network of TPC-D is fully/almost fully established, and supply using TPC-D's own network can be given to consumers on demand or within the time-line defined under the EA 2003 and MERC SOP Regulations?
- (4) TPC-D to identify the areas where duplicate/parallel network has already been established.
- (5) TPC-D to segregate any capex schemes undertaken in the 'Common Area' of supply of TPC-D and RInfra-D, from September 2009 till date, that have not been approved by the Commission.
- (6) TPC-D and RInfra-D to submit the geographical mapping of change-over consumers, so that clusters, if any, where the population of changeover consumers is more concentrated, can be identified.
- (7) TPC-D to submit scheme-wise details of all capex schemes proposed to be undertaken in the 'Common Area' of supply of TPC-D and RInfra-D, from FY 2012-13 to FY 2015-16, along with details of date of Commission's approval for the capex scheme. (Separately for the period from April 1, 2012 to August 14, 2014 and onwards)
- (8) TPC-D to provide data on how many change-over applications have been rejected at the Application stage itself (out of the total Applications received), since, data on the same has not been submitted in the Audit Report submitted by TPC-D
  - (a) Total Applications received
  - (b) Applications rejected at Application stage itself, with reasons for rejection
  - (c) Whether any Applications have been rejected in Wards/areas where TPC-D's distribution network is already well-established?
- (9) Audit Report submitted by TPC-D has confirmed that TPC-D has been insisting on mandatory submission of the following documents for processing change-over Applications:
  - (a) PAN Card details
  - (b) Cheque Details
  - (c) Mobile number

The same issue was agitated during the Public Hearing on TPC-D's MYT Business Plan Petition also. At that time, TPC-D replied that these documents were not mandatory, and other documents could also be submitted. In this regard, TPC-D should justify asking for such documents on a mandatory basis, vis-a-vis the MERC Supply Code Regulations.

- (10) The Petitioner, RInfra-D to submit details of net financial loss incurred by RInfra-D on account of changeover, separately for FY 2009-10, FY 2010-11, and FY 2011-12, by considering inter-alia, the following heads:
- (a) Reduction in sales (in MU) due to change-over
  - (b) Reduction in sales revenue (Rs. crore) due to change-over
  - (c) Loss of cross-subsidy due to changeover
  - (d) Increase in category-wise sales, with clear distinction between subsidised category and subsidising category, on account of normal growth in sales
  - (e) Reduction in power purchase cost due to migration of consumers
  - (f) Income received through Wheeling Charges
  - (g) Income received through Cross-subsidy surcharge
  - (h) Any other item, to be explained

51. The Commission, vide its Notice dated June 28, 2012, scheduled the next hearing in the matter on August 3, 2012.

52. TPC-D, vide its letter dated July 19, 2012, submitted the details sought during the hearing dated June 27, 2012. The main point-wise submissions made by TPC-D are summarised as under:

- (1) TPC-D submitted the copy of the presentation made on June 27, 2012.
- (2) TPC-D submitted broad details of DPR schemes, viz., MERC Code Number, Scheme Name (generalised), Approved Scheme Value, date of DPR submission date, details of in-principle clearance in Mumbai Suburban Area from September 2009. As per TPC-D's submission, the Commission has approved capex schemes amounting to Rs. 1236.46 Crore, with schemes amounting to Rs. 116.45 Crore yet to be approved. TPC-D submitted work carried out against various schemes totalling to Rs. 646.44 Crore.

As regards non-DPR schemes, TPC-D submitted it has not segregated the same based on area, as non-DPR schemes are generally carried out for the entire Licence area. It submitted details of such schemes initiated during April 1, 2009 to March 31, 2011 with amount totalling to Rs. 50.09 Crore in line with details furnished to the Commission in Form 5.4 in Case No. 104 of 2011 for truing up of FY 2009-10 and FY 2010-11. For FY 2011-12, it submitted that non-DPR schemes amounted to Rs.3.45 Crore.

- (3) TPC-D submitted that

- During the presentation made on June 27, 2012, TPC-D had suggested the cluster-based development approach for meeting the timelines under SOP Regulations.
  - Further, in order to assess the Licensee's readiness to supply within the time limits prescribed under the SOP Regulations, it is necessary to understand the availability of adequate number of Distribution Sub-Stations (DSS) in that cluster in terms of spare capacity, existence of adequate DSS ring to enable tapping to feed the Consumer Sub-Station (CSS), availability of CSS in the cluster, and LT network in terms of LT cables and feeder pillars. TPC-D also highlighted the period of 3 months to 1 year specified under SOP Regulations for providing power supply in cases where the distribution network is not laid out and where extension/augmentation of distributing main or commissioning of sub-station is required.
  - TPC-D has carved out clusters for stage-wise development, based on assessment of its network in the clusters.
  - In terms of network availability, the total suburban area of Mumbai may be divided into 19 clusters.
  - TPC-D's backbone network (in terms of adequate capacity in the DSS set up or to be set up in the very near future) is present in 11 clusters out of the above 19 clusters, and TPC-D would be in a position to extend supply to consumers (thereby setting up CSS and associated network) on demand within the timelines stipulated in SOP Regulations, subject to the space being made available by the consumer/society/Municipal Authority especially in the areas, where RInfra-D's infrastructure is already available.
  - For the remaining 8 clusters, augmentation of the backbone network in terms of (i) augmentation of existing DSS, (ii) setting up of new DSS, and (iii) laying of associated DSS rings is required to be carried out.
  - TPC-D provided the details pertaining to analysis of readiness to comply with USO obligations in various clusters of Mumbai suburban area, under which TPC-D submitted the year-wise priority of the cluster development.
- (4) In response to the query regarding identification of areas where parallel network has already been established, TPC-D expressed difficulty in determining the duplicity of network in a particular area since, TPC-D did not have details regarding network data of RInfra-D, and submitted the details of TPC-D network in the geographical area map (A3 size) of Mumbai. TPC-D added that to fairly and correctly determine the issue of network duplication, it is imperative to appreciate the load and the spare capacity in the network in an area, since, if the

load in an area is 200 MVA and the respective capacity of both RInfra-D and TPC-D network is 125 MVA, this shall not be a case of duplication of network as both the networks are utilized to serve different sets of consumers. TPC-D further added that in order to arrive at a conclusion that there is duplication of network, it is necessary to study the spare capacity available in each Licensee's network against the rated capacity.

- (5) TPC-D submitted that it has not undertaken any scheme in the Common Area of supply of TPC-D and RInfra-D that has not been approved by the Commission, except for 'Meter Procurement for TPC-D across Mumbai for FY 2012-13'.
- (6) TPC-D submitted the cluster-wise depiction of changeover consumers over the geographical land base of the Licence area common to TPC-D and RInfra-D.
- (7) While submitting broad details such as project title, approval detail and cost, TPC-D stated that it has not carried out scheme-wise segregation for Mumbai Suburbs and South Mumbai. Since the plan is for 5 years, it has tabulated segregation with schemes initiated upto FY 2014-15 and schemes initiated in FY 2015-16.
- (8) TPC-D submitted that it did not maintain the record of rejected applications upto the period March 31, 2012, and such process of record keeping was started only after April 1, 2012. TPC-D submitted the information for the period from April 1, 2012 to June 30, 2012.
- (9) There appears to be an error in the Audit Report in so far it records the PAN card and mobile number are mandatory requirements for the purpose of changing over supply to TPC-D. As evident from the Application Form of TPC-D, PAN card is one of the optional documents that may be submitted as a proof of identity.
  - In case of consumers having a load more than 20 kW, the interest on security deposit may exceed the threshold of Rs. 5,000/- for mandatory deduction of Tax at Source (TDS) as per Section 194A of the Income Tax Act, 1961. TPC-D is insisting that the consumers above 20 kW should submit the copy of the PAN card in order to correctly record TDS, which is presently 10%. TPC-D presented the summary of type of identity proof submitted by consumers, with PAN Card being the most common at 71%, followed by Voters ID Card at 14% and Passport at 9%.
  - Cheque details are not mandatory. It presented the year-wise data of consumers who have paid the security deposit in cash.
  - Mobile number is not mandatory and landline number can also be given. These numbers are requested so that they can be contacted for sharing

information, advising them on bill status and having an effective and faster communication with the consumer.

53. RInfra-D, vide affidavit dated July 23, 2012, challenged the legality of the proposal made by TPC-D during the presentation dated June 27, 2012. RInfra-D submitted that TPC-D's proposed option to takeover RInfra-D network from the LT CSS at book value for slum areas is not only contrary to the provisions of the EA 2003, the Rules and Regulations of the Commission and but also contrary to the settled law including the Judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 2898 of 2006 [(2008) 10 SCC 321]. Further, both proposal and presentation are beyond the prayers in Case No. 151 of 2011 and could not have been made in the present proceedings. Paragraph 75 of the said Hon'ble Supreme Court Judgment, has not dispensed with the USO of a Distribution Licensee, but has reaffirmed the requirement to fulfil such USO. RInfra-D submitted that if the Judgment is read to absolve TPC-D from the obligation to lay its network, it would render the provisions of Section 42(1) of the EA 2003 nugatory. TPC-D's proposal is made on the premise that RInfra-D would hand over its robust network to TPC-D at book value, with a view that TPC-D's USO is fulfilled at the cost of RInfra-D, which cannot be countenanced in law. TPC-D's proposal in this regard ought not to be considered.

54. RInfra-D, vide letter dated July 24, 2012, submitted the details sought during the hearing dated June 27, 2012. The primary submissions of RInfra-D are as under:

- (i) RInfra-D submitted geographical mapping of the changeover consumers for each of its administrative Divisions (namely Central, Eastern, Northern, South Central, South) in soft format, with colour-wise distinction being made between subsidised residential consumers (green) and subsidising residential and Commercial & Industrial consumers (red).
- (ii) RInfra-D submitted the data regarding the reduction in sales in MU and sales revenue in Rs. Crore due to changeover, the loss of cross-subsidy due to changeover, increase in category-wise sales (with migration and without migration), reduction in power purchase cost due to migration of consumers, income received through Wheeling Charges and Cross-Subsidy Surcharge.
- (iii) RInfra-D submitted that in view of the Changeover Order dated October 15, 2009, large scale migration of subsidising sales has taken place and is continuing in view of inadequate Cross-Subsidy Surcharge. Out of total changeover sales of 4424 MU for three years, only 549 MU (12%) is of subsidised category, whereas 3875 MU is of subsidising category. This reflects the trend of consumer migration and loss of Cross Subsidy to RInfra-D, which will put the burden on

tariff of subsidised consumers in future Tariff Orders. The loss of Cross Subsidy is also reflected in the revenue gap. The recovery of such revenue gap from cross-subsidizing consumers would result in cascading impact on migration of such consumer, more particularly when there is abysmally low cross subsidizing sale left in RInfra-D system. The burden of loss of Cross Subsidy on subsidised consumers would take their tariff beyond affordable levels, defeating the very objective of the Commission in creating it.

- (iv) RInfra-D submitted that if there was no migration, RInfra-D sales mix would have had 62% subsidizing sales as against roughly 50% in the present sales structure. Further, a look at overall Average Billing Rate of migrated consumption of over Rs. 8.50 per unit in all three years suggests the type of sales that has migrated out of RInfra-D's portfolio and has added to TPC-D's portfolio.
- (v) RInfra-D submitted that it has determined the reduction in power purchase cost on account of change-over using 'what-if' methodology, i.e., what the power purchase cost of RInfra-D would have been if no migration had happened.
- (vi) RInfra-D has computed the net financial loss to RInfra-D on account of changeover as per the following methodology employed: Net financial loss to RInfra-D = Loss of Revenue – (Reduction in Power Purchase Cost due to change-over + Receipts of Wheeling Charges and Cross Subsidy Surcharge). The amounts submitted are summarised in the Table below:

(Rs. Crore)

<b>Year</b>	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>Total</b>
Loss of Revenue	181.28	1,293.71	2,312.58	3787.57
Less: Reduction in power purchase cost	144.00	956.67	1,073.72	2,174.39
Less: Income from Wheeling charges	15.26	121.75	216.14	353.15
Less: Income from CSS	0	0	49.74	49.74
<b>Net Revenue Loss</b>	<b>22.02</b>	<b>215.29</b>	<b>1,022.72</b>	<b>1,260.03</b>

- (vii) As seen in the above Table, the financial loss to RInfra-D on account of change-over has been submitted as over Rs. 1250 Crore over the three-year period from FY 2009-10 to FY 2011-12. RInfra-D submitted that the majority of this loss has happened in FY 2011-12 due to lower power purchase rates as compared to previous years, and therefore, lesser savings in power purchase cost.

- (viii) If the Commission had determined the Cross-Subsidy Surcharge as per its own formula, and the same was applied since the date of migration, there would still have been a net negative financial impact of over Rs. 500 Crore to RInfra-D.
- (ix) The Consumption profile of RInfra-D has taken a severe beating, together with its HT/LT ratio.
- (x) Cost reduction on account of changeover cannot be translated to tariff reduction due to significant revenue loss and the difference not being recouped by way of Cross-Subsidy Surcharge.
- (xi) With fewer consumers and lower sales to spread the cost on, the per unit impact of fixed cost of power purchase would only increase the tariff further.
- (xii) With a worsening sales mix, spreading the resultant revenue gap on the balance consumers would only lead to higher tariff than the present, resulting in further migration.
- (xiii) If the situation is allowed to continue there is likely to be further divergence in tariff instead of any convergence in tariff. The Commission's intervention in the form of appropriate Cross-Subsidy Surcharge is requested to prevent this situation and sustain competition.

55. During the hearing held on August 3, 2012 Shri. J. J. Bhatt, Advocate appeared on behalf of RInfra-D. Shri. Sitesh Mukherjee, Advocate appeared on behalf of TPC-D. The Commission noted that as directed during the previous hearing, both the Parties have submitted the relevant information. However, on analyzing the same, it is found that certain additional information is required. Both the Parties agreed to submit the same.

56. The Counsel for TPC-D submitted that while ruling on the matter, the Commission also needs to keep in mind the issue of space constraint especially for last mile connectivity. He submitted that the Judgment in the matter of *Telstra Corporation Ltd. v. Commonwealth, (2008) 234 CLR 210*, was relevant to the present matter. He further expressed reservations on RInfra-D's submission on cumulative revenue loss and requested the Commission to allow TPC-D to file an affidavit in reply. The Commission allowed TPC-D to submit the reply within a week's time.

57. The Counsel for RInfra-D stated that the EA 2003 does not provide for sharing of the network. Further, the case law of *Telstra Corporation Ltd. v. Commonwealth, (2008) 234 CLR 210* is not at all applicable to the present matter, as it is related to the issue of nationalisation vs. denationalisation, moreover, the case is of other country. He requested the Commission to close the proceedings.

58. The Commission directed Director (EE), MERC, to organize a meeting with the representatives of both the Parties to discuss the requirement of any additional data. Further, both Parties were directed to submit certain details with a copy served on each other.

59. In compliance with the direction of the Commission, separate meetings were held with the Parties on August 7, 2012 in the office of the Commission.

60. During the meeting with RInfra-D, the following clarifications were sought:

- (1) RInfra-D was asked to provide details clearly indicating its erstwhile consumers (including temporary, permanently disconnected, etc., in its Licence area in the following manner - Ward-wise, year-wise, and consumer category-wise), who have now 'switched over' on TPC-D's wires, in order to justify its contention that TPC-D has been laying network in a selective manner.
- (2) RInfra-D was asked to confirm the source of Average Billing Rate considered in Annexure I of its submission dated July 24, 2012, wherein RInfra-D had computed the cumulative revenue loss on account of the migration of consumers from RInfra-D to TPC-D.

61. During the meeting with TPC-D, the following clarifications were sought vis-a-vis the details already sought and/or submitted by TPC-D:

- (1) TPC-D to submit the details of TPC-D network in the geographical licence area overlapping with RInfra Licence area, through cluster-wise and Municipal Ward-wise maps, clearly showing the location of the changeover consumers.
- (2) TPC-D to submit the details of Clusters and Wards where TPC-D would be in a position to extend supply to consumers on demand within the timelines stipulated in SOP Regulations. In this regard, TPC-D to also reconcile the data submitted in Annexure III of submission dated July 19, 2012 and Slide 30 of TPC-D presentation dated 28/06/2012.
- (3) TPC-D to confirm whether the network roll-out plan proposed by TPC-D, spread across Clusters and Wards across Mumbai suburban area, covers the entire Licence area common to TPC-D and RInfra-D.
- (4) TPC-D to submit scheme-wise details of all capex schemes proposed to be undertaken in the 'Common Area' of supply of TPC-D and RInfra-D, from FY 2012-13 to FY 2015-16, along with details of date of Commission's approval for the capex scheme (separately for the period from April 1, 2012 to August 14,

2014 and onwards) by segregating the schemes between Mumbai Suburbs and South Mumbai.

- (5) TPC-D to provide details of new consumers taking supply from TPC-D through TPC-D's distribution network in the Licence Area common to TPC-D and RInfra-D subsequent to the Order dated October 15, 2009 in the following manner: Ward-wise, Zone-wise, consumer category-wise.
  - a. Further, in the above data, TPC should also provide the details of switch over consumers, in case this is a sub-set of the above data, else, TPC-D may confirm that the above data is the same as the switch over data.

62. RInfra-D, vide affidavit dated August 9, 2012, submitted the requisite data. RInfra-D's main submissions are as under:

- (1) RInfra-D resubmitted the copy of the letter dated July 24, 2012 along with its Annexures, as the same had not been submitted on affidavit.
- (2) Further, RInfra-D submitted its comments on TPC-D's submission dated July 19, 2012, as under:
  - (i) As regards the direction to TPC-D to submit the scheme-wise details of all capex scheme undertaken in the 'Common Area' of supply of TPC-D and RInfra-D from September 2009 to till date, along with the details of date of Commission's approval for the capex scheme, RInfra-D stated that the Commission may examine under each of the DPR schemes initiated from September 2009 whether the network was developed for catering to all new loads or whether the network was developed so as to cater to requirements of switched over consumers. RInfra-D further stated that the data submitted by TPC-D does not assist the Commission to examine the issues of selective network laying.
  - (ii) TPC-D had proposed capex considering South Mumbai as well as Mumbai suburban area, and it is likely that proposed capex for South Mumbai area may be utilized in Mumbai Suburban area.
  - (iii) As regards the clarifications on the timelines within which the TPC-D would be in a position to cater to consumer demand for supplying electricity on demand using its own network taking into consideration the EA 2003 and MERC SOP Regulations, TPC-D has replied by taking into consideration the period from FY 2012-13 to FY 2015-16. RInfra-D submitted that the said submission is conditional and not contemplated under EA 2003, as the period (of FY 2012-13 to FY 2015-16) overshoots the tenure of TPC-D's licence.

- (iv) As regards difficulty expressed by TPC-D in determining duplicity of network on the ground that network data of RInfrac-D is not available, RInfrac-D submitted that adverse inference ought to be drawn on account of non-submission of data. RInfrac-D added that at least for approximately 5000 consumers, TPC-D has selectively laid its parallel network.
- (3) The Commission during the hearing held on August 3, 2012 directed RInfrac-D to indicate erstwhile consumers of RInfrac-D (including temporary, permanently disconnected, etc.) who have now switched over on TPC-D wires. RInfrac-D submitted a list containing details pertaining to such consumers (switchover) viz., RInfrac-D administrative Division, area/location, expected load, year in which consumer switched over, broad category of consumer (residential, Commercial, Residential + Commercial), and MCGM Ward number. RInfrac-D clarified that the list provided includes name of the project or consumer, and the project may include many consumers within it.
- (4) RInfrac-D submitted that selective network laying by TPC-D can be ascertained by comparing the per capita consumption on TPC-D and RInfrac-D network before 2009 and by comparing the same with the per capita consumption of the switched over consumers.
- (5) RInfrac-D submitted that due to switchover of high cross subsidizing consumers, the balance mix and the per capita consumption of RInfrac-D would get further deteriorated thereby creating advance 'Domino Effect' on the balance consumers of RInfrac-D. It further submitted that the Commission may examine the statistics of not only the mix load but also the per capita consumption of the switchover consumers of RInfrac-D.

63. Further, during the meeting held with the Commission's officers, RInfrac-D clarified that the Average Billing Rate used by RInfrac-D for computing the revenue loss due to migration was based on actual Average Billing Rate of the consumer category and consumption slab. RInfrac-D further conveyed that the list of switchover consumers is broadly categorised into three types of consumers, viz.:

A - Cases in which temporary supply was given by RInfrac-D and permanent supply taken from TPC-D

B - Cases in which existing REL/RInfrac-D consumers are connected by TPC-D (thereby network duplication)

C - Consumers directly connected on TPC-D without approaching RInfrac-D

64. TPC-D, vide affidavit dated August 10, 2012 submitted the requisite data sought. Main submissions are summarised as under:

A. TPC-D resubmitted the copy of the letter dated July 19, 2012 along with its Annexures, as the same had not been submitted earlier on affidavit.

B. TPC-D submitted its response to RInfra-D submission dated July 24, 2012, as under:

(i) RInfra-D's computation of financial loss on account of changeover is based on two fundamentally erroneous assumptions, namely: (a) RInfra-D has absolute and unfettered right over its distribution system and distribution network, and (b) consumers connected to RInfra-D's wires are captive to RInfra-D's licensed business.

(ii) The Licensee does not have absolute and unfettered rights over its network:

(a) The network erected by a Licensee in its licensed area of supply is a 'regulatory property', which is planned, created and paid for by the consumers under the strict supervision and guidance of the Commission. A Licensee's right over the 'regulatory property' is created, sustained and defined by the EA 2003 and, therefore, the ambit of Licensee's rights and attributes over the said regulatory property are to be derived from the EA 2003.

(b) The Distribution Licensee is only 'authorised' to 'operate and maintain' a distribution system, and there is no concept of ownership built into the definition under Section 2(17) of the EA 2003. Similarly, no concept of ownership has been introduced under Section 42(1) of EA 2003 either, which says that it is the duty of the Distribution Licensee to 'develop and maintain' an efficient, coordinated and economical distribution system. While considering the concept of 'ownership', it is necessary to bear in mind that the distribution system and associated assets do not belong to the Licensee and they belong to the body of consumers who have paid for it through tariff, as the entire capital cost including all running costs have been recovered from the consumers.

(c) The fact that the capital cost for creating a distribution asset is recovered through tariff, in a situation where the Distribution Licensee operates on a revenue neutral principle, militates the finding of ownership in favour of RInfra-D.

(d) The concept of 'regulatory property' is not contrary to the decision of the Hon'ble Appellate Tribunal for Electricity in the Case of *M/s Mula Pravara Electric Co-operative Society Lts. v. MERC & Ors*, dated December 16, 2011. The Commission had directed the transfer and

vesting of distribution assets of Mula Pravara with MSEDCL at a 'transfer value'. Hon'ble ATE set aside the Commission's Order, holding this to be a complete transfer and change of Distribution Licensee's assets as opposed to the concept of users, which can only be exercised in accordance with Sections 19, 20 and 24 of the EA 2003.

- (e) While referring to the case of *Telstra Corporation Ltd. v. Commonwealth, (2008) 234 CLR 210*, it is submitted that the concept of 'regulatory property' only deals with the attributes of ownership. A Licensee is not divested of its title over the regulatory property but by virtue of it carrying on a licensed business in a regulatory environment, the decisional and dispositive control over the property resides with the Regulator, vested effectively in the citizenry for the common good of the consumers.
- (f) The Regulator can direct for either of the following, namely: (i) open access to the network, where a consumer seeks to receive the supply from a third party supplier other than the Distribution Licensee within whose area of supply his premises are situated (ii) sharing of network, in case of multiple Licensees operating in the same area of supply.
- (iii) The Regulator is empowered to direct sharing of network between parallel licensees:
  - (a) As held in *K. Ramanathan v. State of Tamil Nadu, (1985) 2 SCC 116*, the Regulator has wide and expansive powers over things subject to regulation, and in the absence of restrictive words, the power must be regarded as plenary over the subject. Therefore, though arrangement for sharing of network is not the right of a Distribution Licensee but it is permissible for the Regulator to direct for sharing of the network in a situation when there are two Licensees operating in the same area. Sections 16, 23, 61, 86(1)(c) &(i) empowers the Regulatory Commission to direct such sharing of wires between the parallel Licensees.
  - (b) The legislature while enumerating the objectives of the EA 2003 through various provisions has left it to the State Commissions to decide and formulate how the network development in an area can be carried out in the most economical and efficient manner.
  - (c) It would be against the cause of consumer welfare if a consumer who has already contributed to the cost of network development in his area by one Distribution Licensee is again made to bear the same cost for

erection of duplicate network by another parallel Licensee in case he seeks to changeover supply from his original Distribution Licensee.

- (d) While explaining the scope and application of the Hon'ble Supreme Court's Judgment dated July 8, 2008, TPC-D submitted that the said Judgment is not the source of the Commission's power to direct sharing of network between the Licensees. It was held therein that TPC-D is a parallel Licensee and entitled to supply in retail. It is further averred that there is no principle of interpretation of a Judgment of the Hon'ble Supreme Court, which would lead to the conclusion that discussion in paragraphs 99 and 100 of the abovesaid Judgment was intended to interpret the provisions of Section 42(3) of the EA 2003 contrary to its plain language.
- (iv) Consumers connected to the wires of a license are not captive to its business
- (v) As the consumer changing over supply to a parallel Licensee remains bound by the tariff as determined by the Commission, it follows that if Cross-Subsidy Surcharge is imposed on a changeover consumer, he would be burdened with both, the cross-subsidy (payable to the chosen Distribution Licensee) and Cross-Subsidy Surcharge (to be paid to the Distribution Licensee whose wires are used). Therefore, Cross-Subsidy Surcharge should not be imposed in a parallel licensee situation as it would lead to an anomalous situation.
- (vi) Cross-Subsidy Surcharge is meant to bring a level playing field between the Distribution Licensee (with a burden of USO) and that third party supplier who has no such USO burden, however, this logic is completely absent when a consumer moves to another parallel Distribution Licensee in the same area, which Distribution Licensee is also subject to the rigours of an USO. Both the Distribution Licensees, regardless of whose wires are used, have an USO in common area.
- (vii) Cross-Subsidy Surcharge cannot be the means for RInfra-D to reclaim its entire loss of cross subsidy especially in view of the admitted legal position (*held in RVK Energy Pvt. Ltd. v. Central Power Distribution Co. of A.P., 2007 ELR (APTEL) 1222*) that Cross-Subsidy Surcharge is not envisaged to measure up to or be equal to the current level of cross subsidy. The argument of RInfra-D to the extent it is seeking the Commission to intervene in the form of 'appropriate Cross-Subsidy Surcharge' so as to allow RInfra-D to recoup its purported loss is without any legal basis, further, RInfra-D is

seeking to be competitive in its licensed business by recovering its entire loss caused due to changeover.

- (viii) The computation of financial loss on account of changeover submitted by RInfra-D, is therefore, incorrect and cannot be sustained in law. In a parallel Licensee situation, the real determinant of a Licensee's performance and efficiency, as well as any gain or loss, has to be measured with reference to its Average Cost of Supply (ACoS). The respective ACoS of TPC-D and RInfra-D over the past three years are as follows:

Average Cost of Supply (Rs./unit)		
Year	TPC-D	RInfra-D
2009-10	5.14*	6.04
2010-11	5.15*	6.54
2011-12	5.85**	6.31

\* After truing up, \*\* As submitted in the Business Plan for the Commission's approval

- (ix) The savings in power purchase costs are based on several assumptions that have been made by RInfra-D, especially on load profile, average load, etc. Further, the power purchase cost impact has to be computed with IBSM settlement values, as the majority of the reference period, i.e., from October 2009 to July 2011 was under the Inter-State Balancing and Settlement Mechanism (IBSM) regime where the settlement was on monthly basis. TPC-D submitted the sample calculation for FY 2010-11.

C. TPC-D submitted the details sought during the hearing dated August 3, 2012 and during the meeting dated August 7, 2012, as under:

- (1) TPC-D submitted the cluster-wise GIS maps depicting the network of TPC-D and the location of the changeover consumers.
- (2) As regards identification of the 11 Clusters where TPC-D would be in a position to extend supply to consumers on demand, TPC-D submitted that in its earlier submission, it had inadvertently not considered Trombay under the common area and considered the same in South Mumbai. However, including the Trombay cluster, the number of clusters in the common area now stands revised to 20 clusters against 19 given earlier. Further, TPC-D resubmitted the details of clusters in which it is in position to extend supply to consumers on demand within the timelines stipulated in SOP Regulations.

- For better presentation, data has been segregated into two categories, viz., (i) SOP compliant clusters, and (ii) Clusters which require additional network development for SOP compliance.
- Out of 20 clusters, TPC-D would be in position to extend the supply in 12 clusters.

(3) As regards cluster-wise details for balance area common to TPC-D and RInfra-D, TPC-D submitted the reconciliation of the licence area as under:

(in Sq. Km)

<b>Particulars</b>	<b>South Mumbai</b>	<b>Mumbai Suburbs</b>	<b>Total</b>
Licence Area	65	420	485
Less: Green Area, Marshy Lands, Water Bodies & Non-Development Area	5	158	163
Net Area for Network Development	60	262	322

D. Information sought during the meeting dated August 7, 2012

- (1) TPC-D submitted a single (A4 size) map depicting the network of TPC-D in the licence area along with layers of cluster-wise and ward-wise demarcation of the licence area.
- (2) TPC-D clarified that the cluster-wise network rollout plan submitted for 20 clusters in the Mumbai Suburban Area covers the entire licence area common to TPC-D and RInfra-D.
- (3) As regards segregation of the proposed capex schemes between Mumbai Suburbs and South Mumbai, TPC-D submitted the following broad categorisation for capex schemes proposed during the period from April 1, 2012 to March 31, 2016:

<b>Capex Schemes</b>	
<b>Distribution related</b>	<b>Supply related</b>
1. Greenfield Network Development 2. Network Development and Strengthening 3. Reliability of Network 4. Automation of Network	1. Meter related 2. Consumer Management and Infrastructure Development

TPC-D submitted that the capex schemes furnished under following heads are common to the entire Licence area and are difficult to segregate between Mumbai Suburbs and South Mumbai:

- Reliability of network
- Automation of network
- Consumer Management and Development of Infrastructure

Further, as it is difficult to bifurcate the meter related schemes into schemes for South Mumbai and Mumbai Suburbs, TPC-D has considered capital investment proposed under these schemes in Common Area, except for 'Meter for changeover consumer' which has been considered in Mumbai Suburban Area. Schemes proposed under 'Greenfield Network Development' are a part of Mumbai Suburban Area. The Network Development and Strengthening schemes have been divided in three parts, i.e., for South Mumbai, for Mumbai Suburbs and for Common area (common area includes schemes like cable diversion, network augmentation, etc.)

(4) TPC-D submitted that it has not maintained the Ward-wise data for consumer addition and further furnished details of consumers addition as per its administrative zones (viz., North, Central, East, South Central and South). Further, for facilitating analysis, it provided an approximate Ward composition of the zones lying in the common area.

- TPC-D submitted that switchover consumers are a sub-set of the data submitted.
- TPC-D submitted that switchover consumer refers to the consumers who were initially availing power supply on RInfra-D wires but have now moved over to TPC-D wires in the same category. Except MIAL, there is no case of switchover in the Common Area.
- There are only about 50 cases coming under 'temporary' category, i.e., the consumer was getting 'temporary' category supply on RInfra-D wires and has later availed permanent power supply connection from TPC-D.
- TPC-D submitted that around 15000 consumers have been added on TPC-D's network in Mumbai suburbs from October 15, 2009 to July 31, 2012, comprising of around 12200 residential consumers, around 2500 commercial consumers, around 90 LT industrial consumers, and 42 HT commercial consumers.

## DECISION WITH REASONS

65. Having heard the Parties and the authorised Consumer Representatives, and after considering the material placed on record, the following issues arise before the Commission:

- a) Has the interim Order dated October 15, 2009 which laid down the scheme for the changeover of consumers from one Distribution Licensee to another attained finality? What is the scope available to the Commission to modify the said Order?
- b) Has TPC-D indulged in cherry-picking under the changeover process?
- c) Has TPC-D indulged in cherry-picking while switching over consumers to its distribution network?
- d) Has RInfra-D and its consumers been disadvantaged due to the alleged cherry-picking by TPC-D under the changeover/switchover process?
- e) Has TPC-D met its Universal Service Obligations (USO) as a Distribution Licensee in its Licence Area?
- f) Can the Commission grant the reliefs sought by RInfra-D in its Petition?
- g) Can the Commission grant the interim reliefs sought by RInfra-D in its Interim Application?
- h) Is there a need to modify the changeover protocol formulated under the interim Order in Case No. 50 of 2009 at this stage, separately for changeover and switchover cases, and if so, to what extent?
- i) How to address the operational issues that have been raised by RInfra-D and TPC-D regarding the changeover process and switchover being done by TPC-D?
- j) Can the issue of Cross-subsidy surcharge and Regulatory Asset Surcharge be addressed through this Order?

66. However, before delving into the above issues, it is important to point out that several issues raised by the parties herein have also been raised before the Hon'ble ATE in Appeal Numbers 132, 133, 139, 140, 144, 164, and 178 of 2011. The said appeals are pending and the Judgment of the Hon'ble ATE is awaited. The Commission hence, cannot render any findings on such issues. The Commission now proceeds to give its analysis and ruling on those issues that are not before the Hon'ble ATE in Appeal Numbers 132, 133, 139, 140, 144, 164, and 178 of 2011, keeping in view the extant Laws, Regulations, submissions of the Parties and the authorised Consumer Representatives, the developments in this context over the past two and a half three years, and the Commission's judgement, as under:

67. As regards the issue (a), the Commission issued the interim Order dated October 15, 2009 in Case No. 50 of 2009 under Section 94(2) of the EA 2003, on the Petition filed by TPC-D under Regulation 21 of the MERC (Distribution Open Access) Regulations, 2005, Sections 86(1)(a) and 86(1)(f) of the EA 2003. TPC-D had requested the Commission to formulate the detailed operating procedures pertaining to installation of meters, meter reading and billing, changeover procedure, customer services, dispute redressal, etc, in order to effect supply to changeover consumers using the existing distribution network of RInfra-D. The Commission issued this Order to evolve a mechanism for facilitating changeover by the consumer from one Distribution Licensee to another Distribution Licensee. The Commission ruled that this interim arrangement shall stay in effect until formulation of the final scheme in the form of Regulations or otherwise dealing with all the relevant aspects of changeover are issued by the Commission. Thus, the Commission has elaborated the scheme as well as the contours and frame-work of the changeover mechanism in the above-said Order dated October 15, 2009. Further, this Order was an interim Order issued under Section 94(2) of the EA 2003, and the final Order in this matter is yet to be issued, hence, this Order has obviously not achieved finality as yet, contrary to the submissions of TPC-D in this regard.

68. Further, since this is an Interim Order under S. 94(2) of the EA 2003, the Commission can in law, modify the said interim Order in Case No. 50 of 2009, as deemed appropriate, to ensure that the objective of enabling consumer choice is achieved. It also needs to be appreciated that this is the first time that such a scheme of changeover of consumers from one Distribution Licensee to another Distribution Licensee using the existing distribution network, has been attempted anywhere in the country. Further, by its very design, any Order on such matters has to evolve constantly in order to keep in tune with the ground realities.

69. As regards the issue (b) on whether TPC-D has indulged in cherry-picking under the changeover process, it is necessary to first understand the distinction being made by TPC-D by using the terms 'changeover' and 'switchover' to identify a particular group of consumers. As per TPC-D, 'changeover' consumers means the consumers who were taking supply from one Distribution Licensee through its distribution network, changing over to another Distribution Licensee for supply of electricity, while, however, continuing to be connected to the distribution network of the first Licensee. Further, TPC-D has classified 'switchover' consumers as those consumers who were taking supply from one Distribution Licensee through its distribution network, changing over to another Distribution Licensee for supply of electricity on the network of the second Distribution Licensee, i.e., consumers who have changed both the Supply Distribution Licensee as well as the Wheeling Distribution

Licensee. For the purpose of this Order, the Commission has used the terminology of 'changeover' and 'switchover' as defined by TPC-D for the sake of convenience.

70. RInfra-D has alleged that TPC-D is cherry-picking while permitting changeover of consumers from RInfra-D to TPC-D, by selectively taking only subsidising consumers and that too consumers having high per-capita consumption, while ensuring that the subsidised category consumers are prevented from changing over from RInfra-D to TPC-D. RInfra-D has further alleged that TPC-D is creating artificial roadblocks to low-end consumers, so that only the cream of the consumers shift to TPC-D, which is adversely affecting RInfra-D, as RInfra-D is losing only the subsidising consumers while all subsidised consumers are remaining with RInfra-D, thereby accentuating the problem for RInfra-D and its balance low end consumers.

71. In order to assess whether there is any substance in the above-referred allegations made by RInfra-D, the Commission had directed both, RInfra-D and TPC-D to submit the relevant information regarding the process of accepting Changeover Applications, and the consumer categories that have shifted from RInfra-D to TPC-D based on the Changeover Protocol laid down under the interim Order dated October 15, 2009 in Case No. 50 of 2009, as summarised earlier in the Order. The Commission has analysed the submissions made by the Parties in this regard, the findings of which are given below:

- a) TPC-D has submitted the Internal Audit Report on the process being adopted by TPC-D for changeover, the findings of which have been summarised in the earlier paragraphs of this Order, which confirm that certain requirements such as PAN Card, Mobile Telephone Number, and Cheque Details are mandatorily required to be submitted, for an Application to be accepted by TPC-D's system. In reply to a query by the Commission in this regard, TPC-D submitted that there appears to be an error in the Audit Report, and that other documents are also being accepted towards address proof, and submission of PAN Card is not compulsory. As regards mobile number, TPC-D submitted that even landline telephone number is accepted, and such contact details are required for easier communication with the consumers. As regards need for submission of cheque details, TPC-D has submitted that payment of cheque is not compulsory, and many changeover consumers have paid the requisite amounts in cash. However, the Commission is of the view that TPC-D cannot make such a subsequent denial of the findings of the Internal Audit Report, since, the same has been

submitted by TPC-D itself, without any caveats or comments regarding the findings of the Internal Audit Report.

- b) TPC-D's Power Supply Application Form, which is a common Application Form for changeover applications as well as new connections, also confirms that submission of PAN Number/TAN Number is a compulsory requirement under a separate head, in addition to PAN Card being accepted as one of documentary evidence for identity proof. TPC-D has attempted to justify this requirement by saying that PAN details are required for deducting the correct amount of Income Tax (TDS) while paying interest on Consumers' Security Deposit to the consumers, since in case of consumers having Sanctioned Load above 20 kW, the amount of interest may exceed Rs. 5000, requiring TPC-D to deduct tax at source. However, the Commission is of the view that TPC-D's justification has no merit, since this data is being sought from all consumers and not only from consumers having Sanctioned Load above 20 kW. Further, similar complaints have also been received during the Public Hearing on the ARR and Tariff Petitions filed by TPC-D over the last two years.
- c) As regards the documents to be submitted along with the application for supply, Regulation 4 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, specifies as under:

#### ***“4. Application for Supply***

*4.1 The applicant shall provide the following information / particulars/ documents to the Distribution Licensee while making an application for supply or for additional load, shifting of service, extension of service or restoration of supply:*

- (i) applicant's name and, whether or not the applicant is the owner of the premises for which supply of electricity is being applied for;*
- (ii) address of premises for which supply of electricity is being applied for and billing address, if different from such premises for supply;*
- (iii) where applicant is not the owner of the premises, name of owner of premises;*
- (iv) purpose of usage of electricity and load applied for each such usage;*
- (v) whether the application is for a new connection, shifting of service, additional load, extension of service, change of name or restoration (where the disconnection was for a period of less than six months);*

*(vi) name, address, licence number, contact telephone number and e-mail ID (if available) of Licensed Electrical Contractor who will certify the wiring works pertaining to the premises;*

*(vii) additional documents as may be required from the applicant under any statute for the time being in force:*

*Provided that the application form shall provide a list of (a) all major purposes of usage and (b) all such documents along with a reference to specific provision of the statute(s) under which they are required by the Distribution Licensee from the applicant at the time of giving supply of electricity to the premises:*

*Provided further that for consumers falling under the domestic tariff category, a copy of any one of the following documents, namely (i) ration card; (ii) photo-pass; (iii) voter's card; (iv) passport; (v) documents pertaining to occupation of premises, may be required at the time of processing of the application;*

*(viii) additional details that may be provided by the applicant, at his option, to facilitate the supply of electricity or consumer service by the Distribution Licensee;*

*(ix) fee for processing the application or receipt thereof, based on the schedule of charges approved by the Commission under Regulation 18."*

- d) From the above, it can be observed that PAN Card is not a mandatory requirement at the time of making application for supply. It is also evident that the Regulations envisaged requirement of details such as telephone number that too only of the Licensed Electrical Contractor and not of the applicants. Therefore, the requirement to provide the above-said data along with the Power Supply Application Form, is not in accordance with the MERC Supply Code, and hence, indicate that TPC-D has been attempting to filter the consumers who are changing over from RInfra-D to TPC-D, rather than accepting all complete Applications from all eligible consumers, in accordance with its mandate as a Distribution Licensee under the law.
- e) The Commission had directed TPC-D to submit the data regarding the category-wise number of changeover Applications rejected at the Application stage itself, since, this data was not brought out by the Internal Audit Report submitted by

TPC-D. However, TPC-D has been unable to submit this data, which would have revealed whether cherry-picking is happening in the changeover process. TPC-D has submitted that since, there is no benefit in maintaining this data, such data has not been maintained till March 2012, and hence, the same cannot be provided. However, TPC-D's submission in this regard does not have merit, since; TPC-D has admitted that it is maintaining this data from April 1, 2012. Further, the Internal Audit Report submitted by TPC-D itself confirms that even among registered Applications, out of around 1272 applications rejected due to submission of incomplete documents, in 72 sample cases (i.e., 100% of the selected sample), all the required documents have been ticked in the system as being actually available. TPC-D's explanation in this regard that maybe the consumers did not submit the latest electricity bill of RInfracorps does not appear reasonable.

- f) The above analysis show that genuine applications from low-end consumers are likely to have been rejected, which points towards cherry-picking being done by TPC-D in the changeover process, since the addition of only high-end subsidising consumers to TPC-D's consumer base is being allowed.

72. The above analysis shows that in terms of sales, the proportion of changeover of subsidising sales is far higher than that of subsidised sales and comprises 90% of the sales that has migrated to TPC-D, and even in terms of changeover of consumers, the proportion of subsidising category is very high at 39% of the total changeover consumers. Accordingly, the Commission has arrived at the conclusion that a very high number of subsidizing consumers (with high energy consumption) are changing over to take supply from TPC-D. The Commission is of the view that whether this is because of any intentional action or omission of TPC-D behind this trend is not as much important as the trend itself, because this trend is upsetting the level playing field and hence, is not conducive to a competitive environment in electricity distribution by two Distribution Licensees having a common area of supply.

73. As regards the issue (c) RInfracorps has stated that as recognised in the Commission's Order for RInfracorps in Case No. 72 of 2010, at least for around 5000 changeover consumers, TPC-D has set up the distribution network, and the same has been done in a selective manner to the detriment of the other consumers of RInfracorps. TPC-D has since clarified that these consumers, numbering around 5000, were not actually taking supply from RInfracorps under the respective category, and are either temporary connections issued by RInfracorps, wherein such consumers have applied for permanent supply under the appropriate category

to TPC-D, or are new consumers, who were never supplied to earlier by either of the Distribution Licensees, to whom supply has been given using the distribution network created for the purpose. The Commission is of the view that if TPC-D has given supply to new consumers in the Licence area common to TPC-D and RInfra-D through its own network, and such consumers have not approached RInfra-D for receiving supply, then this cannot be considered as either changeover or switchover, and hence, cannot be attributed with the so-called practice of cherry-picking. However, from the documents submitted by the Parties and analysed by the Commission under Para 81 of the Order, it is seen that though TPC-D has rightfully laid the network for supplying electricity to these new consumers, it has not laid the network for supplying electricity to the consumers in the areas adjoining the new connections and has preferred to rely on RInfra-D network for supplying to such consumers. Seen in this light, even this activity compromises with the level-playing field.

74. The Commission had directed TPC-D to submit the details of all capital expenditure undertaken in the Common Area of Supply after October 2009 (date of interim Order in Case No. 50 of 2009) till date, and to provide the details of the prior approval granted by the Commission for such capital expenditure schemes, which was submitted by TPC-D. Scrutiny of such capital expenditure schemes reveals (as is explained in the subsequent paragraphs of this order) that all these capital expenditure schemes have been primarily focussed on providing electricity supply to the subsidising HT/LT category of consumers rather than being intended for the Licence area as a whole.

75. The Commission also asked TPC-D to submit data on areas where parallel network has been developed. In reply, TPC-D submitted that duplication of network needs to be seen vis-a-vis spare capacity and the load being served by the Distribution Licensees. TPC-D's replies in this regard are contrary, as on the one hand, TPC-D is contending that duplication of assets is bad and will go counter to the objectives of the EA 2003 of ensuring efficiency and economy of operation, and on the other hand, TPC-D is contending that duplication cannot be assessed and all network addition is useful. Moreover, the Commission's analysis shows that TPC-D has been setting up network selectively, as explained in subsequent paragraphs.

- a) TPC-D has admitted that as a Distribution Licensee it is free to roll out its network in the manner that suits its business. TPC-D has contended that it is not required to put up its distribution network in every nook and corner of the licensed area even before there is a demand for connection from a consumer. If

this rationale were to be accepted, then TPC-D can continue to lay its network in a selective manner, and continue to provide supply to consumers using RInfra-D's network, and lay its own network only where it finds expedient to do so. While no one expects TPC-D to set up the distribution network in the entire Licence area overnight, the time-frame for the same cannot be expected to be several years, depending on TPC-D's business interests. It is already over four years since the Hon'ble Supreme Court upheld the Distribution Licence of TPC-D, and the Commission notified the MERC (Specific Conditions of Distribution License for The Tata Power Company Limited) Regulations, 2008. However, TPC-D is yet to lay down its network in the Licence area.

76. TPC-D has contended that TPC-D has always been ready and willing to connect and supply to all and any consumer who wishes to receive supply from it, and that TPC-D is duty bound to release new connections and supply to any consumer who seeks connection and supply from TPC-D. TPC-D has further submitted that the Changeover Scheme and interim Order dated October 15, 2009 does not impede TPC-D's obligation to lay down its network for releasing such new connections to consumers in its licensed area, and it is up to the consumer situated in the Common Area of Supply to decide as to whether he wants to receive supply from TPC-D or RInfra-D, and through whose Wires, because the cost implications are different in both cases. TPC-D has further added that the changeover consumer can be on existing Distribution Licensee's wires till the time he wishes to stay.

77. In this regard, the Commission does not find merit in TPC-D's contentions, for the following reasons:

- a) The consumer merely applies for supply to the Distribution Licensee of his area of supply, and is not expected to indicate that he wants the supply through a certain distribution network. Since, TPC-D does not have the distribution network, it is making use of the existing distribution network of RInfra-D for providing the supply, under the Changeover Protocol approved by the Commission in its interim Order dated October 15, 2009 in Case No. 50 of 2009.
- b) TPC-D's premise that the changeover consumer can continue on existing Distribution Licensee's network till the time he wishes to stay are contrary to the Commission's decision in the Order dated 15<sup>th</sup> October 2009. As a matter of fact, the Order dated 15<sup>th</sup> October 2009 being interim in nature, which is pale without doubt in terms of the express language contained therein, and having received the request for supply from so many changeover consumers, TPC-D

was required to lay the distribution network accordingly, in accordance with its own submission that TPC-D has always been ready to connect and supply to all consumers who seek connection and supply from TPC-D.

78. RInfra-D has alleged that TPC-D is setting up its distribution network in a selective manner and has taken away consumers like MIAL, HDFC Bank and certain other consumers in an illegal manner, thereby ensuring that these large subsidising consumers will be classified under Group III (in accordance with the Commission's Order in Case No. 72 of 2010) and will not be liable to pay the Cross-Subsidy Surcharge and the Regulatory Asset Surcharge, thereby adversely affecting the financial viability of RInfra-D and increasing the tariff burden on RInfra-D's consumers. RInfra-D has further contended that TPC-D ought not to have laid the network for MIAL when MIAL was already using RInfra-D's network, as TPC-D's actions have resulted in stranded assets for RInfra-D. The Commission is of the view that if TPC-D lays the distribution network for giving supply to all the consumers in its Licence area, which is one of the mandates of a Distribution Licensee under the EA 2003 and incidentally, also one of the prayers of RInfra-D, then the utilisation of RInfra-D's network, especially the last mile connectivity part, is likely to be significantly reduced. However, under no circumstances should the network creation be allowed on a selective basis.

79. RInfra-D was asked to provide details clearly indicating its erstwhile consumers (including temporary, permanently disconnected, etc., in its Licence area in the following manner - Ward-wise, year-wise, and consumer category-wise), who have now 'switched over' on TPC-D's wires, in order to justify its contention that TPC-D has been laying network in a selective manner. It was observed that the list submitted by RInfra-D included the consumers switched over before year 2003. Further, there was also uncertainty on the period in which such network was developed. In its analysis, the Commission has filtered out the data of switchover prior to October 2009, so that only the relevant data is considered for the period under consideration.

80. TPC-D was also asked to furnish details of new consumers taking supply from TPC-D through TPC-D's distribution network in the Licence Area common to TPC-D and RInfra-D subsequent to the interim Order dated October 15, 2009 (Ward-wise, Zone-wise, consumer category-wise). In response, TPC-D provided the number of consumers added to its network subsequent to the interim Order dated October 15, 2009 for five Zones covering its suburban Licence area.

81. It is clarified that for analysis purposes, the Commission has considered details submitted by the Parties only the period after October 15, 2009. Though, there was asymmetry of information provided by both the Licensees, the Commission has perused through the details of consumers and projects on the maps and tried to reconcile the same with the details of capital expenditure scheme available with it. Ward-wise details of following consumers are tabulated below:

- A- Temporary supply by RInfra-D and permanent supply taken from TPC-D
- B- Existing REL/RInfra-D consumer connected by TPC (Network Duplication)
- C- Consumers directly connected on TPC-D network without approaching RInfra-D

**A- Temporary supply by RInfra-D and permanent supply taken from TPC-D**

**Table: Number of consumers**

MCGM Ward	Single consumers (No.)			Projects (No.)				
	Commercial	Industrial	Total	Commercial	Residential	Residential (PART)	Commercial + Residential	Total
H West	-	-	-	1	-	-	-	1
K East	7	-	7	9	5	1	4	19
K West	2	-	2	3	8	1	1	13
L	1	-	1	1	2	-	-	3
M East	-	-	-	-	1	-	-	1
M West	1	-	1	-	1	-	-	1
MBMC Area	-	-	-	5	4	-	1	10
MMRDA	-	-	-	9	-	-	-	9
N	-	-	-	-	-	-	1	1
P North	-	-	-	3	2	-	1	6
P South	1	-	1	4	6	-	-	10
R South	1	1	2	2	1	-	-	3
R North	-	-	-	-	1	-	-	1
R Central	-	-	-	-	3	-	-	3
S	-	-	-	3	-	-	1	4
<b>Total</b>	13	1	14	40	34	2	9	85

**Table: Expected Load for consumers indicated**

Expected Load	Single consumers (MW)			Projects (Expected Load in MW)				
	Commercial	Industrial	Total	Commercial	Residential	Residential (PART)	Commercial + Residential	Total
H West	-	-	-	0.25	-	-	-	0.25
K East	9.6*	-	0	18.28	4.6	2.4	14.75	40.03
K West	0.85	-	0.85	4.8	5.12	0.21	0.5	10.63
L	2	-	2	12.6	7.5	-	-	20.1
M East	-	-	-	-	1	-	-	1
M West	0.05	-	0.05	-	2	-	-	2
MBMC Area	-	-	-	2.9	2.85	-	0.5	6.25
MMRDA	-	-	-	19.4	-	-	-	19.4
N	-	-	-	-	-	-	6.8	6.8
P North	-	-	-	4.5	3.5	-	6	14
P South	0.2	-	0.2	7.15	3.7	-	-	10.85
R South	0.3	0.8	1.1	0.2	0.1	-	-	0.3
R North	-	-	-	-	0.8	-	-	0.8
R Central	-	-	-	-	1.65	-	-	1.65
S	-	-	-	13.2	-	-	7.6	20.8
<b>Total</b>	<b>3.4</b>	<b>0.8</b>	<b>4.2</b>	<b>83.28</b>	<b>32.82</b>	<b>2.61</b>	<b>36.15</b>	<b>154.86</b>

\* Min load - 0.3 MW

**B- Existing RInfra-D consumers connected by TPC-D (Network Duplication)****Table: Details of consumers**

Name	Category	Single Customer
M S S E S EN	Commercial	Single Customer
M. S. NIDA TEX	Industrial	Single Customer
MIAL	Commercial	Single Customer
MIAL	Commercial	Single Customer
M/s Aegis Logistics	Commercial	Individual
HDFC Bank Chandivali	Commercial	Individual
M/s Karina Synthetics Pvt.Ltd	Commercial	Individual
M/s Litichika InternationalSakinaka	Industrial	Individual
M/s Universal Oil SealsMfg Co. Pvt Ltd Kurla	Industrial	Individual

**C- Consumers directly connected on TPC-D network without approaching RInfra-D**

**Table: Number of consumers**

MCGM Ward	Single consumes (No.)	Projects (No.)					Total
	Commercial	Commercial	Industrial	Commercial + Residential	Residential		
H West	-	-	-	-	-	-	-
K East	3	6	2	-	-	-	8
K West	1	-	-	-	-	-	-
L	-	1	-	-	-	-	1
M East	-	-	-	-	-	-	-
M West	-	-	-	-	-	-	-
MBMC Area	-	-	-	-	3	-	3
MMRDA	-	-	-	-	-	-	-
N	-	-	-	-	-	-	-
P North	2	1	-	-	1	-	2
P South	-	-	-	-	3	-	3
R South	3	-	-	-	3	-	3
R North	-	-	-	-	-	-	-
R Central	-	-	-	-	-	-	-
S	-	-	-	1	1	-	2
<b>Total</b>	<b>9</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>11</b>	<b>-</b>	<b>22</b>

**Table: Expected Load for consumers indicated**

Expected Load	Single consumes (MW)	Projects (Expected Load in MW)				
		Commercial	Industrial	Commercial + Residential	Residential	Total
H West	-	-	-	-	-	-
K East	2.2	8.9	0.5	-	-	<b>9.4</b>
K West	0.12	-	-	-	-	-
L	-	4	-	-	-	<b>4</b>
M East	-	-	-	-	-	-
M West	-	-	-	-	-	-
MBMC Area	-	-	-	-	2.5	<b>2.5</b>
MMRDA	-	-	-	-	-	-
N	-	-	-	-	-	-
P North	1.32	0.4	-	-	0.6	<b>1</b>
P South	-	-	-	-	2.8	<b>2.8</b>
R South	2.3	-	-	-	2.06	<b>2.06</b>
R North	-	-	-	-	-	-
R Central	-	-	-	-	-	-
S	-	-	-	10.68	4.52	<b>15.2</b>
<b>Total</b>	<b>5.94</b>	<b>13.3</b>	<b>0.5</b>	<b>10.68</b>	<b>12.48</b>	<b>36.96</b>

Thus, from the above analysis, the following conclusions can be drawn:

- Ward-wise cherry picking by TPC-D is evident, especially for single consumers
- Such single consumers are primarily from categories other than residential category
- Though there are changeover consumers in the surrounding area, TPC-D has laid its network only for the single consume without laying the network for remaining changeover consumers in the surrounding area
- Selective network laying is evident from the following cluster maps: Malad BMC Lagoon, BMC Pumping station.

82. Hence, appropriate directions need to be given to TPC-D to ensure that TPC-D is unable to indulge in such cherry-picking under the switchover process. The Commission has given such directions in this Order, while discussing a subsequent issue.

83. As regards the issue (d) on whether RInfra-D and its consumers have been disadvantaged due to the alleged cherry-picking by TPC-D under the changeover/switchover process, both Parties have made extensive submissions, as under:

- a) RInfra-D has submitted that its distribution network, i.e., consumer meters and CT/PT, have become redundant on account of the creation of a parallel distribution network by TPC-D in a selective manner.
- b) RInfra-D also submitted its computations of net revenue loss, as summarised in the earlier paragraphs of this Order.
- c) RInfra-D submitted that all the revenue loss will add to the revenue gap and will have to be passed on to the remaining consumers, which will adversely affect the tariffs of the low-end subsidised consumers and also drive away the balance few subsidising consumers, which in turn will worsen the impact on the low-end subsidised consumers and their tariffs will reach unsustainable levels.
- d) On the contrary, TPC-D has contended that RInfra-D's computation of revenue loss due to migration of consumers from RInfra-D to TPC-D suffers from 2 basic fallacious assumptions, viz., (a) consumers connected to RInfra-D's wires are captive to RInfra-D's licensed business, and (b) RInfra-D has absolute and unfettered right over its distribution network.
- e) TPC-D also commented on the appropriateness of the assumptions used by RInfra-D for computing the savings in power purchase expenses
- f) TPC-D added that in any event, there is no net loss to RInfra-D, as all the revenue loss will be recovered from the ARR, which is passed on to the consumers under the Cost-Plus approach.

84. These contentions and submissions have been analysed below:

- a) As regards RInfra-D's contention that its distribution network is becoming redundant/stranded on account of selective creation of parallel network by TPC-D, the Commission is of the view that there is no merit in the same, as most of the assets are used as part of the overall system and are interconnected to other loads as well, and only the last-mile connectivity portion may become redundant/stranded. However, as clarified earlier, the scheme of parallel Licensees under the EA 2003 requires the creation of a parallel network, hence; there is no choice for TPC-D in the matter.
- b) As regards the revenue loss computation, the Commission has not analysed the same including the savings in power purchase expenses in great detail, as the same is only peripherally relevant to the present matter. It is observed that RInfra-D has not deducted the amount of revenue from Cross-Subsidy Surcharge, while computing the net revenue loss for FY 2011-12. As a result, the net revenue loss for FY 2011-12 based on RInfra-D's approach, works out to

Rs. 973 crore, and the cumulative revenue loss over the changeover period from October 2009 onwards works out to Rs. 1210 crore.

- c) As regards TPC-D's contention that consumers connected to RInfra-D's wires are not captive to RInfra-D's licensed business, the Commission is of the view that while the consumers are not captive to RInfra-D, any Licensee would obviously compute the revenue loss in a similar manner, in case the consumer moves away to another source of supply, irrespective of whether the new source of supply is a bi-lateral Open Access source or another Distribution Licensee of the same area of supply.
- d) As regards TPC-D's contention that RInfra-D does not have absolute and unfettered right over its distribution network, and that the network created by a Distribution Licensee is a 'regulatory property', the same having been raised before the Hon'ble Tribunal in Appeal Numbers 132, 133, 139, 140, 144, 164, and 178 of 2011, the Commission cannot give any findings thereon

85. However, as the Order dated 15<sup>th</sup> October 2009 is not the subject matter of any appeal and in view of the findings in the foregoing paragraphs, the Commission is of the view that there are sufficient grounds for the Commission to calibrate the changeover protocol suitably.

86. As regards the issue (e) on whether TPC-D has met its Universal Service Obligations (USO) as a Distribution Licensee in its Licence Area, the issue is related to the issue (c) discussed above. The additional submissions made by the Parties on this issue and the Commission's analysis and ruling on the issue are as under:

87. RInfra-D has submitted that TPC-D has to fulfil its USO either by utilising only the distribution network of RInfra-D to supply to both changeover and new consumers in the Common Area of Supply, or lay its own distribution network in the Common Area of Supply and start fulfilling its USO. However, based on the earlier analysis of various provisions of law, the Commission is of the view that such a choice is not available to TPC-D. TPC-D has to set up its own distribution network in the Common Area of Supply in the medium-term, and usage of the existing distribution network of RInfra-D is only an interim solution to be adopted in the interregnum till such time as TPC-D sets up its own distribution network.

88. TPC-D has contended that network expansion is a continuous process and USO is qua individual consumers, therefore, as and when a consumer wants supply through TPC-D's

network, TPC-D is statutorily obligated to connect by laying down its own network, if the consumer wants so. The Commission does not find merit in TPC-D's contentions in this regard, for the following reasons:

- a) TPC-D has to set up its own distribution network in the Common Area of Supply in the medium-term.
- b) Further, the contention that the consumer has to indicate whether he wants supply on TPC-D's network has already been rejected based on the Commission's analysis, earlier in this Order.
- c) In order to meet its USO, TPC-D should be in a position to give supply to all consumers in its Licence area using its own distribution network, as per the timelines specified under the EA 2003 and the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, viz.,

*"4.1 The 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.***

...

*4.5 Where the supply of electricity to a premises requires extension or augmentation of distributing mains, the Distribution Licensee shall give supply to such premises **within three months from the date of receipt of complete application** in accordance with the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.*

*4.6 Where the supply of electricity to a premises requires commissioning of a new sub-station forming part of the distribution system, the Distribution Licensee shall give supply to such premises **within one (1) year from the date of receipt of complete application** in accordance with the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005."**(emphasis added)***

- d) As summarised earlier, TPC-D has identified twenty (20) 'Clusters' in the Common Licence Area and has submitted that in twelve (12) of these Clusters, its backbone network is in place and TPC-D is in a position to

provide supply to consumers on its distribution network within the timelines prescribed under the MERC SOP Regulations.

- e) In other words, in eight (8) Clusters, TPC-D is not in a position to provide supply to consumers on its distribution network within the timelines prescribed under the MERC SOP Regulations.
- f) Moreover, TPC-D has effectively contended that the network will be expanded only based on applications received, and TPC-D will not develop the network in the entire Licence area. This contention is not in accordance with law, and contrary to the duties and obligations of a Distribution Licensee to develop the distribution network in the entire area of supply. Merely because TPC-D is in a position to give supply within a period of one year on its network cannot be considered as TPC-D meeting its USO obligations in the Common Area of Supply. TPC-D should be able to give supply to consumers on its distribution network within the minimum specified time-line of one month from the date of receipt of application, in order to truly comply with the requirement.
- g) However, TPC-D has not met such USO in its Licence area even in the 12 Clusters identified by TPC-D, as it has not rolled out its distribution network even after the elapse of more than 4 years since the Judgment of the Hon'ble Supreme Court upholding the Distribution Licence of TPC-D and the notification of the MERC (Specific Conditions of Distribution Licence applicable to The Tata Power Company Limited) Regulations, 2008, and is not in a position to give supply on demand within a period of one month.
- h) As stated earlier, TPC-D was allowed to use the distribution network of RInfra-D to meet its USO and give supply to consumers to enable consumer choice, only till such time as TPC-D set up its own network, and this was never intended to be a permanent solution, as being suggested by TPC-D.
- i) For the same reason, there is no merit in TPC-D's contention that if TPC-D is unable to use RInfra-D's network, it will adversely affect TPC-D's ability to meet its USO in the Common Area of Supply.
- j) Although TPC-D has expressed its desire to meet its USO in several of its submissions, it is clear that the same cannot be achieved by using RInfra's distribution network.

89. In order to meet its USO, TPC-D has to lay its distribution network in the entire Licence area within a specified time frame of maximum 2-3 years from now, since already 4 years have been lost. However, in the Licence area common to TPC-D and BEST, TPC-D

will be subject to the orders of the Hon'ble Supreme Court in Civil Appeal No. 4223 of 2012.

90. As regards the issue (f) on whether the Commission can grant the reliefs sought by RInfra-D in its Petition, it is necessary to reproduce the exact reliefs sought by RInfra-D in its Petition, as amended by RInfra-D vide submission dated December 8, 2011:

“

- a) *that this Hon'ble Commission may be pleased to modify and/or clarify the Order dated 15th October 2009, by holding and/or providing that the said Order dated 15th October 2009, and the protocol contained therein shall operate and be applicable on the condition that TPC-D does not connect its own network to any existing consumers of RInfra-D or any new consumers in RInfra's area of supply till TPC-D complies with its Universal Service Obligation by laying its network within TPC-D's licensed area of supply that coincides with RInfra's licensed area of supply.*
- b) *In the alternative to the aforesaid and in the event of the modification/clarification prayed for in prayer (a) above not being granted, this Hon'ble Commission may be pleased to withdraw and/or cancel the non-adversarial Order dated 15<sup>th</sup> October 2009;*
- c) *Pending the hearing and final disposal of the Petition/Case, TPC-D may be restrained by an order and injunction of this Hon'ble Commission:*
  - iii. *from connecting on its own network any existing consumer of RInfra-D; or*
  - iv. *from connecting on its own network any new consumer in RInfra's licensed area of supply;**in the alternative to prayer (c)(i) and (ii) above the operation of the Order dated 15<sup>th</sup> October 2009 be stayed;”*

91. In regard to the reliefs (a) and (c) seeking directions to prevent TPC-D from cherry picking, the Commission has given certain specific directions in the subsequent paragraphs. Failure to do so by TPC-D shall attract severe consequences in law.

92. Relief (b) is a request to withdraw and/or cancel the non-adversarial interim Order dated October 15, 2009, and under the alternative to prayer (c) (i) and (ii), RInfra-D has sought a stay on the operation of the interim Order issued by the Commission on October

15, 2009 in Case No. 50 of 2009. The Commission is of the view that this prayer of RInfra-D cannot be granted since competition is essential, and that is the reason the above-said Order was issued, so that TPC-D was able to supply to consumers in the Common Area of Supply using RInfra-D's distribution network, till such time as TPC-D set up its own distribution network, else, competition would never have happened.

93. As regards the issue (g) on whether the Commission can grant the interim reliefs sought by RInfra-D in its Petition, it is necessary to reproduce the exact interim reliefs sought by RInfra-D in its Interim Application, as amended by RInfra-D vide submission dated December 8, 2011:

"

- a) *Pending the hearing and final disposal of the Petition/Case, TPC-D may be restrained by an order and injunction of this Hon'ble Commission:*
  - i) *from connecting on its own network any existing consumer of RInfra-D; or*
  - ii) *from connecting on its own network any new consumer in RInfra's licensed area of supply;*
- b) *in the alternative to prayer (a)(i) and (ii) above the operation of the Order dated 15<sup>th</sup> October 2009 be stayed;"*

94. In this context, TPC-D has raised the legal objection that the interim reliefs sought by RInfra-D are the same as the reliefs sought under the main prayers in the Petition, which is not permitted, as ruled by the Hon'ble Supreme Court. TPC-D's submission in this regard is correct, and RInfra-D cannot seek the identical relief through the main Prayers as well as its prayers for interim relief. However, notwithstanding the above, since, the final decision is being given by the Commission after hearing all the Parties and after going through all the submissions, the said IA is infructuous.

95. As regards the issue (h) on whether there is a need for the Commission to modify the changeover protocol formulated under the interim Order dated October 15, 2009 in Case No. 50 of 2009 at this stage, separately for changeover and switchover cases, and if so, to what extent, the Commission is of the view as under:

96. Based on all the analysis of all the above issues, the Commission has come to the conclusion that there is a need to intervene in the manner of changeover and switchover of consumers, as being undertaken by the Parties, and there is a need to calibrate the migration of consumers from one Licensee to another, in order to ensure a level playing field and also

to protect the interests of low-end consumers being supplied electricity in the Common Area of supply between RInfra-D and TPC-D. Accordingly, the Commission hereby modifies the interim Order in Case No. 50 of 2009, under Section 94(2) of the EA 2003, as under:

- a) Prospectively, from the date of this Order, consumer changeover will be allowed from RInfra-D to TPC-D only for the residential category of consumers and that too only for the consumers who consume electricity upto 300 units a month.
- b) For the purpose of identifying the target segment for consumer changeover, only those residential category consumers whose 'average' monthly consumption over the previous 12 months (as on date of submitting the application and as captured in the last paid monthly bill of RInfra-D) is upto and including 300 units per month, shall be eligible to changeover from RInfra-D to TPC-D.
- c) The above restriction shall not apply to pending applications for changeover (as on date of this (as on date of this Order), irrespective of consumer category and consumption slab, which will be processed as per the earlier protocol approved in the interim Order dated October 15, 2009, and changeover for eligible consumers shall be done in a smooth manner.
- d) This restriction of changeover being restricted to residential consumers with average electricity consumption of upto 300 units a month, shall be in force for a period of one year from the date of this Order, and the Commission will review the status of changeover and switchover and new connections added in the identified areas during this period, before deciding on the forward path for the period beyond one year.
- e) For all changeover consumers who have changed over before the date of this Order or who have already applied before the date of this Order and are eligible for changeover, the supply will be given by TPC-D using the network of RInfra-D, till such time as TPC-D develops its own distribution network in the area.
- f) It may be noted that apart from the above modifications, all other aspects of the Protocol will remain the same as approved by the Commission in the interim Order dated October 15, 2009 in Case No. 50 of 2009.
- g) Further, TPC-D should immediately amend its Power Supply Application Form to bring it in line with the MERC Supply Code Regulations, and remove the mandatory requirement of providing the PAN/TAN Card number, Mobile number, etc., as elaborated above.
- h) The Commission will also monitor the progress of consumer addition by TPC-D (changeover, switchover, new connections and reverse migration, if any) on quarterly basis (June, September, December, March), and both RInfra-D and TPC-D will be required to submit the desired information (refer **Annexure I**)

for every quarter, by the end of the first month after the end of the respective quarter.

- i) Switchover of consumers from RInfra-D to TPC-D network is allowed for existing changeover consumers and all consumers who have already applied and are eligible for changeover, for all consumer categories, from the date of laying distribution network in the Common Licence Area. This has been explained in greater detail in the subsequent paragraphs.
- j) All existing and future changeover consumers, who have changed over from RInfra-D to TPC-D and all existing direct consumers of TPC-D, can changeover from TPC-D to RInfra-D, in accordance with the protocol approved by the Commission in the interim Order dated October 15, 2009 in Case No. 50 of 2009.
- k) The above dispensation, to be in force for the next one year from the date of this Order

**Table: Matrix for migration of Consumers from RInfra-D to TPC-D**

<b>Particulars</b>	<b>Consumers in 0-300 Units Residential Category</b>	<b>All consumers other than 0-300 Units residential category</b>	<b>Allowed in Which Wards/ Clusters</b>	<b>Distribution Network being used</b>
<b>Changeover</b>	Allowed	Not allowed	All	RInfra-D distribution network
<b>Switchover</b> (means disconnected from one DL and re-connected on wires of other DL)	Allowed	Not Allowed for Applications made for a period of one year from the date of issue of this Order (since the new changeover/switchover Applications from categories other than 0-300 units residential category are blocked) However, switchover is allowed for existing changeover consumers and changeover consumers	Selected Clusters/ Wards	TPC-D's own distribution network

<b>Particulars</b>	<b>Consumers in 0-300 Units Residential Category</b>	<b>All consumers other than 0-300 Units residential category</b>	<b>Allowed in Which Wards/ Clusters</b>	<b>Distribution Network being used</b>
		who have applied before the date of this Order		
<b>Direct</b> (new consumers)	Allowed	Allowed	All	TPC-D's own distribution network

97. The Commission is of the view that there is a need to issue specific directions to TPC-D regarding the capital expenditure to be undertaken over the next one year, in order to ensure that TPC-D meets its USO in the Common Licence area (Suburban Mumbai) within a reasonable time period. For this purpose, the Commission has analysed the submissions made by both Parties, as under:

- a) As discussed earlier, TPC-D has proposed to roll out its distribution network under a 'Cluster' based approach, as compared to the earlier and conventional approach of formulating Municipal Ward wise schemes. In this regard, the Commission has observed that:
  - i. The 'Mindspace' Cluster along with 'Vasant Utsav' Cluster, has been redefined from TPC-D submission dated July 19, 2012 to other submissions given by TPC-D.
  - ii. Prima facie, it appears that the area between the 'Dahisar' Cluster and 'Mira Bhayander' Cluster is not included in any of the Clusters proposed by TPC-D, though TPC-D's distribution network exists in the said area (for Lodha Aqua, Mira Cooperative Industrial Estate, etc.)
- b) Thus, it appears that the 'Cluster' can depend on definition and also vary from time to time. Hence, the Commission is of the view that reliance on the Cluster based approach can lead to confusion and disputes regarding the boundaries of the Cluster. It may be noted that in its Business Plan Petition, TPC-D has proposed Ward-wise network strengthening. Further, TPC-D has identified 14 Wards of its entire Licence area for network strengthening under which it has carried out DSS mapping for load growth. As Municipal Wards are clearly

defined and there can be no dispute, it is advisable if the network roll out plan is based on Municipal Wards rather than Clusters.

- c) However, for the purpose of giving specific directions regarding the network rollout Plan, the Commission has considered the Clusters proposed by TPC-D, since most of the data has been submitted under the Cluster based approach. TPC-D is directed to re-draw the approved Cluster-wise Network Rollout Plan into a Ward-wise Network Rollout Plan, and submit the same to the Commission for approval, within 2 weeks of the issue of this Order.
- d) The Commission has also observed certain discrepancies in the data regarding number of changeover consumers, submitted by TPC-D in different submissions as tabulated below, and which need to be corrected by TPC-D:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Total No. of changeover consumers</b>
1	As per the MYT Business Plan	2,64,107
2	As per (back up slide) the presentation dated April 13, 2012 submitted vide affidavit dated May 2, 2012	2,34,462
3	As per the Cluster wise maps submitted on July 19, 2012	2,30,865
4	As per the Cluster wise maps submitted on August 13, 2012	2,24,272

- e) The Commission has adopted the following philosophy while identifying the Clusters (to be redrawn into a Municipal Ward-wise Plan by TPC-D) where TPC-D should roll out its Distribution network in the first Phase, i.e., next one year from the date of this Order:
- i. TPC-D should not roll out its distribution network in the Clusters/Wards, where there are negligible or very few residential consumers, in the first Phase
  - ii. Clusters have been identified by prioritising against the following criteria
    - (i) Cluster should have higher number of residential consumers as compared to other Clusters
    - (ii) Cluster should have higher number of residential changeover consumers as compared to other Clusters

(iii) TPC-D's distribution network should be present in the Cluster. In this regard, scrutiny of the 8 Clusters (which have not been proposed by TPC-D in the initial period, on the ground that network augmentation needs to be carried out for giving supply in these Clusters) provided under Annexure-II of submission dated August 10, 2012 shows that the installed DSS capacity for few Clusters is ranging from 0-20 MVA. Since the Distribution Licensee always plans for future expansion while zeroing down on the location and space of the Sub-station, and since, existing 10 MVA transformer can be replaced also with 20 MVA transformer, the Commission is of the view that this aspect is not such a big constraint as being made out by TPC-D.

f) Accordingly, the following Clusters have been identified by the Commission (to be redrawn into a Municipal Ward-wise Plan by TPC-D) where TPC-D should roll out its Distribution network in the first Phase, i.e., next one year from the date of this Order:

Sl.	Name of Clusters Proposed to be taken up by TPC-D for Network Rollout	No. of existing change over consumers	Clusters identified by the Commission for full network rollout within 1 year time period
	<b><u>SoP Compliant Clusters</u></b>		
1	Mira Road	22385	Mira Road
2	Dahisar	19254	Dahisar
3	Kurla LBS	7501	Kurla LBS
4	Kalanagar	3458	-
5	Versova BMC Lagoon	9779	-
6	Saki	14689	Saki
7	Powai	5701	-
8	Chandivali (L&T Powai)	6542	-
9	Madh Island 1	241	-
10	Madh Island 2	95	-
11	Mind Space	12338	Mindspace
12	Trombay	4427	Trombay
	<b><u>Clusters which require additional n/w development</u></b>		
13	Mankhurd Chembur	12234	Mankhurd Chembur
14	Vrindavan	13226	Vrindavan
15	BMC Pumping Station	17609	-
16	Arogyanidhi	13419	Arogyanidhi
17	Goregaon E	11180	-

Sl.	Name of Clusters Proposed to be taken up by TPC-D for Network Rollout	No. of existing change over consumers	Clusters identified by the Commission for full network rollout within 1 year time period
18	Versova	20633	-
19	Vasantotsav	12155	Vasantotsav
20	Malad BMC Lagoon	17406	Malad BMC Lagoon

98. Accordingly, the Commission hereby issues the following directions to TPC-D regarding the network roll out plan and capital expenditure to be undertaken over the next one year from the date of this Order:

- a) TPC-D will have to focus all its energies and capital expenditure and ensure that by the end of one year from the date of this Order, TPC-D has rolled out its entire distribution network in the 11 Clusters identified above (to be redrawn into a Municipal Ward-wise Plan by TPC-D) in such a manner that it is in a position to provide supply through its own distribution network to existing and prospective consumers located anywhere within these Clusters, within the minimum time period of one month specified under the MERC SOP Regulations.
- b) TPC-D has to ensure that all capital expenditure schemes submitted to the Commission for approval are part of the overall Network Rollout Plan prepared in such a manner that the above objective is achieved. The Commission clarifies that it shall not accord its in-principle approval for any capital expenditure scheme proposed by TPC-D to be undertaken over the next one year, unless it complies with this overarching direction. Further, TPC-D should ensure that the necessary space for sub-station/Distribution Transformer, etc., is obtained by relying on the help of the State Government and other appropriate Authorities, since, TPC-D cannot link the compliance to conditions such as space availability, etc..
- c) Further, the Commission has already granted in-principle approval to capital expenditure schemes to be undertaken over the next 2-3 years. In view of the above direction to redraw the Cluster based Plan into a Ward-wise Plan, such that the 11 Clusters identified by the Commission are covered in the first Phase, TPC-D has to re-arrange the Plan such that the schemes covering the 6 Clusters overlapping between TPC-D's proposed Plan and those identified by the Commission (Mira Road, Dahisar, Kurla LBS, Saki, Mindspace, Trombay, Mankhurd Chembur, Vrindavan, Arogyanidhi, Vasantotsav, and Malad BMC

Lagoon) are covered, and the balance schemes are designed for the remaining Clusters.

- d) Further, TPC-D should ensure that wide publicity is given to reach the consumers in these identified 11 Clusters, to the effect that TPC-D is in a position to provide supply using its own network to all consumers interested in taking power supply from TPC-D, within the timelines specified in the MERC SOP Regulations.

99. As regards the issue (i) on how to address the operational issues that have been raised by RInfra-D and TPC-D regarding the changeover process and switchover being done by TPC-D, the Commission is of the view as under:

100. Both, RInfra-D and TPC-D have raised several operational issues in their submissions qua each other, to highlight the difficulties being faced by each of them on account of the purported improper approach of the other. However, TPC-D has submitted that these operational issues are minor in nature and can be addressed through mutual discussions. In its submissions, RInfra-D has also said that the operational issues can be taken up separately and also committed during the hearings to look into the operational matters seriously with a view to resolving them in a timely manner.

101. In this context, it needs to be noted that the Commission issued the interim Order in Case No. 50 of 2009 through a consensual process of discussion and both the Parties, viz., RInfra-D and TPC-D came forward in a very constructive and collaborative manner to design the operational procedures and formulate the changeover protocol, which has been successfully implemented in so far as the consumers in the Common Area of supply have been given the choice of electricity supplier, though certain operational issues have cropped up over this period. The Commission is of the view that the scope of the present Case is to resolve the larger issue of ensuring a level playing field in the competitive Distribution Licence business, and to calibrate the changeover process to ensure that the intended objectives are met, rather than get bogged down by the operational issues raised by the Parties qua each other. Moreover, both the Parties are also in agreement that these operational issues can be resolved through mutual discussions at the appropriate levels in the organisational hierarchy. Hence, the Commission directs the Parties, viz., RInfra-D and TPC-D to resolve the operational issues through mutual discussions in a constructive manner in the larger consumer interest, and ensure the success of the parallel Licensee model prevailing in the city of Mumbai. In the meantime, neither Party should take any

unilateral decision in this matter, in such a manner that it adversely affects the changeover process and disadvantages the other Licensee and the consumers.

102. As regards the issue (j) on whether the issues of Cross-Subsidy Surcharge and Regulatory Asset Surcharge can be addressed through this Order, the Commission is of the view that these issues are presently sub-judice before the Hon'ble ATE in Appeal Numbers 132, 133, 139, 140, 144, 164, and 178 of 2011 and the Commission is also one of the Respondents in these matters. Hence, the Commission cannot give any view or ruling on these matters in this Order.

With the above ruling and directions, the Petition filed by RInfra-D in Case No. 151 of 2011 is disposed of.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman

## ANNEXURE I

<b>Format No.</b>	<b>Title</b>
Format 1.1	For Changeover consumers - Application status during the period
Format 1.2	For Switchover consumers - Application status during the period
Format 1.3	For Direct consumers - Application status during the period
Format 1.4	For Changeover consumers- Status of pending applications as on date of issue of the Order in Case No. 151 of 2011 (August 22, 2012)
Format 1.5	For Switchover consumers- Status of pending applications as on date of issue of the Order in Case No. 151 of 2011 (August 22, 2012)
Format 1.6	For Changeover consumers- Status during the period
Format 1.7	For Switchover consumers- Status during the period
Format 1.8	For Direct consumers- Status during the period

**Note:**

1. All formats to be submitted by both TPC-D and RInfra-D.
2. Formats to be submitted in the manner specified in the Order.
3. TPC-D and RInfra-D may add additional details.

**Format 1.1: For Changeover consumers - Application status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of applications made during the period	No. of applications rejected at the application stage itself by		Reasons for rejection	Applications registered as 'Complete Applications' during the period
				TPC-D	RInfra-D		
Ward 'X'	Cluster 'a'	<b>LT-I - Residential (Single Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT- I- Residential (Three Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT II - Commercial</b>					
		...					
		...					
		LT III Industry (<20 kW Load)					
		...					
		...					
		HT I - Industry					
		HT II - Commercial					
		...					
			<b>Cluster 'b'</b>	...			
	<b>Cluster 'c'</b>	...					
Ward 'Y'	<b>Cluster 'd'</b>	...					
...	...	...					
...	...	...					
...	...	...					

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.2: For Switchover consumers - Application status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of applications made during the period	No. of applications rejected at the application stage itself by		Reasons for rejection	Applications registered as 'Complete Applications' during the period
				TPC-D	RInfra-D		
Ward 'X'	Cluster 'a'	<b>LT I- BPL</b>					
		<b>LT-I - Residential (Single Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT- I- Residential (Three Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT II - Commercial</b>					
		...					
		LT III Industry (<20 kW Load)					
		...					
		...					
		HT I - Industry					
HT II - Commercial							
...							
	<b>Cluster 'b'</b>	...					
	<b>Cluster 'c'</b>	...					
Ward 'Y'	<b>Cluster 'd'</b>	...					
...	...	...					
...	...	...					
...	...	...					

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.3: For Direct consumers -Application status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of applications made during the period	No. of applications rejected at the application stage itself by		Reasons for rejection	Applications registered as 'Complete Applications' during the period
				TPC-D	RInfra-D		
Ward 'X'	Cluster 'a'	<b>LT I- BPL</b>					
		<b>LT-I - Residential (Single Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT- I- Residential (Three Phase)</b>					
		0-100 units					
		101-300 units					
		301-500 units					
		500 and above					
		<b>LT II - Commercial</b>					
		...					
		LT III Industry (<20 kW Load)					
		...					
	...						
	HT I - Industry						
	HT II - Commercial						
...							
	<b>Cluster 'b'</b>	...					
	<b>Cluster 'c'</b>	...					
Ward 'Y'	<b>Cluster 'd'</b>	...					
...	...	...					
...	...	...					

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.4: For Changeover consumers- Status of pending applications as on date of issue of the Order in Case No. 151 of 2011 (August 22, 2012)**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Pending applications		No. of applications rejected by		No. of Changeover done	SOP Compliance (Days taken)		
			at the beginning of period	at the end of period	TPC-D	RInfra-D		Avg.	Min.	Max.
<b>Ward 'X'</b>	<b>Cluster 'a'</b>	<b>LT-I - Residential (Single Phase)</b>								
		0-100 units								
		101-300 units								
		301-500 units								
		500 and above								
		<b>LT- I- Residential (Three Phase)</b>								
		0-100 units								
		101-300 units								
		301-500 units								
		500 and above								
		<b>LT II - Commercial</b>								
		---								
		---								
		<b>LT III Industry (&lt;20 kW Load)</b>								
		---								
		---								
<b>HT I - Industry</b>										
<b>HT II - Commercial</b>										
	<b>Cluster 'b'</b>	---								
	<b>Cluster 'c'</b>	---								
<b>Ward 'Y'</b>	<b>Cluster 'd'</b>	---								
---	---	---								
---	---	---								

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.5: For Switchover consumers- Status of pending applications as on date of issue of the Order in Case No. 151 of 2011 (August 22, 2012)**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Pending applications		No. of applications rejected by		No. of Switchover done	SOP Compliance (Days taken)			
			at the beginning of period	at the end of period	TPC-D	RInfra-D		Avg.	Min.	Max.	
Ward 'X'	Cluster 'a'	LT I- BPL									
		LT-I - Residential (Single Phase)									
		0-100 units									
		101-300 units									
		301-500 units									
		500 and above									
		LT- I- Residential (Three Phase)									
		0-100 units									
		101-300 units									
		301-500 units									
		500 and above									
		LT II - Commercial									
		...									
		LT III Industry (<20 kW Load)									
		...									
		...									
		HT I - Industry									
		HT II - Commercial									
...											
	Cluster 'b'	...									
	Cluster 'c'	...									
Ward 'Y'	Cluster 'd'	...									
...	...	...									
...	...	...									

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.6: For Changeover consumers- Status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of complete applications made during the period (a)	No. of applications rejected by (b)		No. of Changeover done during the period (c)	Pending applications		SOP Compliance (Days taken)		
				TPC-D	RInfra-D		at the beginning of period (d)	at the end of period (e = d+a-b-c)	Avg.	Min.	Max.
Ward 'X'	Cluster 'a'	LT-I - Residential (Single Phase)									
		0-100 units									
		101-300 units									
		LT- I- Residential (Three Phase)									
	Cluster 'b'	0-100 units									
		101-300 units									
		...									
Cluster 'c'	...										
Ward 'Y'	Cluster 'd'	...									
...	...	...									
...	...	...									

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.7: For Switchover consumers- Status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of complete applications made during the period (a)	No. of applications rejected by (b)		No. of Switchover done during the period (c)	Pending applications		SOP Compliance (Days taken)		
				TPC-D	RInfra-D		at the beginning of period (d)	at the end of period (e = d+a-b-c)	Avg.	Min.	Max.
Ward 'X'	Cluster 'a'	LT I- BPL									
		LT-I - Residential (Single Phase)									
		0-100 units									
		101-300 units									
		LT- I- Residential (Three Phase)									
		0-100 units									
	101-300 units										
	Cluster 'b'	...									
Cluster 'c'	...										
Ward 'Y'	Cluster 'd'	...									
...	...	...									
...	...	...									

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Format 1.8: For Direct consumers- Status during the period**

Municipal Ward in the Common area of supply	Corresponding name of Cluster, if any	Consumer Category and Consumption Slab	Total no. of complete applications made during the period (a)	No. of applications rejected (b)	No. of Connections given (c)	Pending applications		SOP Compliance (Days taken)			
						at the beginning of period (d)	at the end of period (e = d+a-b-c)	Avg.	Min.	Max.	
Ward 'X'	Cluster 'a'	<b>LT I- BPL</b>									
		<b>LT-I - Residential (Single Phase)</b>									
		0-100 units									
		101-300 units									
		301-500 units									
		500 and above									
		<b>LT- I- Residential (Three Phase)</b>									
		0-100 units									
		101-300 units									
		301-500 units									
		500 and above									
		<b>LT II - Commercial</b>									
		...									
		<b>LT III Industry (&lt;20 kW Load)</b>									
		...									
		...									
		HT I - Industry									
		HT II - Commercial									
...											
	<b>Cluster 'b'</b>	...									
	<b>Cluster 'c'</b>	...									
<b>Ward 'Y'</b>	<b>Cluster 'd'</b>	...									
...	...	...									
...	...	...									

**Note:** Data to be submitted for each period for every cluster within each Ward for each eligible consumer category and consumption slab

**Appendix I**  
**LIST OF DATES OF HEARINGS**

<b>Sr. No.</b>	<b>Hearing</b>	<b>Date</b>
1	1 <sup>st</sup> Hearing held on	December 5,2011
2	2 <sup>nd</sup> Hearing held on	January 17, 2012
3	3 <sup>rd</sup> Hearing held on	February 9, 2012
4	4 <sup>th</sup> Hearing held on	March 26, 2012
5	5 <sup>th</sup> Hearing held on	April 13, 2012
6	6 <sup>th</sup> Hearing held on	June 27, 2012
7	7 <sup>th</sup> Hearing held on	August 03, 2012

**Appendix II**  
**LIST OF PERSONS WHO PARTICIPATED IN THE HEARINGS**

<b>1<sup>st</sup> Hearing held on December 5, 2011</b>	
1. Shri. P. V. Joshi, Tata Power	24. Shri. Avijeet Lala, Avt. For Tata Power
2. Shri. B. J. Shroff, Tata Power	25. Shri. Kishor Patil, RInfra
3. Shri. R. R. Ranade, Tata Power	26. Shri. M. Shenbagau, Tata Power
4. Shri. V. H. Wagle, Tata Power	27. Shri. Sandeep Narang, E&Y
5. Shri. Amey Naik, Tata Power	28. Shri. Anoop K Zachariah, E&Y
6. Shri. Swati Mehendale, Tata Power	29. Shri. Viddyesh Raje, E&Y
7. Shri. P. Ramachandran, Tata Power	30. Shri. Sudhanshu Gupte, E&Y
8. Shri. N. C. Potphade, Tata Power	31. Shri. S. N. Joshi, Tata Power
9. Shri. Rakshapal Abrol	32. Shri. Abhinav Sharma, Tata Power
10. Shri. P. S. Ganguly, MIAL	33. Shri. Muraleedharan T., Tata Power
11. Shri. Pravind Kumar, MIAL	34. Shri. S. Rao, RInfra
12. Shri. Dilip Shah, RInfra	35. Shri. G. J. Thakkar, RInfra
13. Smt. Sampada Jaint, RInfra	36. Shri. R. R. Mehate, RInfra
14. Shri. K. M. Thatte, M/s B. G. Shirke	37. Shri. Kapil Sharma, RInfra
15. Shri. M. K. Gupte, Tata Power	38. Shri. P. S. Pandey, RInfra
16. Shri. K. N. Pandya, Tata Power	39. Shri. M. D. Salvi, Tata Power
17. Shri. Maneesh Sinha, Tata Power	40. Shri. Ramesh S. Khelat, Tata Power
18. Shri. Ranjit Ganguly, Tata Power	41. Shri. N. Ponrathnam
19. Shri. A. V. Prabhmirashi, Tata Power	42. Shri. P. M. Hundiwale, RInfra
20. Shri. Percy Edibam, Tata Power	43. Shri. Paresh Patkar, Mulla & Mulla
21. Shri. Gaurav Gautam, Tata Power	44. Shri. S. C. Dhapare, Tata Power
22. Shri. J. J. Bhatt, Adv. for RInfra	45. Shri. S. R. Nagolker, Adv. for MIAL
23. Shri. Swendra Khot, RInfra	46. Shri. H. M. Inamdar, Adv. Trilegal

<b>2<sup>nd</sup> Hearing held on January 17, 2012</b>	
1. Shri. Paresh Patkar, Mulla & Mulla	21. Shri Mahesh Joshi, Tata Power
2. Shri. P. V. Joshi, Tata Power	22. Shri. Avijeet Lala, Adv. For Tata Power
3. Shri. Rakshapal Abrol	23. Shri. P. S. Pandey, RInfra
4. Shri. Amey Naik, Tata Power	24. Shri K. R. Shah, Tata Power
5. Shri. Ramesh S. Khelat, Tata Power	25. Shri C. V. Niranjana, Tata Power
6. Shri Nikhil Chaugaijkar, Essar Power	26. Shri Manoj K. Gupta, Tata Power
7. Shri Ashwin Ande, Essar Power	27. Shri Sandeep N. Ohri
8. Shri. N. Ponrathnam	28. Shri. S. C. Dhapare, Tata Power
9. Shri. G. J. Thakkar, RInfra	29. Shri. M. Sinha, Tata Power
10. Shri. Gaurav Gautam, Tata Power	30. Shri. K. N. Pandya, Tata Power
11. Shri. S. N. Joshi, Tata Power	31. Shri. Percy Edibam, Tata Power

12. Shri S. K. Mahajan, Tata Power	32. Shri P. P. Tendulkar
13. Shri Prllar R, Tata Power	33. Shri. R. R. Mehate, RInfra
14. Shri. M. Shanbagan, Tata Power	34. Shri. A. V. Prabhumirashi, Tata Power
15. Smt. Shreya Joshi, May & Co.	35. Shri. S. R. Nagolker, Adv. for MIAL
16. Shri. Anoop K Zachariah, E&Y	36. Shri A Sethe, Tata Power
17. Shri. J. J. Bhatt, Adv. for RInfra	37. Shri Prakesh Phalak, Rinfra
18. Adv. Anjali Chandurkar	38. Smt. Sampada Jaint, RInfra
19. Shri. Swendra Khot, RInfra	39. Shri Himansham Mishra, Rinfra
20. Shri Sanjay Balakrishnan, Rinfra	40. Shri Ganesh Balasubramenian, RInfra

<b>3<sup>rd</sup> Hearing held on February 9, 2012</b>	
1. Shri. Pavan Shukla, Trilegal	17. Shri. Avijeet Lala, Advocate, Tata Power
2. Shri. H. M. Inamdar, Trilegal	18. Shri. Anoop Zachariah, E & Y
3. Shri. Sandeep Ohri, Consumer Representative	19. Shri. J. J. Bhat, Sr. Advocate
4. Shri. A. V. Prabhumirashi, Tata Power	20. Smt. Anjali Chadurkar, Advocate, RInfra
5. Shri. K. R. Shah, Tata Power	21. Shri. Surendra Khot, RInfra
6. Shri. V. H. Wagle, Tata Power	22. Shri. Omkar Savarkar
7. Shri. B. J. Shroff, Tata Power	23. Shri. Sanjay Balkrishnan, RInfra
8. Shri. K. N. Panddya, Tata Power	24. Shri. S. N. Rao, RInfra
9. Shri. P. P. Tendulkar, Tata Power	25. Shri. M. D. Joshi, Tata Power
10. Shri. K. R. Patil, RInfra	26. Shri. N. Ponrathnam, Consumer Representative
11. Shri. D. S. Shah, RInfra	27. Shri. R. P. Abrol, Consumer Representative
12. Smt. Sampada Jaint, RInfra	28. Shri. G. Gautam. Tata Power
13. Shri. Ashok Pendse, TBIA	29. Shri. M. D. Sahi, Tata Power
14. Shri. M. Shenbagan, Tata Power	30. Shri. Ranjit Ganguly, Tata Power
15. Shri. Sitesh Mukharjee, Advocate, Tata Power	31. Shri. S. R Nargolkar, MIAL Advocate
16. Shri. Kapil Sharma, RInfra	32. Shri. P. S. Ganguly, MIAL

<b>4<sup>th</sup> Hearing held on March 26, 2012</b>	
1. Shri. N. Ponrathnam, Consumer Representative	19. Shri. N. C. Potphade, Tata Power
2. Shri. R. P. Abrol, Consumer Representative	20. Shri. V. H. Wagle, Tata Power
3. Shri. Kishor Patil, RInfra	21. Shri. S. C. Dhapare, Tata Power
4. Shri Jaykumar Waghela, RInfra	22. Shri. Maneesh Sinha, Tata Power
5. Shri D. S. Shah, RInfra	23. Shri. P. P. Tendulkar, Tata Power
6. Smt. Sampada Jaint, RInfra	24. Shri R. K. Gupta, Tata Power

7. Shri Prakash Phatak, RInfra	25. Shri M. M. Varshneya, Tata Power
8. Shri. G. J. Thakkar, RInfra	26. Shri Pavan Shukla, Tata Power
9. Shri. S. Rao, RInfra	27. Shri H. V. Tamana, Tata Power
10. Shri. R. R. Mehta, RInfra	28. Shri. Gaurav Gautam, Tata Power
11. Shri. P. S. Pandey, RInfra	29. Shri H. Gokarni, Tata Power
12. Shri. Kapil Sharma, RInfra	30. Shri. Ramesh S. Khelat, Tata Power
13. Shri. Avijeet Lala, Avt. For Tata Power	31. Shri. M. K. Gupta, Tata Power
14. Shri B. J. Shroff, Tata Power	32. Shri K. R. Gupta, Tata Power
15. Shri P. Ramachandran, Tata Power	33. Shri. Sitesh Mukharjee, Advocate, Tata Power
16. Shri S. N. Joshi, Tata Power	34. Shri. P. S. Ganguly, MIAL
17. Shri. M. Shenbagan, Tata Power	35. Shri. S. R Nargolkar, MIAL Advocate
18. Shri Subhadeep Ghosh, Tata Power	36. Shri. Omkar Savarkar

<b>5<sup>th</sup> Hearing held on April 13, 2012</b>	
1. Shri. Avijeet Lala, Advocate for Tata Power	24. Shri. P. S. Ganguly, MIAL
2. Shri Pallav Shukla, Advocate for Tata Power	25. Shri. Raksh Pal Abrol, Consumer Representative
3. Shri K. R. Shah, Tata Power	26. Shri. M. D. Salvi, Tata Power
4. Shri C. V. Niranjana, Tata Power	27. Shri Hitesh Gokarni, Tata Power
5. Shri. Gaurav Gautam, Tata Power	28. Shri. Ramesh S. Khelat, Tata Power
6. Shri P. V. Joshi, Tata Power	29. Shri S. N. Joshi, Tata Power
7. Shri P. Ramachandran, Tata Power	30. Shri. G. J. Thakkar, RInfra
8. Shri. Gautam Gaurav, Tata Power	31. Shri. K. R. Patil, RInfra
9. Shri P. D. Gaikwad, Tata Power	32. Smt. S. R. Mehendale, Tata Power
10. Shri Amey Naik, Tata Power	33. Shri. Maneesh Sinha, Tata Power
11. Shri C. H. Shinde, Tata Power	34. Shri. S. C. Dhapare, Tata Power
12. Shri P. P. Phatak, RInfra	35. Shri R. K. Gupta, Tata Power
13. Shri. Dilip S. Shah, RInfra	36. Shri D. Dey, Tata Power
14. Smt. Sampada Jaint, RInfra	37. Shri V. B. Patil, Tata Power
15. Shri. J. J. Bhatt, Adv. for RInfra	38. Shri D. N. Dabke, Tata Power
16. Smt. Anjali Chadurkar, Advocate, RInfra	39. Shri. Ranjit Ganguly, Tata Power
17. Shri. Surendra Khot, RInfra	40. Shri Subhadeep Ghosh, Tata Power
18. Shri. P. S. Pandya, RInfra	41. Shri. P. M. Hundiwale, RInfra
19. Shri. R. R. Mehate, RInfra	42. Shri K. R. Gupta, Tata Power
20. Shri. Kapil Sharma, RInfra	43. Shri. S. R Nargolkar, MIAL Advocate
21. Shri B. J. Shroff, Tata Power	44. Shri. N. C. Potphade, Tata Power
22. Shri. N. Ponrathnam, Consumer Representative	45. Shri. M. K. Gupta, Tata Power

**6<sup>th</sup> Hearing held on June 27, 2012**

1. Shri. Raksh Pal Abrol	23. Shri Kalyani Chandurkar, Mulla & Mulla, R-Infra
2. Shri Amey Naik, Tata Power	24. Shri D.M. Mirashi, Tata Power
3. Shri V.H. Wagle, Tata Power	25. Shri Omkar Raut, REL:
4. Shri S.R. Mehendale, Tata Power	26. Shri N. Ponrathnam, Consumer Representative,
5. Shri. Karthik Krishnan, Tata Power	27. Shri. K.R. Patil, R-Infra
6. Shri Simesare J.,	28. Shri D.S. Shah, R-Infra.
7. Shri M. Shenbagam, G.M. Tata Power	29. Shri S.P. Paint, R-Infra.
8. M.M. Varshnezar, Manager, Tata Power	30. Shri M.D. Salvi, Tata Power
9. Shri Anshut Arya	31. Shri V.B. Patil, Tata Power
10. Shri Satyanshu, Tata Power Trilegal	32. Shri Ramesh Khalaf, Tata Power
11. Shri Sitesh Mukherjee, Advocate, Trilegal	33. Shri Amaresh Mishra, Tata Power
12. Shri S.C. Dhapan, Tata Power	34. Shri Nilesh Shukla, Tata Power
13. Shri. Avijeet Lala, Trilegal	35. Shri Hitesh Gokarni, Tata Power
14. Shri P.S. Pandya, R-Infra	36. Shri Pradip Singh, Tata Power
15. Shri B.J. Shroff, Tata Power	37. Shri R.M. Kasarpatil, Tata Power
16. Shri Anil Bapat, Tata Power	38. Shri M.P. Kulkarni, Tata Power
17. Shri. Surendra Khot, R-Infra	39. Shri T.E. Sankhe, Tata Power
18. Shri. G.J. Thakker, R-Infra	40. Shri M.K. Gupta, Tata Power
19. Shri. Manhar Singh Saini, Mulla & Mulla,	41. Shri R.R. Mehta, R-Infra
20. Shri. Omkar Savarkar, Mulla & Mulla	42. Shri. Kapil Sharma, RInfra
21. Shri P.V. Joshi, Tata Power	43. Shri. S. R Nargolkar, MIAL Advocate
22. Shri H.T. Inamdar, Tata Power	44. Shri. K.R Gupta, TPC

**7<sup>th</sup> Hearing held on August 3, 2012**

1. Shri. Avijeet K. Lala, Advocate, Tata Power	19. Shri. P. P. Tendulkar, Tata Power
2. Shri V.H. Wagle, Tata Power	20. Shri. S. N. Joshi, Tata Power
3. Shri. Amey Naik, Tata Power	21. Shri. S. N. Rao, RInfra
4. Shri S.R. Mehendale, Tata Power	22. Shri. Pandya, RInfra
5. Shri. M. M. Varhneya, Tata Power	23. Shri. D. S. Shah, RInfra
6. Shri. S. Ghosh, Tata Power	24. Shri. P. P. Phatak, RInfra
7. Shri. Ramesh S. Khalat, Tata Power	25. Smt. Sampada Joint, RInfra
8. Shri. M.D. Salvi, Tata Power	26. Shri. R. R. Mehta, RInfra

9. Shri. Ranjit Ganguly, Tata Power	27. Shri. Kapil Sharma, RInfra
10. Shri. Hitesh Gohani, Tata Power	28. Shri. Omkar Savarkar, Mulla & Mulla
11. Shri. V. B. Patil, Tata Power	29. Shri. D. J. Kakalia, Mulla & Mulla
12. Shri. N. Ponrathnam, Consumer Representative	30. Shri. Surendra Khot, RInfra
13. Shri. Kishor Patil, RInfra	31. Smt. Anjali Chandurkar, RInfra Council.
14. Shri. G. J. Thakkar, RInfra	32. Shri. P. S. Ganguly, MIAL
15. Shri. M. Shenbagan, Tata Power	33. Shri. S. R. Nargolakar, Advt. for MIAL
16. Shri. Chintamani Chitnis, Tata Power	34. Shri. J. J. Bhatt, Senior Advocate for RInfra
17. Shri. S. C. Dhapan, Tata Power	35. Shri. M. K. Gupta, Tata Power
18. Shri. A. V. Potdar, Tata Power	