DELHI ELECTRICITY REGULATORY COMMISSION

STATEMENT OF REASONS
DERC (BUSINESS PLAN) REGULATIONS, 2019

DELHI ELECTRICITY REGULATORY COMMISSION

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A. Background

(1) Regulation 3 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 notified on 31/01/2017, has specified that:

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

(2) Accordingly, in exercise of the powers vested under Sections 61 and 181 (2) of the Electricity Act, 2003 (hereinafter referred to as "Act") and all other enabling powers and in compliance of the requirement under Section 181 (3) of the Act, the Commission had uploaded the draft of DERC (Business Plan) Regulations, 2019 on its website http://derc.gov.in.

(3) The Commission had invited Comments from stakeholders through Public Notices published in leading newspapers, which was also uploaded on the Commission's website http://derc.gov.in/. The last date for submission of comments from stakeholders on the said Regulations was till 19/12/2019.

(4) Further, an Explanatory Memorandum was issued with the intent of explaining the rationale and objective behind Draft DERC (Business Plan) Regulations, 2019.

(5) After considering the comments of all stakeholders, the Commission notified DERC (Business Plan) Regulations, 2019 on 27/12/2019.

(6) This Statement of Reasons (SOR) is being issued with the intent of explaining the rationale and objective behind finalization of DERC (Business Plan) Regulations, 2019 after considering the stakeholders' Comments. However, in case of any deviation/discrepancy in the SOR with respect to DERC (Business Plan) Regulations, 2019, the provisions of DERC (Business Plan) Regulations, 2019 shall be applicable.

(7) It is to mention for the sake of clarity, that the term "Commission" in most of the cases refers to the Officers of the Commission for carrying out the research/due diligence on the available information for preparation of SOR on DERC (Business Plan) Regulations, 2019.

(8) The Stakeholders' comments along-with the Commission's views on various Regulations of the *DERC (Business Plan) Regulations, 2019* are detailed out further in this document.

B. Regulation 1 - SHORT TITLE, COMMENCEMENT AND EXTENT

"(3) The period of validity of these Regulations may be extended by the Commission, as deemed fit and the operational norms may also be extended as per the principles laid down in these Regulations:

Provided that the target for reduction in Distribution Loss for extended period shall be determined by the Commission based on the approved values by the Commission in the past, latest audited accounts, estimate of the actual for the relevant year, prudence check and other factors considered appropriate by the Commission."

Stakeholder's Comments

TPDDL

(a) The Commission while exercising its powers of extension has to rely upon, amongst other factors, actual, approved values of the past. The actual, approved values for TPDDL include figures based on DERC Regulations in force, in past control period. The said values, figures pertaining to past Regulations may not be reflective of true position, as some provisions of such Regulations may be under challenge, review before judicial authorities. Thus, the Commission may also add "recent developments owing to judicial pronouncements, tariff policy changes also as one of the factor" for fair treatment to licensee.

Commission's View

(a) The Commission has already used the words "and other factors" in the Regulation which captures the contention raised by the stakeholder. The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

PART I - GENERATING ENTITY

C. Regulation 3 - Rate of Return on Equity

"Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for Generating Entity shall be computed at the Base Rate of 14.00% on post tax basis: …"

Stakeholder's Comments

IPGCL & PPCL

a) RoE @ 14% post tax is very low. CERC in its Tariff Regulations 2019 has allowed RoE @ 15.5 % post tax. Almost all the SERCs e.g. HERC, PSERC, GERC, UPERC etc. have considered RoE @ 15.5 % post tax. The Commission is requested to consider allowance of RoE @ 15.5 % post tax in line with CERC and other SERCs.

Commission's View

a) The base rate of Return on Equity (RoE) being allowed by various Electricity Regulatory Commissions (ERCs) in India has been analyzed before finalizing the base rate of RoE for the generating entity in DERC (Business Plan) Regulations, 2019.
b) The Commission has observed that base rate of Return on Equity specified by various State Electricity Regulatory Commissions (SERCs) including HERC, MERC, RERC, GERC etc. range from 14% to 17.50%. However, various SERCs like HERC have specified upper ceiling of RoE of 14% in their Tariff Regulations and accordingly allows 10% RoE to their Generation (HPGCL) and Transmission Company (HVPNL) and even Nil RoE to their Distribution Companies as per HERC Order dated 15/11/2018 in Case No. HERC/PRO- 83 & 85 of 2017.
c) The Commission observes that the RoE currently being allowed to the Generating Entity is reasonable and competitive considering the operating scenario and the performance of such Generating Entity with respect to other similar Generating Entity. The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

D. Regulation 4 - Tax on Return on Equity

"The base rate of Return on Equity as allowed by the Commission under Regulation 3 of these Regulations, shall be grossed up with the Minimum Alternate Tax or Effective Tax Rate of the respective financial year in terms of Regulation 72 and 73 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as per the following formula:

Rate of Return on Equity= 14/[(100-Tax Rate)/100] where, Tax Rate is Minimum Alternate Tax (MAT) or Effective Tax Rate, as the case may be."

Stakeholder's Comments

IPGCL & PPCL

a) To provide provision for deferred tax liability on or before 1/4/2019.

Commission's View

a) The Commission in its DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 has indicated that that the effective tax rate shall be considered on the basis of actual tax paid vis-à-vis total income of the Utility in the relevant financial year in line with the provisions of the relevant Finance Acts as follows:

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

Provided that if the rate of return on equity for a Control Period is allowed on pre-tax basis, then income tax on the return on equity shall not be allowed separately as a pass through in ARR;

Provided further that no amount shall be considered towards tax exceeding the actual amount of tax paid by the Corporate entity of the Utility as an assesse."

b) The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

E. Regulation 5 - Margin for Rate of Interest on Loan

"Margin for rate of interest for the Control Period in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Generating Entity shall be allowed as the difference in weighted average rate of interest on actual loan as on 1st April 2020 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1st April 2020:

Provided that the Margin on MCLR shall not exceed 3.50% for the purpose of rate of interest on loan:

Provided further that the rate of interest on loan (MCLR plus Margin) shall not exceed approved base rate of return on equity i.e. 14.00%."

Stakeholder's Comments

IPGCL & PPCL

a) There are no year wise specific limits for margin.

Commission's View

a) The Commission has formulated a reduction trajectory for the margin on rate of interest on loans from FY 2020-21 to FY 2022-23 as 5.00%, 4.25% and 3.50%.
b) The Commission has modified fixed year from '*2020*' to '*respective financial year*' and accordingly, Regulation 5 has been modified in DERC (Business Plan) Regulations, 2019.

F. Regulation 6 - Operation and Maintenance Expenses

"(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Generating Entity shall be as follows:

Table 1: O&M Expenses (Rs. Lakh/ MW)

Station	*FY 2020-21*	*FY 2021-22*	*FY 2022-23*
Gas Turbine Power Station	*29.45*	*30.56*	*31.73*
Pragati Power Station (PPS-I)	*23.02*	*23.89*	*24.80*

(2) Additional Repair & Maintenance expenses on account of DLN burners for PPS-I, if any, shall be allowed on actual basis during the Control Period after prudence check at the time of True Up on submission of documentary evidence."

Stakeholder's Comments

TPDDL, BYPL & BRPL

a) The Power Purchase Agreement of GTPS shall expire in March 2021. Hence, further years of O&M should be omitted from DERC (Business Plan) Regulations, 2019. BYPL & BRPL submitted that there is an increase of around 17% in O&M expenses for PPS-I for FY 2020-21 w.r.t FY 2019-20.

IPGCL & PPCL

b) Normative O&M expenses for GTPS station is very low as compared to CERC Tariff Regulations, 2019. The comparative list of normative O&M expenses as per CERC Tariff Regulations, 2019 and as proposed in present draft DERC (Business Plan) Regulations, 2019 is as under:

Year	CERC Regulations, 2019	Draft DERC (Business Plan) Regulations, 2019	% less as compared to CERC
2019-20	37.48	29.45	21.42
2020-21	38.80	30.56	21.24
2021-22	40.16	31.73	21.00

c) Moreover, the expenditure on STP and safety is to be allowed separately in line with CERC Tariff Regulations, 2019.

Commission's View

a) Even if the PPA expire by March 2021, the norms will be required to be specified during the Control period. However, the cost to be recovered by GTPS will be as per provisions of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, DERC (Business Plan) Regulations, 2019 and Tariff Order. Power Purchase Agreement is a mutual arrangement between the DISCOMs and GTPS. The Commission has specified the O&M Expenses for GTPS for three years viz. FY 2020-21 to FY 2022-23 based on the submissions of GTPS.

a) The Commission has considered the submission of IPGCL & PPCL and has allowed the expenditure on Sewage Treatment Plant (STP) separately in line with DERC Business Plan Regulations, 2017. The Commission observed that 7th pay commission has not yet been implemented finally and only interim relief has been paid. Therefore, the Commission has considered the interim relief as given to the employees of the Licensee while determination of norms for O&M Expenses. Further, the impact of difference of actual amount on account of actual of Seventh Pay Revision and such interim relief, if any, will be considered at the time of True up of ARR for relevant Financial year subject to prudence check. Accordingly, the following proviso has been added in the DERC (Business Plan) Regulations, 2019:

"The impact of difference of amount on account of actual implementation of Seventh Pay Revision and Interim Relief already considered for determination of norms for O&M Expenses, if any, shall be allowed separately in line with the methodology adopted for computation of norms for O&M Expenses, at the time of True up of ARR for relevant Financial year subject to prudence check."

b) The Commission has determined the O&M Expenses for GTPS and PPS-I Stations based on the actual expenses for the past period with suitable escalation which has now been determined at 3.83% whereas in the draft DERC (Business Plan) Regulations, 2019 it was rounded off to 3.80%. The escalation is uniform for all Utilities of Delhi.

G. <u>Regulation 7 - Capital Investment Plan</u>

"(1) The tentative Capital Investment plan for the Generation Entity for FY 2020-21 to FY 2022-23 is as follows:

….

(2) The Capital investment and the respective scheduled date of commissioning, submitted by the Generating Entity in the Annual Tariff Petition, shall form the basis for computation of Annual Fixed Cost in terms of Regulation 99 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017:

Provided that any improvement in operational parameters resulting from commissioning of the scheme due to any Additional Capital Investment in existing generating stations shall form the basis for computing the Energy Charge Rate, from the scheduled date of commissioning of the respective schemes, in terms of Regulation 103 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

(3) Capital cost shall be trued up annually and financial impact on account of variation in projected capital cost in the tariff order vis-a-vis actual capital cost and scheduled date of commissioning vis-a-vis actual date of commissioning shall be dealt as per the provisions of Regulations 61, 62 and 150 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017."

<u>Stakeholder's Comments</u>

<u>TPDDL, BYPL & BRPL</u>

a) Power Purchase Agreement of GTPS shall expire in March 2021. Hence, there is no need to specify norms for any investment beyond 31st March 2021.

b) BYPL & BRPL - Regarding PPS-I Station, higher capital investment plan is proposed by PPCL in draft DERC (Business Plan) Regulations, 2019 with no proper justification and without quantification of any impact on efficiency improvement like Reduction in Gross Station Heat Rate, increase in output power etc. in operating norms. No capital investment plan should be allowed without proper justification and intended benefits in efficiency in operating parameters. Accordingly, "Efficiency improvement head to be added as CAPEX infusion should be linked to efficiency improvement".

IPGCL & PPCL

c) The proposed capex expenditure for PPS-I Station as forwarded to the Commission for FY 2020-21 is Rs 2.67 Cr instead of Rs 26.7 Cr as mentioned inadvertently in Clause 7 (1), Table No. 2 of draft DERC (Business Plan) Regulations, 2019.

d) As regard to submission of business plan of PPCL, one of the capex schemes for FY 2020-21 mentioned at serial no. 6 in table no. 13 i.e. installation of Variable Frequency Drive (VFD) for Condensate Extraction Pump (CEP), the estimate expenditure will be of Rs. 75 lakh instead of Rs. 60 lakh and for FY 2021-22, capex scheme mentioned at serial no. 12 in table no. 13 i.e Generator Relay Protection retrofitting, the estimate expenditure will be of Rs 53 lacs instead of Rs 30 lacs as per the new budgetary offer. Hence, it is requested to consider the same and revise the capital investment plan of PPS-I Station for FY 2020-21, the revised figure is Rs 2.82 Cr and for FY 2021-22, the revised figure is Rs 51.81 Cr.

e) Regarding GTPS, the existing power purchase agreement for power supply from the plant to Delhi Distribution Company will be expiring by March 2021. IPGCL request the Commission to include anticipated amount of expenditure required for life extension and retrofit for synchronous mode operation for the period FY 2020-23.

Commission's View

a) Even if the PPA expires by March 2021, the norms will be required to be specified during the Control period. However, the Capital Investment plan by GTPS will be as per provisions of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, DERC (Business Plan) Regulations, 2019 and Tariff Order. Power Purchase Agreement is a mutual arrangement between the DISCOMs and GTPS. The Commission has specified the Capital Investment Plan for GTPS for FY 2020-21 and FY 2021-22 based on the submission of GTPS.
b) The Commission has modified the Capital Investment Plan in final DERC (Business Plan) Regulations, 2019 based on the stakeholders' submission.
c) The proviso to Regulation 7(2) already stipulates for consideration of improvement in operational parameters resulting from commissioning of scheme from scheduled date of commissioning. Therefore, the same may be considered at the time of true-up of Capital Investment schemes.

H. Regulation 8(1) - Norms of Operation for Generating Stations

"(1) Normative Annual Plant availability factor and Normative Annual Plant Load factor for existing generating stations of Delhi shall be as follows:
I. Normative Annual Plant Availability Factor (NAPAF) 85%
II. Normative Annual Plant Load Factor (NAPLF) 85%"

Stakeholder's Comments

IPGCL & PPCL

a) The availability of the station during previous years has been less than 85%, therefore, fixing the normative availability at higher levels ignoring past performance is against the provisions of Clause 5.11 (f) and Clause 5.11 (h) (2) of the Tariff Policy.

b) As regards normative PLF it is submitted that the PLF in ABT regime is not in control of Generator, solely depends upon power scheduled by beneficiaries, SLDC taking into consideration power availability, grid security, merit-order-prioritization to meet out the demand in most economical, efficient and reliable manner. The Commission is therefore requested to fix the NAPLF based upon the past performance of the plant.

Commission's View

a) The performance of GTPS with respect to the actual availability for the past years is as follows:

PAF achieved by GTPS

Year	NAPAF (%)	Actual Availability (%)
FY 2012-13	80	84.22
FY 2013-14	80	85.76
FY 2014-15	80	68.80
FY 2015-16	80	74.81
FY 2016-17	85	82.84
FY 2017-18	85	83.06
FY 2018-19	85	81.29

b) From the above table, it is observed that GTPS had attained availability in the range of 83%-85% except in FY 2014-15 and FY 2015-16 due to non-functioning of Unit II. Therefore, the Commission fixed the target availability of 85% for GTPS Station which is also in line with CERC Tariff Regulations, 2019.

c) In case of PPS-1 Station, it is observed that the availability achieved in the past years has been more that 85%.

d) It is stated that the scheduling of power in Delhi is done by SLDC, which follows the principle of Merit Order Despatch (MOD) in dispensing cheap power first so that the consumers of Delhi are not burdened with high cost of power. Further, the gas based plants are not must run plants, therefore, the Commission is of the view that optimum scheduling from gas based power stations is possible and these generating stations come under the ambit of MOD principle. Further, for maintaining grid security, SLDC Delhi shall take appropriate action regarding running of the stations.

I. Regulation 8(2) - Norms of Operation for Generating Stations

"GROSS STATION HEAT RATE (GHR)

Gross Station Heat Rate for existing generating stations of Delhi shall be as follows:…"

Stakeholder's Comments

BYPL & BRPL

a) Considering capital investment proposed, lower Gross Station Heat Rate should be allowed to plant as the proposed norms are too relaxed vis-à-vis previous business plan norms.

b) It is observed that Gross Station Heat Rate submitted by PPCL for PPS-I plant for last 4 years is lower than 2000 kCal/kWh.

c) Any Capital Investment allowed by the Commission for the plant should have an impact on operation and efficiency of the plant. Hence, the operating norms should be tightened to encourage efficiency of plant.

Commission's View

a) The performance of PPS-I station with respect to the Gross Station Heat Rate (GHR) for the past years is as follows:

GHR achieved by PPS-I Station (kCal/kWh)

Mode	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Closed Cycle	2046	1998	1972	1973
Open Cycle	3188	3196	3135	3176

b) The norms of operations are mainly specified considering the past performance, vintage of the equipment etc. Accordingly, the Commission has decided to retain the GHR of 2000 kCal/kWh in the draft DERC (Business Plan) Regulations, 2019 as approved in previous Control periods.

c) The proviso to Regulation 7(2) already stipulates for consideration of improvement in operational parameters resulting from commissioning of scheme from scheduled date of commissioning. Therefore, the same may be considered at the time of true-up of Capital Investment schemes.

J. Regulation 8(3) - Norms of Operation for Generating Stations

"Auxiliary Energy Consumption for existing Gas based Generating Stations of Delhi shall be as follows:……"

Stakeholder's Comments

BYPL & BRPL

a) PPCL has itself submitted an Auxiliary consumption of 2.39% during FY 2017-18, whereas, in Business Plan Regulation, 2017, the Commission had set a normative level at 2.50%. Proposed Normative Auxiliary consumption at 2.75% is very high & results in undue burden to consumers. In order to improve efficiency, and keeping in view capital investment plan, the Commission is requested to set Normative Auxiliary consumption at 2% in Combined Cycle.

Commission's View

a) The norms of operations are mainly specified considering the past performance, vintage of the equipment etc.

b) Accordingly, the Commission decided to fix the norm of Auxiliary Consumption as 2.75% in Combined Cycle mode and 1% in Open Cycle mode which is also in line with the CERC Tariff Regulations, 2019.

K. Regulation 9 - Incentive

"(1) Incentive to a Generating Entity or unit thereof shall be payable at the rate of 65 paise/ kWh for ex-bus scheduled energy during Peak Hours and at the rate of 50 paise/ kWh for ex-bus scheduled energy during other hours corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF) achieved on a cumulative basis in accordance with Regulation 8(1) of these Regulations.

(2) Peak hours and other hours shall be as per the slots defined in Order for Time of Day (ToD) Tariff issued in terms of the Regulation 133 & 153 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017:

Provided that in the absence of a separate Order, the Peak hours shall be taken as specified in the tariff order of the Distribution Licensee."

Stakeholder's Comments

BYPL & BRPL

a) Energy Charge Rate (ECR) of Delhi GENCOs is very high. Hence, power from these stations does not fall under MOD. Accordingly, DISCOMs usually do not schedule power from them. The cost of Delhi GENCOs is very high.
b) However, Delhi SLDC vide its various letters have communicated that due to line loading issues and grid constraints, these stations fall in the must run category. This claim is disputed, as it is unilateral and unsubstantiated. Hence, this is Force Scheduling and in event of Force Scheduling on account of line loading, no incentive should be given to Generating stations

IPGCL & PPCL

c) The incentive should not be linked as per PLF on scheduled energy as per actual basis and should be linked to actual availability over and above normative availability as in ABT regime scheduling of power and achieving of PLF over and above the PLF equivalent to normative availability is not in control of Generator.

Commission's View

a) The Commission agrees to the suggestion of the stakeholders that a station running because of force scheduling (as certified by Delhi SLDC) should not be provided any incentive and accordingly, the said Regulation has been amended to this extent.

L. Regulation 10 - Incentive Sharing Mechanism with Respect To Operational Parameters

"(1) The incentive sharing mechanism with respect to operational parameters in terms of Regulation 149 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be

applicable on controllable parameters viz. Gross Station Heat Rate (GHR) and Auxiliary Energy Consumption.

(2) The Net Gain shall be calculated as under -

i. Net gain = (Normative ECR– Actual ECR) x Scheduled Generation,

ii. Where,

iii. Normative Energy Charge rate shall be computed on the basis of norms specified for Station Heat rate and Auxiliary Energy Consumption,

iv. Actual Energy Charge rate shall be computed on the basis of actual Station Heat rate and Auxiliary Energy Consumption.

(3) The Net Gain shall be computed as above on annual basis and shall be shared in 50:50 ratio between the Generating Entity and the beneficiaries."

Stakeholder's Comments

IPGCL & PPCL

a) For deterioration in Station Heat Rate (SHR) and Auxiliary Power Consumption (APC) due to less scheduling and frequent start/ stops, scheduling below minimum technical limit is also to be compensated in line with CERC Regulations, 2019.

Commission's View

a) The Commission has determined the norms of operation based on the past performance which also include the actual operation below the technical limit as and when required, vintage of equipment. Therefore, additional compensation may not be given at this stage.

b) The Commission observed that Net Gain should be calculated as per actual generation because the fuel is utilized only to the level of actual generation and not scheduled generation. Accordingly, the relevant Regulation has been modified in the final DERC (Business Plan) Regulations, 2019.

M. Regulation 11 - Incentive Sharing Mechanism for Re-Financing of Loan

"(1) The incentive due to lower rate of interest on account of re-financing of loan in terms of Regulation 71 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Generation Entity shall be computed as the product of total quantum of loan availed and difference of weighted average rate of interest on actual loans versus margin of 2.00%plus (+) SBI MCLR as on the first day of every financial year.

(2) The incentive on account of re-financing of loan computed as per sub clause (1) above shall be shared equally between the Consumers and the Generation Entity."

Stakeholder's Comments

IPGCL & PPCL

a) Refinancing or financial restructuring cost should be adjusted while arriving incentive due to refinancing of loan. Therefore the incentive should be based upon net incentive due to refinancing or restructuring of existing loan.

Commission's View

a) The incentive due to lower rate of interest on account of re-financing of loan in terms of Regulation 71 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 was introduced to encourage reduction in the financing cost of the Utility. The Commission expects the Utility to perform in efficient manner. The incentives are generally given when the Utility performs better than certain threshold limit. Therefore, the Commission is of the view that incentive should be given to the Utility only when the actual loan interest is below SBI MCLR + 2% margin.

b) The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

PART II – TRANSMISSION LICENSEE

N. Regulation 12 - Rate of Return on Equity

"Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for Transmission Licensee shall be computed at the Base Rate of 14.00% on post tax basis:

Provided that the Equity for the purpose of Return on Equity shall be lower of the Normative Equity determined as per Regulation 63 of the Delhi Electricity Regulatory Commission (Terms and Conditions For Determination of Tariff) Regulations, 2017 or Equity available as per Audited Financial Statement of the relevant year."

Stakeholder's Comments

DTL

a) The Commission has specified Rate of Return on Equity as 14% whereas CERC allows RoE @ 15.50% as per CERC Tariff Regulations, 2019.

Commission's View

a) The base rate of RoE being allowed by various Electricity Regulatory Commissions (ERCs) in India has been analyzed before finalizing the base rate of RoE for the Transmission Licensee in DERC (Business Plan) Regulations, 2019.
b) The Commission has observed that base rate of Return on Equity specified by various State Electricity Regulatory Commissions (SERCs) including HERC, MERC, RERC, GERC etc. range from 14% to 17.50%. However, various SERCs like HERC have specified upper ceiling of RoE of 14% in their Tariff Regulations and accordingly allows 10% RoE to their Generation (HPGCL) and Transmission Company (HVPNL) and even 0% RoE to their Distribution Companies as per HERC Order dated 15/11/2018 in Case No. HERC/PRO- 83 & 85 of 2017.
c) The Commission observes that the RoE currently being allowed to the Transmission Licensee is reasonable and competitive considering the operating scenario and the performance of such Transmission Licensee with respect to other similar Transmission Licensees. The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

O. Regulation 13 - Tax on Return on Equity

"The base rate of Return on Equity as allowed by the Commission under Regulation 12 of these Regulations shall be grossed up with the Minimum Alternate Tax or Effective Tax Rate of the respective

financial year in terms of Regulation 72 and 73 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as per the following formula:

Rate of Return on Equity= 14/[(100-Tax Rate)/100]
Where, Tax Rate is Minimum Alternate Tax (MAT) or Effective Tax Rate, as the case may be."

Stakeholder's Comments

DTL

a) Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No. 255/2013 has allowed the actual income tax paid by DTL. So the income tax shall be allowed as per actual tax paid by the company. As per Judgment of Appellate Tribunal for Electricity (ATE) in Appeal No. 255/2013, the issue for allowing actual income tax is pending before the Commission for FY 2007-08 to FY 2011-12 in Petition No. 62/2017.

Commission's View

a) The Commission in its DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 has made the provision that that the effective tax rate shall be considered on the basis of actual tax paid vis-à-vis total income of the Utility in the relevant financial year in line with the provisions of the relevant Finance Acts as follows:

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

   Provided that if the rate of return on equity for a Control Period is allowed on pre-tax basis, then income tax on the return on equity shall not be allowed separately as a pass through in ARR;

   Provided further that no amount shall be considered towards tax exceeding the actual amount of tax paid by the Corporate entity of the Utility as an assesse."

b) The Commission is of the view that the income tax paid by the Utility on the financial gain earned through efficiencies cannot be passed on to the consumers. The Utility shall bear the additional income tax from its incentives/gains. The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

P. Regulation 14 - Margin for Rate of Interest on Loan

"Margin for rate of interest for the Control Period in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Transmission Licensee shall be allowed as the difference in weighted average rate of interest on actual loan as on 1st April 2020 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1st April 2020:

Provided that the Margin on MCLR shall not exceed 3.50% for the purpose of rate of interest on loan:

Provided further that the rate of interest on loan (MCLR plus Margin) shall not exceed approved base rate of return on equity i.e. 14.00%."

Stakeholder's Comments

DTL

a) As the rate of MCLR as on 1st April of each financial year changes several times during a year, therefore, in line with the Explanatory Memorandum dated 10.12.2019, the Commission is requested instead of fixing the year 2020 for all the years, it should be changed to 1st April of respective financial year.

b) It is further submitted that DTL is now largely dependent on plan fund requirement from GNCTD, which currently charge the interest at the fixed rate of 9.50% to 10.00% p.a. The Commission is therefore requested to allow actual rate of interest on loan to DTL.

Commission's View

a) The Commission has formulated a reduction trajectory for the margin on rate of interest on loan for FY 2020-21 to FY 2022-23 which are 5.00%, 4.25% and 3.50%.

b) The Commission has modified fixed year from '*2020*' to '*respective financial year*' and accordingly, Regulation 14 has been modified in DERC (Business Plan) Regulations, 2019.

Q. Regulation 15 - Operation and Maintenance Expenses

"(1) The Normative, Bay wise and Circuit kilometers wise, Operation and Maintenance Expenses of a Transmission Licensee, including own consumption of energy for Transmission Licensee's installations and offices, shall be as follows:

…

(2) The O&M expenses for a particular financial year of the control period shall be allowed by multiplying the norms for O&M expenses with the respective network capacity at the start of the financial year excluding spare bays and bus section bays. The Transmission licensees shall also be allowed to recover O&M expenses for the network capacity added during the year on pro-rata basis."

Stakeholder's Comments

BYPL

a) For normative O&M, audited figures for previous year taken as base for transmission, whereas in case of DISCOM's certain amount has been deducted from Audited figures. Operating Norm of DTL has been increased. In case of BYPL, in 2019 it would lead to increase in transmission cost in below table, which is exceptionally high as the proposed norm is not in line with increase in O&M cost of the Licensees.

Particulars	BPR – 2017 [FY 2019 - 20]	BPR – 2019 [FY 2020-21]	%
Bay Wise			
400 kVA	50.44	59.208	17.4%
200 kVA	17.06	18.706	9.6%
Ckm.			
200 kV	2.27	4.74	108%

b) It is observed that there is an average reduction of 3% in unit rates of normative O&M expenses. Hence, it is requested to have parity among licensees i.e. either audited figure for all Distribution and Transmission or similar items in transmission needs to be excluded.

BRPL

c) Operating Norm of DTL has been increased. In case of BRPL, in 2019 it leads to increase in transmission cost by 11% which is exceptionally high as the proposed norms is not in line with increase in O&M cost of the Licensees. It is therefore requested that the Commission may consider aligning the norms in a manner, which justifies the nature of activity. In other words, in case the increase in O&M norm for a Generating Company is fixed at "X"%, it should be X+Y% for a Transmission Company and X+Y+Z% for a DISCOM. This is on account of the fact that the business of a DISCOM requires more O&M in comparison to a Transmission Company and the latter requires more O&M qua a Generating Company.

DTL

d) DTL has requested to consider the actual O&M Expenses for FY 2018-19 as Base Year Expenses for computing the O&M Expenses for next Control Period i.e. FY 2020-21 onwards. Further, it is also requested to allow O&M Expenses on MVA Capacity basis, in addition to existing Bay-wise/Ckt, Km-wise norms in line with the CERC Tariff Regulations, 2019.
e) Impact of 7th Pay Commission: It is submitted that the 7th Pay Commission has been provisionally implemented in DTL and the final implementation is pending, effective from 01.01.2016. As of now, DTL is paying only Interim Relief w.r.t. to 7th Pay Commission. So, in line with DERC (Business Plan) Regulation 2017, impact of Seventh Pay Commission on employee cost should be considered separately based on actual payment made by the Transmission Licensees and prudence check at the time of true up of ARR for the relevant financial year.
f) Further the of payment of License Fee for Land in submitted to be un-controllable in nature and varies significantly over the years as the payment of License Fee for Land depends on various factors such as revision of premiums by GNCTD. Therefore, being un-controllable in nature and equated as Force Majeure, the License Fee for Land should not be included in Base Norms and Licensee be allowed the License Fee for Land separately on actual basis.
g) Security Expenses: In line with Govt of India directives, DTL had deployed security personnel through OGR sponsored agency. The Director General of Resettlement, Govt, of India issues notices of minimum wages for the workers deployed through its sponsored agencies. The minimum wages decided by DGR are higher than the minimum wages determined for Delhi Government. Therefore, the financial expenses had increased as well as number of personnel increased due to deployment of security in various offices/sub-stations/installations of OTL as well as due to commissioning of new Sub Stations. From the above, it can be observed that increase in the Security Expenses is much higher than the escalation of 3.80% allowed by DERC for O&M Expenses in Draft DERC (Business Plan) Regulations, 2019. It is also submitted that CERC in its Regulation 35(3) (c) of CERC Tariff Regulations 2019, allows the Security Expenses separately in addition to normative O&M Expenses. Accordingly, it is requested to allow the Security Expenses separately on actual basis.
h) Additional O&M Expenses for Buildings/Offices: DTL is planning to renovate the shabby conditions of its buildings and offices, as most of the buildings/offices belong to the DVB period. In view of this, DTL has considered an amount of Rs. 35 Crore in a phased manner to be invested for

strengthening/upgradation of Buildings/Offices. It is further submitted that as the same exercise has not been done in the past and the R&M Expenses on them is not included in the Base Year Expenses. Accordingly, it has been requested to allow additional O&M Expenses towards maintenance of Buildings/Offices as the same could not be covered in the existing Bay-wise/Ckt, Km-wise norms.

Commission's View

a) The Commission has adopted similar methodology for computation of norms for O&M expenses for transmission licensee and distribution licensee.
b) The Commission observed that 7th pay commission has not yet been implemented finally and only interim relief has been paid. Therefore, the Commission has considered the interim relief as given to the employees of the Licensee while determination of norms for O&M Expenses. Further, the impact of difference of actual amount on account of actual of Seventh Pay Revision and such interim relief, if any, will be considered at the time of True up of ARR for relevant Financial year subject to prudence check.
c) The norms for O&M expenses have been computed excluding the amount of land licence fee and security expenses. Accordingly, the provision for Transmission Licensee to claim Land Licence Fee and Security Expenses separately on actual basis at the time of true up of ARR for the relevant financial year subject to prudence check has been made.

R. Regulation 16 - Capital Investment Plan

"(1) The tentative Capital Investment Plan for the Transmission Licensee for FY 2020-21 to FY 2022-23 is as follows:

…

(2) Capitalisation of employee expenses and A&G expenses shall be allowed equivalent to lower of 25% of (employee cost and A&G expenses) or 10% of material cost or actuals in a particular financial year.

(3) The Capital investment and the respective scheduled date of commissioning, submitted by the Transmission Licensee in the Annual Tariff Petition, shall form the basis for computation of Annual Fixed Cost in terms of Regulation 111 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

(4) Capital cost shall be trued up annually and financial impact on account of variation in projected capital cost in the tariff order vis-a-vis actual capital cost and scheduled date of commissioning vis-a-vis actual date of commissioning shall be dealt as per the provisions of Regulations 61, 62 and 150 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017."

Stakeholder's Comments

BYPL & BRPL

a) There is limited increase in demand and less potential for horizontal expansion in NCT of Delhi. The capability of DTL to execute the capex in one year needs to taken into consideration. Further, the consent of procurer also needs to be considered. Major Capital Investments would be due to increase in load growth primarily from open access consumers like DMRC, NCRTC, DMICDC.

It is submitted that Open Access Consumers contribute substantial to input energy and majorly open access consumer are not contributing for cost of transmission infrastructure as they are procuring power from renewable sources. Hence, the Commission may kindly introduce a suitable provision so that this cost should also be shared by the Open Access Consumer also the non-Open Access consumers cannot be made to bear these costs.

DTL

b) Treatment for variation in Capitalization: The Commission has made provision for the margin of 5% in Capitalization and further the recovery of excess / shortfall tariff due to variation in capitalization at 1.20/0.80 times of interest rate, if the variation in Capitalization is beyond the above margin of 5%.

c) Norms for Capitalization of Expenses: The Commission in *Draft DERC Business Plan Regulations 2019*, has proposed for the allowance of Capitalisation of Employee Expenses and A&G Expenses equivalent to lower of 25% of (Employee Cost and A&G Expenses) or 10% of Material Cost or actuals in a particular financial year.

d) It is submitted that in Financial Statements the Employee Cost, A&G Expenses capitalized are transferred to the CWIP (Capital Work in Progress) and capitalized in the same year, whereas in the Form 30 for Capitalization is issued only on commercial operation of asset and includes the capitalization of total expenses which has been incurred over the years during the construction phase. Due to above, when the project gets commissioned, the actual expenses capitalization in Financial Statement in that particular year do not reflect the total expenses capitalized in that project over the years, due to which the consideration of actuals of that particular year should not be considered for allowing capitalization of Employee and A&G Expenses.

e) Further, the limit of 10% of Material Cost is arbitrary and very low in comparison to actual expense incurred.

Commission's View

a) The provision for reimbursement of open access charges collected from short term beneficiaries by transmission licensee is already in place. Therefore, the contention that these charges are not borne by the short term open access consumers is not correct.

b) The provision related to treatment of variation in capitalization for transmission licensee is not related to draft DERC (Business Plan) Regulations, 2019. This provision relates to DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017.

c) The Commission agrees to the suggestion of the Utility that 10% of material cost may be lower as compared to the capitalization of employee expenses and A&G expenses carried out by the Utility. Therefore, the Commission has retained the existing practice of consideration of 30% of employee expenses and A&G expenses of actual, whichever is lower for capitalization.

S. Regulation 17 - Norms of Operation for Transmission Business

"(1) Normative Annual Transmission System Availability Factor (NATAF) for recovery of Annual Fixed Charges for AC System shall be considered at 98%.
(2) Transmission System Availability shall be computed as per the formulae and methodology specified in Appendices-I, II and III of these Regulations."

Stakeholder's Comments

DTL

a) The Transmission Charging Methodology needs to be changed and to be allowed to recover the monthly transmission charges on Cumulative Transmission System Availability basis.

Commission's View

a) The Commission has adopted the methodology for computation of transmission charges inclusive of incentive which is also in line with CERC Tariff Regulations, 2019.

T. Regulation 18 - Transmission Charges for Transmission Licensee

"The Transmission Charges (inclusive of incentive) for AC system to be billed, in terms of Regulation 112 to 115 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, for a calendar month for transmission system or part thereof shall be computed as follows: … "

Stakeholder's Comments

BYPL

a) The said formula provides for recovery of Transmission Charges below and above 99%. However, the treatment for transmission availability at 99% is not available to Distribution Licensees. Hence, to be fair to the DISCOMs, it is requested that the Commission kindly approve incentive mechanism of System Availability on similar line of Transmission for DISCOM as well.

DTL

b) Target Availability for Incentive/Disincentive: It is submitted that the 1% band (100%-99%) is very less considering the fact that DTL is required to do preventive maintenance, regular overhauling work for keeping the transmission system healthy. Further, it is also submitted that CERC in its Tariff Regulations has fixed Target Availability for Incentive at 98.5%. DTL is having significant assets of DVB era, which require frequent maintenance, testing, etc.
c) In view of above, the Commission is requested to keep the Target Availability for Incentive/Disincentive to be 98% or below.

Commission's View

a) Based on the submission of the stakeholders regarding the treatment at availability of 99%, the Commission has amended the relevant point as under:

"b) For TAFM: 98% < TAFM ≤ 99%, AFC x (NDM/NDY) x (1)"

b) Further, the reasons for deemed availability as mentioned in Appendix – I have been made in line with CERC Tariff Regulations, 2019 as follows:

"5. The transmission elements under outage due to following reasons shall be deemed to be available:
i. Shut down availed for maintenance of another transmission scheme or construction of new element or renovation/upgradation/additional capitalization in existing system approved by

the Commission. If the other transmission scheme belongs to the transmission licensee SLDC may restrict the deemed availability period to that considered reasonable by it for the work involved."

U. Incentive Sharing Mechanism with Respect To Transmission Availability – New provision

"The incentive on account of Transmission availability as per sub clause (18) above shall be shared equally between the Consumers and the Transmission Licensee."

Stakeholder's Comments

BYPL & BRPL

a) There should an addition of ratio for incentive to be shared between the consumer and Transmission licensee. Accordingly, DISCOMs proposed that the incentive on account of transmission availability shall be shared equally between the consumers and the Transmission Licensee.

Commission's View

a) Based on the current operational scenario of the Transmission Licensees across the country, the Commission has not considered the suggestion of the stakeholders.

PART III – DISTRIBUTION LICENSEE

V. Regulation 20 - Rate of Return on Equity

"(1) Wheeling Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at the Base Rate of 14.00% on post tax basis.

(2) Retail Business: Return on Equity in terms of Regulation 4(1) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 shall be computed at an additional Base Rate of 2.00% on post tax basis.

(3) Carrying Cost: Return on Equity in terms of Regulation 2(16) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for computation of weighted average rate of interest for funding of Regulatory Asset/accumulated Revenue Gap through debt and equity shall be considered at 14.00% on pre-tax basis.

(4) The Equity for the purpose of Return on Equity for Wheeling and Retail Business shall be lower of the Normative Equity determined as per Regulation 63 of the Delhi Electricity Regulatory Commission (Terms And Conditions For Determination of Tariff) Regulations, 2017 or Equity available as per Audited Financial Statement of the relevant year:

Provided that balance Equity after funding requirement of capitalisation as per Audited Financial Statement shall be first utilised towards funding of accumulated Revenue Gap and thereafter investments, if any."

Stakeholder's Comments

TPDDL

a) Lower consideration of ROE of 14% for carrying cost purpose. However, the Commission has kept ROE of 14% in Draft (Business Plan) Regulation, 2019 for the purpose of carrying cost.

BYPL

b) The balance Equity belongs to BYPL, and it is for BYPL to decide the manner of its utilization. It will militate against APTEL's judgments if the Commission were to direct the manner of utilization of equity to meet accumulated Revenue Gap or investments. Making of investment is part of corporate governance under the Companies Act, 2013.

c) It is further submitted that the differential treatment between the Generating Companies and the DISCOMs is extremely arbitrary and discriminatory. As regards the treatment of RoE, there is no intelligential differentia between the GENCOs and the DISCOMs. Both utilities are subject to the same tariff determination principles of Section 61 of the EA. By the said dispensation, a favorable and 'step-motherly' treatment is being proposed for the GENCOs while the DISCOMs are being subjected to a stricter and more financially disruptive treatment.

d) BYPL is an independent financial entity and has every right to utilize its Equity in the manner it deems fit and this provision amounts to interfering and micromanaging internal commercial matters which is untenable in law.

e) However, in case of Regulatory Asset (RA) normative equity needs to be allowed, as there is hardly any Banks/Financial Institutions, which are willing to fund the RA amount. RA amount is funded by deferment of Power Purchase dues, attracting the LPSC @ 18% as fixed by the Commission.

BRPL

f) BRPL being an independent entity has every right to utilize its Equity in the manner it deems fit and proviso to this Regulation tantamount to micro managing the internal / commercial matters which is against the spirit of tariff fixation.

Commission's View

a) The base rate of RoE being allowed by various Electricity Regulatory Commissions (ERCs) in India has been analyzed before finalizing the base rate of RoE for the distribution licensee in DERC (Business Plan) Regulations, 2019.

b) The Commission has observed that base rate of Return on Equity specified by various State Electricity Regulatory Commissions (SERCs) including HERC, MERC, RERC, GERC etc. range from 14% to 17.50%. However, various SERCs like HERC have specified upper ceiling of RoE of 14% in their Tariff Regulations and accordingly allows 10% RoE to their Generation (HPGCL) and Transmission Company (HVPNL) and even Nil RoE to their Distribution Companies as per HERC Order dated 15/11/2018 in Case No. HERC/PRO- 83 & 85 of 2017.

c) The Commission observes that the RoE currently being allowed to the Distribution Licensee is reasonable and competitive considering the operating scenario and the performance of such Distribution Licensee with respect to other similar Distribution Licensee.

d) The Commission allows the Return on Equity on the basis of the actual Equity put to use. The Utilities claim that the Regulatory Asset is to be funded by way of Debt:Equity in the ratio of 70:30. In order to determine the carrying cost on Regulatory Asset, the Commission shall examine the utilization of Equity, beyond equity deployed for capitalization, towards funding of regulatory assets. This Regulation has accordingly been retained as provided in the Draft DERC (Business Plan) Regulations, 2019.

e) Regarding stakeholders' submissions of return on equity for computation of carrying cost, it is clarified that the Hon'ble APTEL in its judgment dated 20.06.2016 in Appeal No. 271 of 2013 has upheld the methodology of the Commission for computation of rate of return on equity @ 14% for the purpose of carrying cost.

f) The submission of the stakeholder that the Equity for the purpose of Regulatory Asset be considered on a normative basis is not justified as the carrying cost is allowed to be funded by way of Equity and Debt subject to actual availability. No return on equity shall be allowed for the equity that may not exist.

g) The power purchase dues cannot be deferred as a way of raising finance for its operations. The Utility is provided the working capital as per the formula provided in the Tariff Regulations, 2017 wherein the working capital for power purchase cost is considered separately.

h) Levy of Late Payment Surcharge (LPSC) is a detrimental cost as delay in payments has cascading effect on the sector as a whole and thus cannot be equated with the financing cost of the Utility.

i) The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

W. Regulation 21 - Tax on Return on Equity

"The base rate of return on equity as allowed by the Commission under Regulation 20(1) and Regulation 20(2) of these Regulations shall be grossed up with the Minimum Alternate Tax or Effective Tax Rate

of the respective financial year in terms of Regulation 72 and 73 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, as per the following formula:

Rate of Return on Equity= 16/[(100-Tax Rate)/100]
Where, Tax Rate is Minimum Alternate Tax (MAT) or Effective Tax Rate, as the case may be."

Stakeholder's Comments

TPDDL

a) The Commission is requested to kindly allow the actual tax paid on such deferred tax asset recoverable by the company over and above the tax on ROE.

Commission's View

a) The Commission in its DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 has made the provision that the effective tax rate shall be considered on the basis of actual tax paid vis-à-vis total income of the Utility in the relevant financial year in line with the provisions of the relevant Finance Acts as follows:

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

   Provided that if the rate of return on equity for a Control Period is allowed on pre-tax basis, then income tax on the return on equity shall not be allowed separately as a pass through in ARR;

   Provided further that no amount shall be considered towards tax exceeding the actual amount of tax paid by the Corporate entity of the Utility as an assesse."

b) The Commission is of the view that the income tax paid by the Utility on the financial gain earned through efficiencies cannot be passed on to the consumers. The Utility shall bear the additional income tax from its incentives/gains. The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.
c) The Commission has, therefore, decided not to modify this provision of the draft DERC (Business Plan) Regulations, 2019.

X. Regulation 22 - Margin for Rate of Interest on Loan

"(1) Margin for rate of interest for funding requirements towards capitalisation of Assets, Working Capital and Regulatory Assets for the Control Period in terms of Regulation 4(2) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensee shall be allowed as the difference in weighted average rate of interest on actual loan as on 1st April 2020 and 1 (one) year Marginal Cost of Fund based Lending Rate (MCLR) of SBI as on 1st April 2020:
Provided that the Margin on MCLR shall not exceed 3.50% for the purpose of rate of interest on loan:

Provided further that the rate of interest on loan (MCLR plus Margin) shall not exceed approved base rate of return on equity for wheeling business i.e., 14.00%.
(2) The Distribution Licensee shall follow transparent mechanism to avail Loans and, to the extent possible, shall endeavour to invite open tender for availing Loans."

Stakeholder's Comments

BYPL & BRPL

a) It will be in excess of jurisdiction for the Commission's functioning under the Electricity Act, 2003 to decide the Margin for rate of interest. The Commission could only undertake a prudence check. The Commission has introduced a double capping mechanism on interest on loan by introducing an additional capping of 3.50% above MCLR apart from existing capping of 14%. CERC Regulations works as a guiding factor to SERC.

b) It is submitted that the Commission has first taken cognizance of Tariff Policy 2016, which stipulates for an incentive mechanism. The clause was also available in the (Business Plan) Regulations, 2017 encouraging utilities to go for re-financing. However, capping of margin by 3.50% contradicts the Tariff Policy and talks about deterring utilities through penalty. It is submitted that incentive mechanism is enough to encourage the Utility to go for refinancing and Discom in the past has gone for refinancing. However, the additional capping proposed now is detrimental to the Utility and will result in further downgrade in credit rating resulting in further increase in interest rate as a result of increased risk perception as actual interest rate as of today will not be passed through. This is a regressive step towards forcefully lowering interest rate without any scientific rationale put forward for 3.50% margin and will only result in acting in contradiction to the very purpose it is being introduced. Interest rate is an uncontrollable parameter and is primarily dependent on credit rating of an entity, which in the present case is the lowest among 3 DISCOMs due to higher proportion of regulatory assets owing to non cost reflective tariffs. Further, the pace of RA recovery is inadequate and lowest in BYPL to provide sufficient comfort to the prospective lender.

   BYPL submits in having difficulties in funding its CAPEX loans and has very little bargaining position owing to poor credit rating due to unrecovered regulatory assets and therefore it would be impossible for them to take this financial hit.

   Further, without prejudice to the contentions raised earlier, the ceiling of 14% still has some scientific basis that cost of debt should not exceed cost of equity and therefore should not be altered, as it results in harming the very purpose of existence of cost plus mechanism and associated Regulatory Framework.

c) It is observed that this ceiling provided is only for the purpose of Working Capital which is of short term nature.

d) This new capping of 3.50% is against the principles of cost reflective Tariff determination specified in Section 61 and 62 of the Electricity Act, 2003. It is also to be noted that with the introduction of capping of margin to 3.50%, the earlier capping of 14% has lost its significance as the possibility of MCLR + 3.50% reaching more than 14% is not foreseeable in the upcoming Control Period.

e) Therefore, the proposed additional capping of 3.50% on margin to be removed as the same has huge commercial implications, apart from the same being in excess of jurisdiction.

TPDDL

f) Open tendering process is not possible for raising loan. Hence, it is requested to the Commission to remove/delete the said clause.

Commission's View

a) Section 61 of the Electricity Act, 2003 stipulates for specifying terms and conditions for determination of tariff. Specifying margin for rate of interest on loan is one of the parameters of tariff determination. Accordingly, the Commission has examined the current applicable rate of interest on loan to the Utility and specified the margin for rate of interest on loan.

b) The Commission observed that there exists no incentive to reduce the rate of interest on loan in case the same provision of the Regulation is continued. The Commission has further observed that the Utilities have improved their borrowing rate on the loans availed over a period of time. Considering the current borrowing costs of the Utility, the Commission has decided to provide annual targets for the margin for rate of interest on loans.

c) Accordingly, the Commission has formulated a reduction trajectory for the margin on rate of interest on loan from FY 2020-21 to FY 2022-23 as 5.00%, 4.25% and 3.50% to encourage the Utilities to improve their performance, resulting in reduced borrowing costs, and ultimately lead to savings in the tariff for the consumers.

d) The Commission has modified fixed year from '*2020*' to '*respective financial year*' and accordingly, Regulation 22 has been modified in DERC (Business Plan) Regulations, 2019.

Y. Regulation 23(1) - Operation and Maintenance Expenses

"(1) Normative Operation and Maintenance expenses in terms of Regulation 4(3) and Regulation 92 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution Licensees shall be as follows: …"

Stakeholder's Comments

BYPL & BRPL

a) The clause of statutory pay revision including minimum wages as provided in previous Business Plan Regulations, 2017 may please be added in the DERC (Business Plan) Regulations, 2019 for FY 2020-21 to FY 2022-23.

b) In order to arrive the per unit values for FY 2020-21, FY 2017-18 be considered as the base year and hence, the escalation @ 3.8% has to be considered for 3 times i.e. from FY 2017-18 to FY 2020-21 instead of 2 times.

c) There is reduction in unit rates @ ~3% from FY2019-20 to FY2020-21 vis-à-vis considered escalation of @3.80%

TPDDL

d) Inadvertent error of not considering WPI for FY 2015-16 upto two digit – While computing the growth in FY 16-17 for WPI, the Commission has considered WPI as a whole number (i.e. 110) for FY 2015-16 , instead of considering WPI upto two digit (i.e. 109.70) for FY 2015-16. The Commission has considered two digit number for all years except for WPI of FY 2015-16, therefore resulting into lower computation of escalation factor. Accordingly, it is requested to revise the escalation factor from 3.69% to 3.72%.

e) Consideration of additional escalation of 3% to cover increasing trend – It is submitted that the additional inflation factor at 3.95% should be allowed for each year of the respective control period over and above the year escalation factor (i.e. normal increase + additional increase) computing escalation factor for Year 1 at 3.87%, Year 2 at 4.02% and Year 3 at 4.18%.

f) Methodology followed for computation of normative rate of O&M expenses – To compute the per unit rate, annual O&M expenses may be adjusted with the 7th pay Commission impact pertaining to FY 2016-17 and accordingly, the normative O&M expenses may be arrived.

g) Non consideration of Impact of statutory levies (i.e. GST & Minimum wages for FY 16-17) – TPDDL has submitted to bear additional O&M expenses on account of unprecedented increase of 37% in minimum wages due to the notification issued by Govt of Delhi. Further from 1st July 2017, onwards GST has been implemented. Due to change in the tax regime from multiple indirect taxes to a single GST regime and its implementation, there is almost 3% increase in the landed cost of various activities related to A&G and R&M.

h) Minimum 3 times of inflation to be applied on average normative O&M rate.

i) Revisit the normative rate computed for 66/33/ 11 KV grid substation due to mismatch in network capacity.

j) Minimum increase of 10% is to be considered for Salary/ Employees Expenses – It is requested to consider an average growth of 10.01% in salary for both FRSR as well as Non FRSR Structure Employees as escalation factor for employees instead of average CPI of last three years.

k) Other factors which may be considered while fixation of O&M expenses –

    i. Comparison of likely actual O&M expenses for next MYT control period versus normative O&M expenses as computed based on the proposed methodology in Draft BPR, 2019 for next MYT control period.

    ii. AT&C incentives are no more

    iii. Eroding of assured ROE

    iv. Impact of Lower allowance of O&M expense on stringent Performance parameters as prescribed in Performance Standard Regulations, 2017

    v. Benchmarking with similar placed Utilities

Commission's View

a) The escalation factor in the Draft DERC (Business Plan) Regulations, 2019 was considered after rounding off the consumer price indices (CPI) and wholesale price indices (WPI). The value of indices captures the trend of variation in the prices. The Commission has appropriately considered the indices to reflect the increase in O&M expenses including employee expenses. Based on the suggestions received that these numbers may be considered on actual basis rather than rounding off, the same has been considered. Accordingly, the revised escalation factor works out to be 3.83% instead of 3.80%.

b) The Commission observed that 7th pay commission has not yet been implemented finally and only interim relief has been paid. Therefore, the Commission has considered the interim relief as given to the employees of the Licensee while determination of norms for O&M Expenses. Further, the impact of difference of actual amount on account of actual of Seventh Pay Revision and such interim relief, if any, will be considered at the time of True up of ARR for relevant Financial year subject to prudence check.

c) The norms for O&M expenses have been computed considering the impact of minimum wages. Therefore, the suggestion of the Utility to provide for minimum wages separately has not been considered.

Z. Regulation 23(4) - Operation and Maintenance Expenses

"(4) The Distribution Licensee shall be allowed O&M expenses for a particular financial year of the control period by multiplying the norms for O&M expenses of that particular year with the respective network capacity at the start of the financial year. The Distribution Licensees shall also be allowed to recover O&M expenses for the network capacity added during the year on pro-rata basis."

Stakeholder's Comments

BYPL & BRPL

a) It is proposed that the O&M Expenses for a particular year of the control period be allowed by multiplying the norms for O&M expenses of that particular year with the respective network capacity at the end of the financial year. Such change will remove the ambiguity and tedious job of reconciliation of each asset addition on COD basis and suggested to be kept as closing balance. This will reduce the cumbersome process of pro-rata calculations.

Commission's View

a) The Commission has revised the methodology for computation of norms for O&M expenses based on average network capacity and escalation of three times has been given on the average value computed for FY 2017-18 to determine the norms for FY 2020-21. Accordingly, Regulation 23(4) was modified and the recovery based on the average capacity of network during the year has been made.

AA. Regulation 23(5) - Operation and Maintenance Expenses

"(5) The Distribution Licensee may claim the expenses for raising loan for working capital and regulatory assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:

Provided that if this amount has been included in the interest on working capital and/or Regulatory assets, the same shall not be allowed."

Stakeholder's Comments

TPDDL

a) Expenses for raising loan for CAPEX is not included in the draft DERC (Business Plan) Regulations, 2019. It is proposed that word 'CAPEX' be added and accordingly, the clause may be read as *"The Distribution Licensee may claim the expenses for raising loan for CAPEX, working capital and regulatory assets under O&M expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:*
Provided that if this amount has been included in the interest on CAPEX / working capital and/or Regulatory assets, the same shall not be allowed."

Commission's View

a) The Regulation 87 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 explicitly states that the Utilities shall be allowed Operation and Maintenance expenses on normative basis including expenses for raising the loan for funding of Working Capital and Regulatory Asset and not expenses for raising CAPEX loans as follows:

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

b) Accordingly, the provision for claiming expenses for raising loan for working capital and Regulatory Assets under O&M expenses has been considered separately.
c) The cost of raising loan for capitalisation is to be included in the interest cost.

BB. Regulation 23(6) - Operation and Maintenance Expenses

"(6) The Distribution Licensee may claim the legal expenses separately, subject to prudence check at the time of true up on submission of documentary evidence:

Provided that the legal expenses on account of cases filed against the Orders or Regulations of the Commission before any Court and the legal claims (compensation/penalty) paid to the consumer, if any, shall not be allowed."

Stakeholder's Comments

TPDDL

a) Commission to allow all types of legal expenses, which would incur.

BYPL

b) It is submitted that it is a direct and immediate threat not only to the independence of BYPL but also to the right of BYPL to avail its Constitutional remedies under Article 226 and 227 of the Constitution as also its statutory remedies of an Appeal available under the EA, 2003. The long history of arbitrary and unreasonable tariff determinations and willful refusal to implement the binding judgments of the APTEL continues to constrain BYPL to approach the APTEL time and again against the orders of the Commission.
c) The right to avail the statutory remedies available under the Electricity Act, 2003 are a right given BYPL by the Act. The right to avail a statutory remedy is also a right guaranteed under Article 14 and 19 of the Constitution. The right to do business under Article 19 (1) (g) includes the right to avail of statutory legal remedies to protect and safeguard the business which is part and parcel of the right to do business.
d) The existing provision of the Business Plan Regulations to disallow the legal costs where the Commission is a Respondent, it is most respectfully submitted that there is a clear attempt to prevent BYPL to challenge the correctness and validity of the actions of the Commission. As such, said proposal would be entirely arbitrary and violative under Article 14 of the Constitution. Further the proposal emanates from a direct conflict of interest in the Commission making any such proposal.

e) The Commission has not considered legal fees and legal claim as part of actual expenditure incurred for deriving per unit O&M cost for previous years and is of the view that legal expenses incurred on cases filed against the decisions of the Commission shall not be allowed in the ARR.

f) Allowing expenses incurred in defending/prosecuting regulatory matters/Appeals/Tariff Orders etc. is necessary to allow BYPL to effectively avail of its statutory remedies under section 111 and other applicable provisions of the Electricity Act, 2003. Also, if the expenses incurred by the DISCOMs on account of legal fee are not to be allowed, then any benefit arising out of such litigations! Orders ought not to be shared with the consumers. In fact, all the benefits are passed on to the consumers. Moreover, while the appeals cases are allowed, the legal expenses are inevitable and caused due to disallowance by the Commission in allowing the reasonable expenses etc.; hence BYPL cannot be faulted with and their legitimate expenses to protect the reasonable cost ought not to be denied.

BRPL

g) DISCOM submits that there is no lawful warrant or justification to exclude expenses incurred by BRPL in challenging Orders passed by the Commission. It is submitted that neither the Electricity Act, 2003 nor the Tariff Regulations permit for such an arbitrary dispensation.

h) The proposal in disallowing a portion of such expenses is not only arbitrary but is also against the law laid down by the Hon'ble Appellate Tribunal in Appeal No 265 of 2006.

i) It is submitted that such a proposal, if enacted, would seriously impinge upon Discom's fundamental right to be represented by a lawyer of its choice as well as its freedom of trade guaranteed under Article 19(1)(g) of the Indian Constitution. In fact, this criterion is not only restrictive but completely curtails the Discom's rights and freedoms and is hence unconstitutional.

Commission's View

a) The Commission in its explanatory memorandum of draft DERC (Business Plan) Regulations, 2019 has explained that the information related to Legal expenses was sought from DISCOMs and was found to be at variance due to different reporting mechanism, hence not considered. The Commission is of the view that the legal expenses on account of cases filed against commission before the Hon'ble ATE, High Court, Supreme Court etc., and the legal claims(compensation/penalty) paid to the consumer, if any, shall not be allowed. DISCOMs may claim other legal expenses separately subject to prudence check at the time of the true up of the expensesh. Accordingly, the Commission has retained the draft Regulation in the final DERC (Business Plan) Regulations, 2019.

CC. Regulation 24(1) - Capital Investment Plan

"(1) The tentative Capital Investment plan in terms of Regulation 4(4) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution licensee shall be as follows:
…"

Stakeholder's Comments
BYPL & BRPL

a) The Commission is requested to consider the CAPEX plan as proposed in Business Plan and implementation of smart meters be allowed through OPEX model as an additional O&M.

Commission's View

a) The Commission in past had already accorded in principle approval for capital expenditure on smart meters in phased manner. Accordingly, smart meters capitalization for FY 2020-2023 for Utilities has also been considered under Capital Investment Plan for projection in DERC (Business Plan) Regulations, 2019.

DD. Regulation 24(3) - Capital Investment Plan

"(3) Capitalisation of employee expenses and A&G expenses shall be allowed equivalent to lower of 10% of (employee cost and A&G expenses) or 10% of material cost or actuals in a particular financial year."

Stakeholder's Comments

TPDDL

a) Impact of change in methodology for Staff cost Capitalization – As per the accounting Policy, TPDDL capitalizes 10% of the staff cost as a part of capitalization.
For FY 2017-18, portion of material cost in total Capitalization (excluding meters & ready to use assets) comes to approx. 60%. Accordingly, considering the same ratio of 60% approximately material cost for next 3 years based on approved capitalization comes as under:

Difference on account of change in Methodology by the Commission for Capitalization

Particulars	FY 2016-17	FY 2017-18	FY 2018-19
Approved Capitalization in BPR for next three years (excluding meters)	413	406	432
Material cost 60% of above capitalization	248	244	259
Max staff cost capitalized @ 10% - based on BPR –A	25	24	26
Budgeted staff cost capitalization @ 10% in line with current accounting policy – B	53	57	61
Hit (B-A)	**28**	**33**	**35**

b) Restricting the said capitalization to 10% of material cost is not fair and inconsistent as shown in table above. The change in methodology would result for approx. Rs 30 Cr. hit per annum in the O&M expenses. The Commission has considered the actual O&M expenses of Tata power-DDL as base year expenses which is net of 10% capitalization of staff cost which means that the Commission has considered only 90% of the actual staff cost for FY 2016-17 to FY 2018-19 for the purpose of determination of normative O&M expenses for FY 20-21 onwards. As against this, in the draft BPR Regulation, the Hon'ble Commission has neither considered capitalization of 10% staff cost as continual & consistence practice for new MYT period, nor has normalized staff expenses from FY 2016-17 to FY 2018-19 by adjusted the same with 10% of material cost to consider the same as Base period expenses.

c) Therefore, it is requested to remove the condition of 10% of material cost and continue with the condition of 10% of staff cost or base year staff cost to be adjusted by normalizing base year employee expenses capitalized by reducing the same to the extent of 10% of material cost.

BYPL

d) The said Regulation is inconsistent as this concept of "lower of 10% of (employee cost and A&G expenses) or 10% of material cost or actuals in a particular financial year" would be considered illogical and untenable as the same is not in sync with accepted accounting concept for going concern.

e) Further, BYPL submits that the Commission in case of Transmission in Clause 16 has allowed Capitalization of employee expenses and A&G expenses equivalent to lower of 25% or 10% material cost or actuals. It is submitted that Distribution business is more manpower driven compared to Transmission and hence, higher percentage should be allowed than 25%. Further, overhead capitalisation @10% of material cost is also not justifiable as many schemes involve minor materials and predominately labour intensive e.g:- shifting of lines, cables, substation, up-gradation of substation, lines, etc. There are works that involve more manpower allocation specially pertaining to civil works wherein material cost may be low. Hence, the said clause in impracticable and suggested that the 10% of material cost may be removed.

f) Since, Employee and A&G expenses are not linked to schemes, the capitalisation of overhead expenses shall be computed on total capitalisation in a particular year. A particular group of employees are involved in a scheme and the overhead expenses incurred in proportion of time and certain services provided by the allotted group for the capitalisation of schemes are capitalised during the year. Hence benchmarking on Employee and A&G is reasonable. The limit 10% on material is unreasonable and is without any logical basis.

g) Considering the previous actual, overhead capitalisation @ 15% of Employee Expenses and A&G Expenses please be considered.

BRPL

h) There are works that involve more manpower allocation specially pertaining to civil works wherein material cost may be low. It is suggested that the same may be reviewed on case to case basis.

i) Further, BRPL submits that the Commission in the case of Transmission in Clause 16 has allowed Capitalization of employee expenses and A&G expenses equivalent to lower of 25% or 10% material cost or actuals. It is submitted that Distribution business is more manpower intensive compared to Transmission and higher percentage should be allowed than 25%. In this regard, it is also submitted that this differential treatment for the utilities is against the spirit of equality before law as per the Article 14 of Indian Constitution.

Commission's View

a) The Commission agrees to the suggestion of the Utility that 10% of material cost may be lower as compared to the capitalization of employee expenses and A&G expenses carried out by the Utility. Therefore, the Commission has retained the existing practice of consideration of 30% of employee expenses and A&G expenses of actual, whichever is lower for capitalization.

EE. Regulation 24(6) - Capital Investment Plan

"(6) The quarterly Capital Cost submitted by the Distribution Licensee as per aforesaid sub-Regulation (3) shall be trued up by the Commission and financial impact on account of variation in projected capital cost in the tariff order vis-a-vis actual capital cost & scheduled date of

commissioning vis-a-vis actual date of commissioning shall be dealt under the Annual true up of relevant financial year as follows:

(a) Any excess tariff recovered on account of variation in projected capitalization in the tariff order vis-a-vis trued up capitalization by more than 10% during the year, shall be adjusted in the Revenue Gap/Surplus of the relevant year along with interest rate at 1.20 times of applicable Weighted Average Cost of Capital (WACC) of respective year:

Provided that any excess tariff recovered on account of variation in projected capitalization in the tariff order vis-a-vis trued up capitalization due to reasons beyond the control of the Distribution Licensee i.e., delay in 'In-principle' approval of the schemes, road cutting permission from the concerned agencies etc., shall be adjusted in the Revenue Gap/Surplus of the relevant year along with interest rate equal to applicable Weighted Average Cost of Capital (WACC) of respective year.

(b) Any shortfall in tariff recovered on account of variation in projected capitalization in the tariff order vis-a-vis trued up capitalization by more than 10% during the year, shall be adjusted in the Revenue Gap/Surplus of the relevant year along with interest rate at 0.80 times of applicable Weighted Average Cost of Capital (WACC) of respective year."

Stakeholder's Comments

TPDDL

a) In the existing (Business Plan) Regulation, 2017: Excess or shortfall if any, is charged/ recovered based on Bank Rate of 1st April of Respective year. *However, in the new draft BPR, 2019, the Commission has linked it with* Weighted average cost of capital (WACC) which is higher than the Bank Rate. Thus, it is proposed the Regulation be kept as is.

b) The proposed methodology is also in line with CERC Tariff Regulations, 2019 which is reproduced below:

> *Where the capital cost considered by the Commission on the basis of projected additional capital expenditure exceeds the actual additional capital expenditure incurred on year to year basis by more than 10%, the generating company or the transmission licensee shall refund to the beneficiaries or the long term customers as the case may be, the tariff recovered corresponding to the additional capital expenditure not incurred, as approved by the Commission, along with interest at 1.20 times of the bank rate as prevalent on 1st April of the respective year.*

BYPL

c) The projection of capitalization for next 2-3 years down the line is tedious job even with perfection as the same depends upon lot of factors such as fund availability and other extraneous factors. It is also submitted that there is no similar provision in the case of Generation and Transmission, which is clear case of differential treatment of utilities and is against the spirit of equality before law as per the Article 14 of Indian Constitution. Hence, it is proposed to remove the clause. Further, linking the same to WACC is arbitrary without any justification and can lead to disparity as the same is higher than the earlier rate. It is also submitted that this proposal is against the provisions of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Section 62 of the Electricity Act, 2003.

BRPL

d) The projection of capitalization for next 2-3 years down the line is incapable of being predicted with precision as the same depends upon lot of factors such as fund availability and other extraneous factors.
e) It is also submitted that there is no similar provision in the case of Generation and Transmission which is clear case of differential treatment of utilities and is against the spirit of equality before law as per the Article 14 of Indian Constitution. Further, there is also no justification for considering the shortfall at 1.2 times whereas providing benefits only to the extent of 0.8 times.
f) In view of the above, it is requested to either provide similar treatment for both cases (i.e. adjustment on account of excess capitalization or adjustment on account of shortfall in capitalization) at the same rate or do away with this clause entirely.
g) Further, linking the same to WACC is arbitrary without any justification and can lead to disparity as the same is higher than the earlier rate. It is also submitted that this proposal is against the provisions of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 and Section 62 of the Electricity Act, 2003.

Commission's View

a) The Commission considers the ROCE on the basis of WACC which is multiplied with the RRB of the Utility. It is this ROCE that is considered in the projected ARR of the Utility which is recovered by way of tariff from Consumers.
b) In case of under-capitalisation, the Utility recovers higher tariff as projected and vice-versa. As per Regulation 24(6), such shortfall/excess tariff recovered should also be adjusted in the true up of the ARR at similar financial cost which is WACC and not the Bank Rate. Bank Rate as defined by the Commission in DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 is "*Bank Rate means the base rate or Marginal Cost of Fund based Lending Rate (MCLR) or any other Benchmark Rate as notified by the State Bank of India;*" which is not the same as the Bank rate as defined by CERC Tariff Regulations, 2019 as "*Bank Rate means the one year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points*;". Thus the submission of the stakeholders is not justified.
c) The Commission has given equitable treatment to the Capital Investment plan of the Generation Entity, Transmission and Distribution Licensee under DERC (Business Plan) Regulations, 2019 based on the nature/frequency of investments involved.

FF. Regulation 25(1) - Target for Distribution Loss

"The Distribution Loss target in terms of Regulation 4(9) (a) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 for the Distribution licensees shall be as follows:

Table 15: Target for Distribution Loss for the Control Period

Sr.No.	*Distribution Licensee*	*2020-21*	*2021-22*	*2022-23*
1	*BSES Rajdhani Power*	*8.10%*	*8.00%*	*7.90%*
2	*BSES Yamuna Power*	*9.00%*	*8.75%*	*8.50%*
3	*Tata Power Delhi Distribution Limited*	*7.95%*	*7.85%*	*7.75%*
4	*New Delhi Municipal*	*9.00%*	*8.75%*	*8.50%*

"

Stakeholder's Comments

TPDDL

a) The Business Plan has already submitted with detailed reasons for approving 0.05% reduction trajectory for the next MYT Control period. The Commission accepted TPDDL contention only for FY 2020-21. Therefore, it is again requested to the Commission to consider the TPDDL submission of 0.05% reduction trajectory for FY 2021-22 & FY 2022-23 against the reduction trajectory of 0.10% as considered by the Commission for FY 2021-22 & FY 2022-23.

BYPL

b) Targets specified for FY 2020-21 is 1.50% less than that approved for FY 2019-20 which is immense. Also, once we reached the technical minimum loss, it is very stiff task to further reduce or maintain the achieved level. Further, while approving targets for other DISCOMs the loss reduction specified by the Commission was on higher side than those specified now for BRPL and BYPL. This is a clear case of differential treatment of utilities.

c) It is submitted that the proposed annual loss reduction targets needs to be reviewed in view of the network condition, geographical spread, consumer mix, unauthorized area / usages and the approved Capex at the present level of loss. Not only that the initial loss level for BYPL was the highest (BYPL-63%, BRPL-51%, TPDDL- 48%) and so the current loss level due to various uncontrollable reasons and natural disadvantages as stated below and further loss reduction is even most difficult among DISCOMs

BRPL

d) Targets specified for FY 2020-21 is 1.50% less than that approved for FY 2019-20 which is immense. Also, once BRPL reached the technical minimum loss, it is a very stiff task to further reduce or maintain the achieved level. Further, while approving for TPDDL, the loss reduction specified by the Commission was on higher side than those specified now for BRPL and even for BYPL. Hence, it is proposed to review the same as it will have a serious impact on the financials of BRPL. Further, not much additional capital has been projected on loss reduction and such drastic reduction in the loss needs intensive capex which has not been envisaged by BRPL in its business plan petition.

Commission's View

a) The Commission while determining the Distribution Loss trajectory for the Control period reviewed the actual loss targets as already achieved by the Distribution Licensees. Based on the trajectory as allowed in the DERC (Business Plan) Regulations, 2017 and the current performance, the Commission determined the trajectory which has also been explained in detail in the Explanatory Memorandum issued by the Commission on 10.12.2019. The explanations have been provided along-with comparison of Distribution Loss levels of Licensees in various other states as Mumbai, Surat, Ahmedabad, Noida etc. and internationally.

b) The Commission observed that the actual Distribution Loss achieved by TPDDL during FY 2018-19 was less than 8% as assumed at the time of draft DERC (Business Plan) Regulations, 2019. The actual distribution loss for FY 2018-19 of TPDDL stands at 7.93%. Accordingly, the Distribution Loss Target for FY 2020-21 has been set at 7.90% (i.e. two years after FY 2018-19) with a declining trend of 0.10% every year. The Distribution Loss targets for other Distribution Licensees are in line with the draft Regulations. The Commission arrived at the trajectory for the Control period FY 2020-21 to FY 2022-23 based on above findings which is reasonably achievable and sustainable.

GG. Regulation 25(4) - Target for Distribution Loss

"(4) Any financial impact due to Overachievement on account of Distribution Loss target by the distribution licensee for the relevant year shall be shared between the Distribution Licensee and Consumers as follows:

i. in case actual Distribution Loss is between the loss target and loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 2/3rd to Consumers and 1/3rd to the Distribution Licensee;*

ii. in case actual Distribution Loss is less than loss target minus [50%(Previous Year Target-Current Year Target)] for the relevant year shall be shared in the ratio of 1/3rd to Consumers and 2/3rd to the Distribution Licensee. "*

Stakeholder's Comments

BYPL & BRPL

a) The incentive should be attractive enough to encourage Licensee to improve efficiency which will be win-win situation for both Consumer and Distribution Licensee. Further, the Commission is mandated to look in to the interest of consumers and utilities with equally and therefore if losses are not shared by consumers at least major impact of gain should be allowed to be retained by Utility. Hence, the Commission is requested that gain on account of overachievement of distribution loss shall be shared in ratio of 2/3 to Distribution Licensee and 1/3 to the Consumer.

Commission's View

a) The formula for sharing of the incentive for the Distribution Loss has been reviewed and the Commission observes it to be reasonable. Accordingly, the Commission has retained the formula for sharing of gains/loss on account of over/under-achievement of Distribution Loss target as provided in the draft DERC (Business Plan) Regulations, 2019.

HH. Regulation 27 - Target for Renewable Purchase Obligation

(1) The targets for Renewable Purchase Obligation (RPO) in terms of Regulation 124 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 of a Distribution Licensee from FY 2020-21 to FY 2022-23 shall be computed as a percentage of total sale of power to its retail consumers in its area of supply excluding procurement of hydro power. The target for Renewable Purchase Obligation shall be as follows:

Table 16: Targets for Renewable Purchase Obligation

S.No.	Distribution Licensee	2020-21	2021-22	2022-23
1	Non Solar target	10.25%	10.25%	10.50%
2	Solar target	7.25%	8.75%	10.50%
3	Total	17.50%	19.00%	21.00%

(2) The Distribution Licensee shall comply with its RPO through procurement of Solar energy and Non-Solar energy:

Provided that on achievement of Solar RPO compliance as specified in aforesaid sub-Regulation (1) to the extent of 85% and above, remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond non-Solar RPO for that particular year:

Provided further that on achievement of Non-Solar RPO compliance as specified in aforesaid sub-Regulation (1) to the extent of 85% and above, remaining shortfall if any, can be met by excess Solar energy purchased beyond Solar RPO for that particular year:

Provided also that the Distribution Licensee may purchase Renewable Energy Certificate ('REC') for any shortfall in meeting their total RPO targets for any financial year within three months from the date of completion of the relevant financial year.

(3) Renewable Energy generation recorded through Renewable Energy meters installed in the premises of net metering Consumers shall be deemed to be part of RPO of the Distribution Licensee as specified in Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014, for the relevant year:

Provided that in case the annual generation from solar generation system recorded through Renewable Energy meters exceeds the Capacity Utilisation Factor (CUF) of 19%, the Distribution Licensee shall get the Renewable Energy meters tested by Independent third party, National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited meter testing lab.

(4) The cost of Renewable Energy purchased by the Distribution Licensee through Power Purchase Agreement approved by the Commission and the total power injected into the grid through net metering arrangement, in excess of RPO target shall be part of power purchase cost of the Distribution Licensee for the relevant year.

(5) Non-compliance of the RPO targets by the Distribution Licensee shall attract penalty at the rate of 10% of the weighted average Floor Price of Solar and Non- Solar Renewable Energy Certificate, as specified by Central Electricity Regulatory Commission for the relevant year, for quantum of shortfall in RPO.

(6) The amount of penalty imposed on the Distribution Licensee due to non- compliance of the RPO targets shall be reduced from the ARR during True up of the relevant Financial Year in terms of the Regulation 124 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017."

Stakeholder's Comments

NDMC

a) Untied Large Hydro Power is requested to be consider for the RPO and energy projected to be available in the coming 5 years may be treated for shortfall observed in RPO during past years.

TPDDL

b) In order to avoid burden for consumer of its licensed area, it is requested to keep the RPO target for the next control period at the same level as specified for FY 2019-20.
c) To consider allowing offset of Solar RPO through Non-Solar REC and Non-Solar RPO from Solar REC to the extent of 15% of the Solar and Non-Solar RPO requirement. The same would help in meeting the RPO effectively in the event of non-availability of Solar/Non Solar REC inventory.
d) Power scheduled by the Open Access (OA) consumers over and above the Renewable Power Purchase Obligation (RPO) mandate should be considered for compliance of DISCOMs RPO.

BYPL

e) The Commission is requested to keep the RPO targets for future years same as of FY 2019-20. i.e. 17% (6.75% - Solar; 10.25% - Non Solar). Other SERC's have also in past have waived off/defer/revise RPO targets of concerned DISCOMs considering the difficulties faced by DISCOMS in achieving the RPO targets. In view of the above, BYPL request the Commission to provide time to meet the RPO shortfall of the previous years by deferring the implementation by 5 to 7 years.

BRPL

f) Interchangeability of Solar and Non Solar should be allowed without any capping. The renewable energy procurement is done on availability basis and cost basis and should be allowed as it will increase average power purchase cost which will be against the interest of consumers. In any event, even the present targets are very difficult to meet and any increase would only make it impossible for BRPL to achieve the same specially since the present market conditions are not conducive to even buy RECs. Therefore, the Commission may consider using BRPL's proposal on this count.

g) Further, it is submitted that the target for Non-Solar in isolation is not possible as per the prevailing market conditions.

Commission's View

a) The target for the RPO have been determined by the Commission in accordance with the national initiative notified under Tariff Policy in para 6.4(1) on 28.01.2016 to achieve the target of 175 GW of renewable capacity by March 2022.

b) The Commission endorsed the RPO trajectory as notified by Ministry of Power vide Guidelines dated 22.07.2016 in its DERC (Business Plan) Regulations, 2017 with slight modification that the targets set for a year under the said Guidelines were shifted by one year while adopting the trajectory for the Delhi Distribution Licensees.

c) Similarly, continuing with the national initiative to meet the Renewable capacity target by March 2022, the Commission has determined the Long Term RPO trajectory including the provision of 85% in line with the Guidelines issued by Ministry of Power, GoI dated 14.06.2018 with slight modification that the targets set for a year under the said Guidelines are shifted by one year while adopting the trajectory for the Delhi Distribution Licensees.

d) Further, based on the submissions of the Stakeholder regarding fulfilling the RPO by buying physical energy vis-à-vis Renewable Energy Certificates, the Commission has modified the provision in draft DERC Business Plan) Regulations, 2019 as follows:

"…the target for RPO shall be met through purchase of power from various Renewable Energy sources or purchase of Renewable Energy Certificates ('REC') or combination of both……."

II. Regulation 29 - Incentive Sharing Mechanism for Sale Rate of Surplus Power

"(1) The computation of incentive for Sale Rate of Surplus Power in terms of the Regulation 165 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensees shall be as follows:

i. The variable cost of the generating station for which power is surplus and required to be sold through Power Exchanges shall be considered as the previous month's billed variable cost of such generating station.

ii. The variable cost of the generating station for which power is surplus and required to be sold through Banking and Bilateral arrangements shall be considered as the previous month's billed variable cost of such generating station prevalent at the date of entering into such contracts:
Provided that the normative cost of banking transactions shall be weighted average rate of variable cost of all long term sources.

iii. The incentive shall be the product of rate difference (Actual Sale Rate- Variable Cost) and Quantum of Power actually sold during the month.

(2) The incentive computed under sub-clause (1) above shall be shared between the Consumers and the Distribution Licensee in the following prescribed manner: -

i. The incentive realisation upto 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 2/3rd to the Consumers and 1/3rd to the Distribution Licensee.

ii. The incentive realisation above 100% recovery of Average Fixed Cost per unit of all Generating sources of relevant year, projected by the Commission in the relevant Tariff Order, prorated to actual sale of Surplus Power shall be shared in the ratio of 1/3rd to the Consumers and 2/3rd to the Distribution Licensee."

Stakeholder's Comments

TPDDL

a) Slot wise computation of incentive is to be considered in line with Terms and Conditions for Determination of Tariff Regulations, 2017.
b) Methodology for Banking transactions to be specified.
c) The Delhi SLDC vide its minutes of meeting no. F.DTL/207/DGM(SO)/143 dated 14.09.2018 has mentioned to consider the following stations under must run category.
    i. Thermal station at minimum technical limit.
    ii. Delhi Gencos station namely GT, Pragati & Bawana on account of transmission constraints/Gas allocation to Bawana as per the Hon'ble Supreme Court order.
    iii. Hydro, Nuclear & Renewable power stations.
d) On account of above points, it is suggested that non disincentive on sale of surplus power from above stations must be considered as start/stop/backing down of these stations is not under control of a Utility and the System Operator.
e) Owing to its nature of must run and demand being low during off-peak hours, a Utility is left with no choice but to sell surplus power from these stations in the exchange/IDT even if the market rates are less than variable cost of power from these stations. The same is essentially required to be done to avoid massive under-drawals in the grid in form of Unscheduled interchange which can cause System/Grid disturbance, hence no disincentive on such sale should be considered.

f) For the purpose of computation of incentive on sale of surplus power, the Commission is requested to consider the calculation of incentive on sale of surplus power on slot wise basis because scheduling of power is done on slot wise and consequently any sale of power whether under banking, bilateral, exchange or IDT also takes place on a slot-wise basis.

g) It is requested to the Commission to fix a single rate for banking to make it revenue neutral.

BRPL

h) The Tariff Regulations, 2017 and more specifically Regulation 121(3), provide that normative cost of banking transactions shall be the rate of average power purchase cost of the portfolio of the distribution licensee. Therefore, there is no justification to modify this clause in the proposed Regulations. This proposed modification would significantly prejudice BRPL and would dis-incentivize utilities from entering into Banking transactions.

i) BRPL submits that the 2017 Tariff Regulations and more specifically Regulations 123 read with 165, provide that incentive for sale of surplus power should be considered slot wise. The proposal to consider the incentive cumulatively for the entire month, would not only dis-incentivize BRPL but is also against the 2017 Tariff Regulations.

Commission's View

a) The formula for Incentive Sharing Mechanism for Sale Rate of Surplus Power has been reviewed and the Commission observes it to be reasonable. Accordingly, the Commission has retained such formula as provided in the draft DERC (Business Plan) Regulations, 2019.

JJ. Regulation 30(4) - Mechanism for Recovery of Power Purchase Cost Adjustment Charges

"(4) The treatment of PPAC computation as per the specified formula shall be as follows:

a. in case PPAC does not exceed 5% for any quarter, the Distribution Licensee may levy PPAC at 90% of computed PPAC with prior intimation to the Commission without going through the regulatory proceedings.

b. in case PPAC exceeds 5% but does not exceed 10% for any quarter, the Distribution Licensee may levy 90% of the PPAC upto 5%, and thereafter 75% of the remaining PPAC (Actual PPAC% – 5%) with prior intimation to the Commission without going through the regulatory proceedings.

c. in case PPAC exceeds 10% for any quarter, the Distribution Licensee may levy PPAC as per sub-clause (a) and (b) as above without going through the regulatory proceedings and shall file an application for prior approval of the Commission for the differential PPAC claim (Actual PPAC% – 8.25%)."

Stakeholder's Comments

TPDDL

a) It is requested to the Commission to allow levying of 90% of the total PPAC & the remaining deficit to be considered at the time of true-up. The same would help in avoiding quarterly submission of PPACs Petitions for adjudication by the Commission and at the same time avoid the issue of passing multiple entries for the purpose of levying retrospective PPAC on consumers.

BYPL & BRPL

b) It is requested that the Commission gives cognizance to the explanation provided in Explanatory Memorandum and revise the limit to 20% as followed by MERC.

c) The Commission may also consider making suitable changes to ensure that the recovery of PPAC is not limited to the ensuing quarter only since the invoices from Generating Companies are typically received only at the beginning of the ensuing quarter and sometimes much later. Therefore, from a logistic standpoint, the Hon'ble Commission may consider making suitable changes.

Commission's View

a) The Commission observed that the recovery of PPAC as per MERC is only through Energy Charges component of Electricity Bill while DERC allows recovery of PPAC through both Fixed Charges and Energy Charges.

b) Based on various submissions of the stakeholders on the existing procedure of recovery of PPAC, the Commission has modified the earlier PPAC recovery mechanism as follows:

"(4) The treatment of PPAC computation as per the specified formula shall be as follows:

a. in case PPAC does not exceed 5% for any quarter, the Distribution Licensee may levy PPAC at 90% of computed PPAC with prior intimation to the Commission without going through the regulatory proceedings.

b. in case PPAC exceeds 5% but does not exceed 10% for any quarter, the Distribution Licensee may levy PPAC of 5% and 75% of balance PPAC (Actual PPAC% - 5%) with prior intimation to the Commission without going through the regulatory proceedings.

c. in case PPAC exceeds 10% for any quarter, the Distribution Licensee may levy PPAC as per sub-Regulation (a) and (b) as above without going through the regulatory proceedings and shall file an application for prior approval of the Commission for the differential PPAC claim (Actual PPAC% 8.75%)."

c) Accordingly, the draft DERC (Business Plan) Regulations, 2019 have been modified.

KK. Regulation 31(1) - Incentive Sharing Mechanism for Re-Financing of Loan

"(1) The incentive due to lower rate of interest on account of re-financing of loan in terms of Regulation 71 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensee shall be computed as the product of total quantum of loan availed and difference of weighted average rate of interest on actual loans versus margin of 2.00% plus (+) SBI MCLR.

(2) The incentive on account of re-financing of loan computed as per sub clause (1) above shall be shared equally between the Consumers and the Distribution Licensee."

Stakeholder's Comments

TPDDL

a) The incentive due to lower rate of interest on account of re-financing/resetting of loans in terms of Regulation 71 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensee shall be computed as the product of total quantum of loan availed and difference of weighted average rate of interest on actual loans to be computed separately for Capex loans, Working Capital loans & Revenue Gap loans versus margin of 2.00% plus (+) SBI MCLR as on 1st April of the respective year.

BYPL & BRPL

b) The incentive should be in the ratio of 1:2 between the consumer and Distribution Licensee to encourage Distribution Licensee to improve efficiency. It will result in win-win situation for both Consumer and Distribution Licensee.

Commission's View

a) The Commission has already considered the suggestion of the stakeholders and has indicated the methodology for incentive due to re-financing of loan as the product of total quantum of loan availed and difference of weighted average rate of interest on actual loans versus margin of 2.00% plus (+) SBI MCLR as follows:

"31. INCENTIVE SHARING MECHANISM FOR RE-FINANCING OF LOAN

(1) The incentive due to lower rate of interest on account of re-financing of loan in terms of Regulation 71 of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 from FY 2020-21 to FY 2022-23 of the Distribution Licensee shall be computed as the product of total quantum of loan availed and difference of weighted average rate of interest on actual loans versus margin of 2.00% plus (+) SBI MCLR.

(2) The incentive on account of re-financing of loan computed as per sub clause (1) above shall be shared equally between the Consumers and the Distribution Licensee."

b) It is to submit that the optimization of costs is essential for the business and that the same needs to be driven primarily by the Licensee. Accordingly, the sharing ratio of 1:1 in case of savings in cost due to refinancing/re-structuring of loans is reasonable. The Commission has, therefore not modified this provision of the Draft DERC (Business Plan) Regulations, 2019.