

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 82 of 2021**

**Case filed by Tata Power Company-Distribution seeking declaration that delay in the switchover of consumers by Adani Electricity Mumbai Ltd.-Distribution is illegal and contrary to the Commission's Order dated 12 June 2017 in Case Nos. 182 of 2014 and 40 of 2015 read with the Supply Code and Standard of Performance Regulations**

Tata Power Company Ltd.- Distribution

.....Petitioner

V/s

Adani Electricity Mumbai Ltd.- Distribution

..... Respondent

**Appearance:**

For Tata Power Company Ltd.- Distribution

..... Shri Basava Prabhu Patil (Adv.)

For Adani Electricity Mumbai Ltd.- Distribution

.....Shri Sanjay Sen (Adv.)

**Coram**

**Sanjay Kumar, Chairperson**

**I. M. Bohari, Member**

**Mukesh Khullar, Member**

**ORDER**

**Dated: 7 January, 2022**

1. Tata Power Company Ltd.- Distribution (**TPC-D**) has filed its Petition on 12 July 2021 under Section 86, Section 142 and Section 146 of the Electricity Act, 2003 (**EA**) seeking declaration that delaying/ disallowing the switchover of consumers by Adani Electricity Mumbai Ltd.-Distribution is illegal and contrary to the Commission's Order dated 12 June 2017 in Case Nos. 182 of 2014 and 40 of 2015 read with the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (**Supply Code and SoP Regulations**).
2. **Petitioner's main prayers are as follows:**

- i. *Hold and declare that AEML's actions of delaying/ disallowing the switchover of consumers is illegal and contrary to this Hon'ble Commission's Order dated 12.06.2017 in Case Nos. 182 of 2014 & 40 of 2015 read with the Supply Code;*
- ii. *Hold and declare that the aforesaid conduct of AEML is punishable under Sections 142 and 146 of the Electricity Act, 2003;*
- iii. *Direct AEML that going forward, it shall carry out migration of the consumers strictly in accordance with this Hon'ble Commission's Order dated 12.06.2017 in Case Nos. 182 of 2014 & 40 of 2015 read with Supply Code in a timely and non-discriminatory manner;*
- iv. *Pending adjudication of the present proceedings, pass an ex-parte, ad-interim/ interim order directing AEML to forthwith carry out migration of pending cases (as specified in Table No. 1 hereinabove) and not later than a period of 30 days from the Order of this Hon'ble Commission;*

**3. Petitioner has stated as follows:**

- 3.1 Vide its Order in Case No. 182 of 2014, the Commission has laid down the protocol for migration of consumers in common licence area of TPC-D and AEML-D. According to which, the consumer ought to be switched over from the network of one licensee to another licensee's network in a time bound manner with necessary co-ordination among both licensees. In terms of the aforesaid Order read with the Supply Code and SoP Regulations, 2021, switchover needs to be scheduled within the 30<sup>th</sup> day of receiving a disconnection notice from the consumer.
- 3.2 Since the passing of the Order in Case No. 182 of 2014, AEML-D and TPC-D have been coordinating amongst themselves and carrying out switchovers within the stipulated timeframe. However, in the recent past, AEML has been deliberately delaying/ disallowing the switchover. This delay pertains to the period from March 2020 till date. At the moment, there is a delay in carrying out of switchover of approximately 150 consumers.
- 3.3 TPC-D, on multiple occasions, informed AEML-D of the hardship being caused to the consumers and continuing violation of the statutory framework by AEML-D. However, AEML-D has sought to brush aside the said issue under the alleged reason of manpower constraints.
- 3.4 This illegal conduct of AEML-D during the period of March to October 2020 was intimated by TPC-D to the Commission vide its letter dated 5 September 2020, after which AEML-D immediately undertook to facilitate the pending migration of consumers with effect from 3 October 2020. For the period between October 2020 and 9 May 2021, AEML-D cooperated and adhered to the prescribed statutory framework. However, post 9 May 2021, AEML-D has once again gone back to its illegal practice of denying/ delaying switchover.

**AEML's actions of delaying/ denying switchovers is contrary to the governing framework regarding switchover of consumers as also to its duties as a responsible distribution licensee**

- 3.5 On 21 March 2020, AEML-D wrote to TPC-D stating that all commercial switch over activities will be stopped immediately until further notice. Therefore, all switchovers were stopped. On 26 March 2020, the Commission in light of the then Covid 19 situation, issued a Practice Direction stating that distribution licensees may suspend other non-essential services which require visiting consumer premises i.e. meter reading, billing, offline bill collection at bill payment centers, release of new connections etc. However, such relaxation in obligations of the distribution licensees was only until Government's Order imposing restrictions on account of COVID-19 was in force.
- 3.6 The activities relating to supply of electricity have been exempted from Covid-19 restrictions. Hence, there is no bar on AEML-D to carry out switchover activities. In any case, unlocking of restrictions began on 29 June 2020 whereby once again all activities of distribution licensees were not restricted in any manner except the areas which were declared as containment zone.
- 3.7 However, under the shelter of the Commission's Practice Direction, AEML-D refused to carry out any switchovers until 3 October 2020. TPC-D had written to the Commission on 5 September 2020. After TPC-D's letter to the Commission, AEML-D finally relented and stated that consumer migration may resume from 3 October 2020. However, even afterwards and continuing to this date, AEML-D time and again has refused to carry out switchovers on various grounds such as unavailability of manpower etc. There is no regulatory exception given to distribution licensees to not honour consumers' choice on such ground. Hence, AEML-D has failed in its duties as a responsible distribution licensee.
- 3.8 Various affected consumers have also written to the Commission highlighting their grievances about financial losses on account of AEML-D's refusal to effect switchovers.
- 3.9 No Orders/ Notifications qua restrictions on account of Covid-19 outbreak imposed restrictions on activities of a distribution licensee for supply of electricity.
- 3.10 It is the obligation of a distribution licensee to ensure that it is sufficiently capable in all respects including manpower to carry out their obligations. Thus, AEML-D's conduct is in breach of its licence conditions and the Commission's General Conditions of Distribution Licence Regulations, 2006 which provides that the Distribution Licensee shall comply with the provisions of the EA, Rules, Regulations including the Supply Code and SoP Regulations. Thus, AEML's contumacious conduct is also punishable under Sections 142 and 146 of the EA.

**AEML's conduct of delaying/ denying switchovers is discriminatory, arbitrary and causes heavy prejudice to consumers seeking switchover**

- 3.11 In the same period when AEML-D has been denying switchover, AEML-D has been carrying out all other onsite activities such as changeover/ reverse changeover/ joint meter readings/ disconnections etc. AEML-D is continuing to take on consumers by way of changeover from TPC-D while refusing to switchover from AEML-D to TPC-D. In certain situations, AEML-D chooses to carry out switchovers of only residential

consumers and no other consumers including commercial and industrial. Thus, AEML-D is discriminating amongst consumers by providing switchover services to some consumers while denying other consumers.

- 3.12 While AEML-D itself represented to the Commission vide letter dated 21 March 2020 that it would restrict activities for new connections etc. and has sought to deny switchover of consumers, AEML-D itself has added multiple new connections over time. AEML-D's own report to the Commission qua new connections added during the period of April 2021 is submitted along with the Petition.
- 3.13 TPC-D has been communicating through numerous emails for scheduling of pending switchover applications, however, in response, AEML-D has been expressing difficulties in scheduling the switchovers citing the limited availability of manpower and rail travel restrictions. TPC-D had offered its support to AEML-D on the issue of limited manpower availability, however AEML-D refused to accept TPC-D's support stating that as per their policy, the network related activity cannot be outsourced.
- 3.14 The said conduct reeks of being anti-consumer and discriminatory in as much as AEML-D is doing all activities except those which it perceives not to be beneficial to it. It is evident from the emails of the consumers that the consumers are being put to heavy financial burden on this account and are thus facing prejudice due to AEML-D's selective implementation of the switchover protocol.

4. **AEML-D, vide its reply dated 10 August 2021, stated as follows:**

***The present petition is not maintainable***

- 4.1 The Commission had issued practice directions dated 26 March 2020, wherein it was inter-alia directed that the Distribution Licensees may suspend the "non-essential" services, including release of new connections. The aforesaid practice directions are in the nature of a delegated legislation by the Commission, and therefore, there cannot be any violation when AEML-D has been carrying out its functions strictly in accordance with the aforesaid directions.
- 4.2 The aforesaid practice directions are still in force, as the Commission has not issued any further order(s) qua relaxation of the said directions. Further, the nature of these practice directions is such that the restrictions are to be modulated based on the current status of the pandemic and any restrictions imposed by the Government.
- 4.3 There is no violation of timelines prescribed under the Order in Case No. 182 of 2014 as the said timelines stand suspended on account of the above practice directions.
- 4.4 The aforesaid Practice Directions permitted the Distribution Licensees to suspend non-essential activities, requiring public interface till such time the Government's Order imposing restrictions is in force. The Government of Maharashtra (**GoM**) issued three "Unlock" guidelines from July 2020 till September 2020, which allowed gradual opening up of various sectors, while maintaining the requirement of social distancing. TPC-D's submission appears to imply that since July 2020 onwards, Distribution Licensee's activities should have resumed without any embargo. However, the overall general requirement in all sectors, including essential ones, was one of minimizing

public interface and maintaining social distancing, through suspension of non-essential activities. Even TPC-D realized that the abovementioned Practice Directions continued to be in force even during the period of “unlocking” and it is for this reason that TPC-D in its letter dated 5 September 2020 requested the Commission to relax the Practice Directions to allow release of power supply to the consumers including switchover and changeover. However, the Commission did not modify or withdraw the practice directions keeping in mind the lurking nature of the pandemic.

- 4.5 AEML-D was only following the spirit of the directions from both the Government and the Commission and accordingly, it decided to temporarily suspend switchover activities. This was also necessitated by the fact that AEML-D’s own manpower, which carries out switchover was significantly impacted by COVID, both directly and indirectly and AEML-D, therefore, was forced to make do with limited manpower, thereby carrying on with essential activities only, during such period. Further, subsequent to Unlock 5.0 announced by the GoM in October 2020, AEML-D resumed these activities as the threat of COVID, had been continuously waning, thereby allowing AEML-D to gradually resume normal business operations.
- 4.6 The Commission’s Order in Case No. 182 of 2014 has been in operation for the past four years and continuing till date. Except under extraordinary circumstances (like the present pandemic), AEML-D has efficiently coordinated with TPC-D to carry out switchover of consumers, within the timeframe which has been admitted by TPC-D. TPC-D has categorically stated that such alleged delay has happened from March 2020. It is admitted fact that due to ongoing pandemic started from March 2020, there have been various restrictions in order to curb the spread of Covid-19 in the country.
- 4.7 TPC-D, in the instant Petition, has covered the entire period from the onset of first wave of COVID pandemic in March 2020 and thereafter the onset of second wave in April / May 2021. AEML-D has broken up the period into the respective blocks and explained the situation, for better appreciation of the facts by the Commission, in the following manner:

Particulars	Lockdown	Gradual restoration of normalcy			Normal operations	Lockdown / Significant second wave impact	Gradual restoration of normalcy
	March to June 2020	July 2020	Aug 2020	Sept 2020	Oct 2020 to March 2021	April to May 2021	June 2021 till date
Pending S/o applications at beginning of month/period	36	36	36	36	71	29	39
Switchover scheduling request Received from TPC-D	0	0	0	35	990	125	222

Switchover applications executed during period / month	0	0	0	0	961	86	134
Closing no. of S/o applications at end of period / month	36	36	36	71	29*	39*	88

***\*23 and 6 cases are such cases where switchover could not be executed due to delay / cancellation by TPC / customer / Arrears***

- 4.8 Thus, during the first four months (March to June, 2020), on account of the ongoing pandemic, the GoM as well as the Commission directed that the utilities need only to perform basic essential activities to ensure continuity of supply and all other operations were required to be suspended, including release of new connections. As per the practice directions, switchover and changeover are not essential activities as the concerned consumer is already connected to a utility's network and receiving supply and hence there is no issue of discontinuity in supply. Accordingly, switchover and changeover activities were suspended by both AEML-D and TPC-D.
- 4.9 Thereafter, during the subsequent period from July 2020 till September 2020, there was a gradual restoration of normalcy. However, even after July 2020, a significant number of covid cases were being reported on a daily basis, and most business operations continued to remain under lockdown. The actual restoration of normal operations was slow to start, due to shortage of manpower and the continuing threat of COVID.
- 4.10 The availability of manpower was not only stressed due to a large number of COVID positive cases among the concerned employees and their families, but also due to unavailability of local trains for movement, which remained unavailable till long after the said "unlocking" began. Further, while AEML-D can make use of outsourced manpower for carrying out changeover, reverse changeover, disconnections, etc., Switchover is a different activity, which requires own manpower only, because it involves permanent changes to AEML-D's network, which could impact other connected consumers also. Therefore, switchover activities were only gradually resumed in consonance with the availability of AEML-D's manpower.
- 4.11 Subsequently, AEML-D resumed switchover activities normally from October 2020 onwards, when its manpower availability was largely restored and the threat of COVID had waned considerably. In fact, even during the period of "unlock" as directed by the GoM, there still existed certain restrictions which were necessary to be followed. As such, a discretion has been granted to the Distribution Licensees to modulate the restrictions imposed in the practice directions by using prudence. The imposition of unlock by the government did not any manner mean that either the threat of COVID-19 ceased to exist, or the practice directions ceased to operate.
- 4.12 AEML-D has adhered to switch over protocols as per the Order in Case No. 182 of

2014 in spite of the timelines qua such protocol being not applicable on account of the above practice directions.

- 4.13 TPC-D has alleged that conduct of AEML-D during the period of March to October 2020 was intimated to the Commission vide its letter dated 5 September 2020. However, AEML-D did not receive any scheduling request from TPC-D for switchover from March 2020 till August 2020. Thus, from June 2020 onwards, TPC-D itself scheduled only 35 applications and all of them were considered in September 2020.
- 4.14 Further, normal business operations resumed, and switchover activities were normally scheduled in coordination between the two licensees from October 2020 till about March 2021 when the COVID second wave struck. TPC-D itself has not raised any grievance regarding this particular period in its Petition. The same goes on to show that the handling of switchover applications by AEML-D has been a function of how the COVID pandemic has behaved.
- 4.15 Further second wave of COVID impacted heavily towards the end of March 2021 and during the period March 2021 till the end of May 2021, AEML-D's frontline workforce which executes switchover, had 330 number of COVID positive cases, which is about 50% of the total such workforce. With such a significant impact, the operations of the business were affected. Further, the practice directions dated 26 March 2020 were in force and the GoM had initiated lockdown in the State from 13 April 2021, thereby imposing restrictions on the movement of people. However, despite the second wave, AEML-D, coordinated with TPC-D and AEML-D executed 94 switchover applications.
- 4.16 Further, AEML-D has already scheduled and executed 104 Switchover cases for residential consumers in the months of June 2021 and July 2021 (so far). Thus, AEML-D has not deliberately withheld switchover.
- 4.17 The Supply Code and SoP Regulations, 2021 and the ones preceding it have consistently exempted Distribution Licensees from performance of their obligations as a result of Force Majeure and other uncontrollable circumstances. The COVID pandemic was a factor that could not be controlled by the Distribution Licensees. Hence, there cannot be any question of violation of any orders by AEML-D, in the light of the practice directions dated 26 March 2020 issued by the Commission.

***TPC-D has no right to be heard as it is itself in express violation of the relevant judgments/ orders***

- 4.18 TPC-D itself has violated the judgment dated 28 November 2014 passed by the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal Nos. 229 & 246 of 2012, and the Order in Case No. 182 of 2014. The Hon'ble ATE in its aforesaid Order had stated that it was necessary to ensure that no undue commercial advantage was gained by TPC-D by selectively laying down network to cater to only high-end consumers. Keeping in mind the intent of the above Judgment, the Commission had passed the Order in Case No. 182 of 2014 which also emphasized the issue that there should not be a selective approach in laying down network, with the intention that there should not be any cherry picking of consumers.
- 4.19 Further, in its Order dated 30 March 2020 in Case No. 326 of 2019, the Commission

has observed that it had approved the distribution loss trajectory of 1.02% for FY 2017-18 and FY 2018-19 considering the projected increase in the LT distribution network by TPC-D and lower HT:LT ratio. However, TPC-D had not expanded the LT distribution network as anticipated. The Commission expressed its concerns about the inaction on the part of TPC-D especially with regard to not extending their LT network and directed TPC-D to submit, within three months, the available/planned LT network, especially in the vicinity of areas they are supplying HT consumers. Thus, the Commission was not convinced qua the conduct of TPC-D in laying down the network selectively.

- 4.20 There are no switchover applications whatsoever, from consumers to switchover to TPC-D network in the slum areas and all the switch over applications have been from non-slum areas. Thus, TPC-D has been selective in its approach towards laying down of network. Hence, TPC-D itself is in violation of the Order in Case No. 182 of 2014 and hence it cannot then file the present Petition alleging violation by AEML-D. As held by the Hon'ble Supreme Court in *Prestige Lights Ltd. v. SBI*, a party cannot ask for any relief unless it purges its own contempt. Hence, the present Petition filed by TPC-D deserves to be rejected with costs.

***TPC-D itself has erred in scheduling the switch-over applications***

- 4.21 TPC-D itself has failed in scheduling the switchover applications within the stipulated time frame. There are a large number of pending switchover cases where the application for switchover / disconnection has been received from TPC-D way back, and the said cases are yet to be scheduled by TPC-D itself.
- 4.22 TPC-D, has itself been sitting on 321 applications for switchover, where even after the consumer giving disconnection notice, the switchover has not been scheduled by TPC-D.
- 4.23 Out of the above applications, over 110 applications have been received in the months of May 2021 and June 2021 which are pending. Thus, TPC-D itself had issues with scheduling switchovers in the pandemic times (possibly for reasons due to its own manpower, new connection/line laying operations hampered due to pandemic etc.), while they expect AEML-D personnel to be promptly present as and when decreed by TPC-D to carry out disconnection of the consumer, not displaying any appreciation for similar situation of manpower crunch that AEML-D was facing as a result of the pandemic.
- 4.24 Further, TPC-D creates all sorts of issues to prevent consumers' switchover. In the past few months, two customers (Adani Inspire building, BKC) have sought to switchover from TPC-D's to AEML-D. However, TPC-D rejected the switchover application as last electricity bill (not due) was not paid. Same treatment was given to Mumbai International Airport Ltd.
- 4.25 TPC-D has alleged that around 149 consumers applications have not been processed. However, the said figure is wrong as AEML-D, out of the said 149 applications, has already scheduled 75 applications since 9 June 2021 when the operations of AEML-D resumed. The remaining applications and the ones being received afterwards are being



gradually processed, as manpower situation is improving.

- 4.26 AEML-D has never refused to process the application, and the same was only put on hold due to the ongoing pandemic.
- 4.27 The function of change-over and switch-over is exempted, as per the extant Regulations, from performing the obligations if there are uncontrollable situations preventing the same. Also, unlike repairs and maintenance and also new connection (where the consumer is without power supply), which are essential functions to ensure provision or continuity of power supply, change-over and switch-over do not fall under the same category, as the concerned consumer is already connected to the network of one Licensee and is receiving supply.
- 4.28 During COVID second wave starting April 2021, AEML-D initially executed switchover applications as scheduled by TPC-D and a total of 94 applications were executed during the month of April 2021. Finally, due to significant manpower crunch and the need to ensure minimal impact of COVID on the health and welfare of its frontline workforce, AEML-D was forced to suspend switchover activity during the month of May 2021. Thereafter, from the month of June 2021, as the COVID second wave waned and the manpower situation gradually improved, AEML-D re-initiated switchover.
- 4.29 AEML-D is carrying out switchover as per available manpower and gradually all pending switchover applications shall be processed as per scheduling by TPC-D. There is no deliberate attempt to delay switchover.
- 4.30 With respect to the TPC-D's allegation that AEML-D has been releasing its own connections even after 21 March 2020, the data of release of new connections by AEML-D at Levels 1 and 2, collated from the Reports submitted to the Commission, demonstrates the massive dip in new connections released after February 2020. The same gradually started picking up from August 2020 (though still much lower than business as usual figures) and from October 2020, it was back to normal level.
- 4.31 Hence, there is no merit in the allegations raised by TPC-D and the entire Petition of TPC-D is devoid of any merit and deserves to be rejected by the Commission with costs.

**5. TPC-D, in its rejoinder dated 12 August 2021, stated as follows:**

- 5.1 TPC is filing its preliminary rejoinder with a liberty to file detailed rejoinder subsequently. AEML-D has raised baseless allegations against TPC-D, such as no switchover being carried out in slums and that TPC-D creating hurdles in carrying out switchover from TPC-D to AEML-D. If AEML-D is aggrieved by TPC-D's conduct, it is at liberty to file a Petition against TPC-D. AEML-D ought not be permitted to enhance the scope of the present lis by seeking reliefs against TPC-D. Hence, aforesaid issue ought not be considered while adjudicating the present lis.
- 5.2 To justify the said delay, AEML-D is attempting to take shelter of the Commission's Practice Direction dated 26 March 2020 by selectively reading the said practice direction. However, the last sentence of the practice direction states that "...This

*Practice Direction shall remain in vogue till such time the Government's Order imposing restrictions on account of COVID-19 is in force...*

- 5.3 Thus, such relaxations were only qua situations where a distribution licensee was restricted from carrying out its obligations by Government Orders on account of Covid-19. There were never any restrictions qua a distribution licensee's functioning throughout the outbreak of Covid-19. In any case, it is only switchovers which have been stopped by AEML-D on account of the pandemic, whereas it continues to carry out all other onsite activities without being affected by the pandemic. The peak of the 2<sup>nd</sup> wave of Covid-19 was in April, 2021 when AEML continued to carry out switchovers. It was only subsequent to 9 May 2021 that AEML-D started claiming manpower shortages on account of Covid-19, even while continuing to carry out all other onsite activities.
- 5.4 In fact, from the time of filing the Petition on 12 July 2021 to date, AEML-D once again resumed carrying out switchovers selectively and has implemented 191 cases despite the Commission's Practice Direction being in force and with the same Government restrictions in force from 9 May 2021 to 12 July 2021.
- 5.5 On 2 August 2021, AEML-D once again declined to carry out switchovers citing manpower issues on account of outbreak of Covid-19.
- 5.6 While AEML-D has refused/ delayed in carrying out switchover in the garb of COVID, AEML-D has been engaging in all other onsite activities except switchover which is evident from SOP Reports submitted by AEML-D to the Commission for the period April 2021- June 2021. These reports show that during this time, AEML-D has effected almost 11,473 new connections. It has effected meter reading of 74,50,056 cases, and it has resolved 19,258 billing complaints. In all these cases, there is a requirement of consumer interface. It is thus unclear as to how AEML-D singles out not carrying out switchover cases but faces no manpower shortage/ risk qua such the other above activities. Further, during the period in question, AEML-D has carried out almost 2000 cases of changeovers from AEML-D to TPC-D, almost 710 cases of reverse changeovers but only 177 cases of switchovers until end of July 2021.
- 5.7 AEML-D has claimed that switchovers are being restricted due to the supposed required consumer interface. However, switchovers require the same amount or lesser interface with consumers as opposed to changeovers. This shows that AEML-D is not interested in carrying out switchovers in a timely manner for reasons best known to it.
- 5.8 Moreover, AEML-D has been engaged in selectively carrying out switchover of consumers. This is evident from the fact that out of 149 pending switchover applications as on the date of filing of the Petition, 44 applications have been completed by AEML and all these applications pertain only to residential category. Also, during the period between 10 July 2021 to 10 August 2021, 133 new switchover applications were sent to AEML. Out of 133 applications, 87 applications pertaining to residential category of consumers have been processed. The selective switchovers by AEML-D is also evident from the fact that it has switched over limited number of consumers in the same society.
- 5.9 As regards AEML-D's submission that Regulation 26 of the Supply Code Regulations

excuses it from its obligations as a distribution licensee on account of a force majeure event or other uncontrollable occurrences, it is noteworthy that every other activity apart from switchovers are being carried out by AEML-D with no hindrance from any supposed uncontrollable occurrence. The uncontrollable occurrence as claimed by AEML-D should have prevented all activities or none at all. AEML-D cannot selectively be using the excuse of outbreak of Covid-19 for only switchover cases. In any case, no government entity ever placed a restriction on the activities of distribution licensee during the entire period of outbreak of the pandemic. AEML-D was not stopped in any manner from carrying out its duties as a distribution licensee.

- 5.10 Thus, AEML -D is presenting a vague reason of outbreak of Covid-19 as a mere fig leaf to disguise its conduct of not carrying out switchovers in a timely manner. Hence, TPC-D prays that the Commission be pleased to grant the reliefs as prayed for by TPC in consumer interest.

**6. At the E-hearing dated 13 August 2021 held through video conferencing:**

- 6.1 The Parties re-iterated their respective submissions as made out in their Petition/replies. TPC-D stated that it would not be pressing the non-compliance action if AEML-D finishes the pending switchovers within two weeks. After hearing the Parties, the Commission closed the case for Orders and directed the Parties to file their respective written submissions within seven days.

**7. AEML-D, in its written submission dated 23 August 2021, stated as under:**

- 7.1 TPC-D has alleged that a total of 149 switchover applications are pending with AEML-D from June 2021 till the date of filing of the petition. Out of the 149 applications, only 28 were remaining as on the date of hearing. The said remaining applications will be processed in due course, keeping in mind the existing pandemic situation.
- 7.2 With the practice directions, the Distribution Licensees are allowed to suspend “non-essential” services (not directly linked to maintaining continuity of power supply) which require visiting premises of consumers or meeting consumer in person, and specifically included “release of new connections” by the Distribution Licensees. Scheduling of switch over applications is part of the activity of release of new connections and requires physical presence of personnel and interaction of utility personnel with consumers, which obligation stands suspended on account of the above practice directions.
- 7.3 No case is made out qua non-compliance of any orders by AEML-D. This is also evident from the explicit oral submissions made by TPC-D during the hearing held on 13 August 2021, wherein it was stated that it was not pressing for a direction under Sections 142 and 146 of the EA. After the aforesaid submission of TPC-D, nothing survives in the present Petition to be decided on merits or otherwise.
- 7.4 The allegations made by TPC in its Petition appears to imply that since July 2020 onwards, Distribution Licensee’s activities should have resumed without any embargo, which is not true as COVID first wave was still in full force, the restrictions imposed by the Government were in place, and Practice Directions of the Commission continued to apply.

- 7.5 Hence, the present Petition is not at all maintainable and deserves to be rejected as there can be no non-compliance when the practice directions dated 26 March 2020 are in existence. Furthermore, all pending switchover applications will be processed in due course, as soon as it is practical.
8. Subsequently, TPC-D, on 27 August 2021 filed a precipe requesting to list the matter for hearing with a contention that AEML-D was continuing its non-compliances in switchover activities. TPC-D also sought to file an additional affidavit. Based on TPC-D's request, the matter was scheduled for further hearing.
9. **On 1 September 2021, TPC-D filed its additional affidavit and stated as follows:**
- 9.1 During the hearing dated 13 August 2021, TPC-D submitted that, by 10 August 2021, AEML-D had carried out 105 switchovers out of 149 switchovers. It was clarified that, TPC-D wants to put a quietus to the present dispute provided that going forward switchovers are carried out in timely manner. In this context, TPC-D stated that it will not seek invocation of Sections 142 and 146 of the EA, only if all the pending switchovers are forthwith carried out by AEML-D. AEML-D submitted that they had already carried out a substantial number of switchovers and shall carry out all the remaining switchovers at the earliest. Pursuant to these submissions, the Commission reserved the matter for Orders.
- 9.2 Contrary to the assurance given, AEML-D has yet again failed to carry out the pending switchovers and to facilitate new switchover requests. Any switchovers carried out pursuant to hearing dated 13 August 2021 was also carried out at AEML-D's whims and fancies. As a result of the same, TPC-D is constrained to file the present Additional Affidavit, placing on record details of AEML-D's conduct of delaying/ denying switchovers
- 9.3 AEML-D is still engaging in the same behavior as before. After 13 August 2021, 153 additional consumers became eligible for switchover. Out of such 153 cases, 42 cases were completed, and 111 cases remained pending. These 111 cases along with 37 still pending cases from before 13 August 2021 bring the total number of delayed and pending cases as on 30 August 2021 to 148. As regards the aforementioned 148 cases, the relevant factual details are as under:
- From the last date of hearing (13 August 2021) till 30 August 2021, TPC-D has scheduled switchovers for these consumers on 15 occasions, out of which AEML-D has rejected the scheduled switchovers on 11 occasions. Out of such 11 occasions, AEML-D has not even bothered to respond to TPC-D's scheduling requests on as many as 6 occasions
  - During the same period, almost all changeovers/ reverse changeovers have been accepted/ scheduled by AEML-D. These activities require similar consumer interface/ manpower. TPC-D has always accepted any migration that AEML-D had scheduled during this time.
  - Since the hearing dated 13 August 2021, AEML-D has only carried out a limited number of switchovers selectively on 4 days (37 cases), whilst rejecting all other scheduled switchovers during last three weeks. This is despite majority of Covid-19

restrictions being removed and local trains resuming almost normal operations.

- 9.4 Out of 149 delayed switchover cases flagged by TPC-D at the time of filing of the Petition, 37 are still pending and newer delayed cases are continuously increasing. Some of such cases have been scheduled for, as many as 42 times by TPC-D and yet such consumers have not been switched over. All of the pending cases are at least delayed by more than 30 days beyond the stipulated timeline, with many averaging above approximately 60 days.
- 9.5 Several consumers have complained to AEML-D/ the Commission regarding AEML-D's conduct on account of pending switchovers. Despite the same, AEML-D has failed to carry out their switchovers. Even the consumers who have complained to AEML-D/ the Commission have been denied switchover – with delays touching 111 days after deadline, despite having been scheduled 24 times.
- 9.6 AEML-D has carried out switchovers arbitrarily and as per its whims and fancies. In some cases where switchover requests have been made for an entire society, only a few consumers were switched over while switchover for the majority of consumers was denied by AEML-D. Out of 5 housing societies for which switchover requests have been made (77 consumers in total), only approx. 37% of such cases have been carried out by AEML, while no reason has been given for denying switchovers of remaining 63% of the consumers who are situated in the same premises.
- 9.7 It is unclear as to how AEML-D is prioritizing one 'non-essential' activity over other activities. No orders have been passed by the Commission directing AEML-D to prioritize one service over the other. In view of the above, TPC prays that the Commission impose penalty on AEML-D in terms of Section 142 and 146 of the EA.
- 9.8 While AEML-D has submitted that TPC-D has stated that it was not pressing for action under Sections 142 and 146 of the EA, it failed to appreciate that such a statement came about only on AEML's own submission to the Commission that it has completed most pending switchovers and will carry out new switchovers in a timely manner.
- 9.9 AEML-D is not entitled to protection of the Commission's Practice Direction dated 26 March 2020 in light of its own conduct. AEML-D has made several misleading statements in its Submissions dated 23 August 2021. TPC-D is providing the factual position. AEML has claimed that out of 149 applications mentioned in the Petition, only 28 are remaining as on 13 August 2021. Out of 149 pending cases mentioned in the Petition, 1 has been cancelled and 37 are still pending. AEML-D has claimed that no consumer has approached the Commission alleging non-processing of switchover applications. TPC-D submits that several consumers have written to the Commission flagging AEML-D's conduct.
- 9.10 AEML-D claimed that TPC-D did not schedule switchovers from March 2020 to August 2020. However, TPC-D had scheduled switchovers from March 2020 to August 2020. In fact, once AEML-D resumed switchovers in October 2020, AEML had requested for the dates of these applications to be revised.
- 9.11 Hence, the Commission is requested to grant the reliefs as prayed as also pass a direction to AEML-D to complete all pending switchover cases in a non-discriminatory

manner as soon as possible but no later than 10 days. The Commission is requested to list the present matter for hearing at the earliest.

**10. On 6 October 2021, AEML-D filed its reply to the additional affidavit of TPC-D and stated as follows:**

- 10.1 The Commission granted reasonable opportunity to TPC-D to present its case, and also gave liberty to file written submissions after the matter was reserved for final orders on 13 August 2021. However, TPC-D not only defied the orders of the Commission by not filing the written submissions but has also abused the process of law by filing such affidavit. Hence, the affidavit dated 31 August 2021 filed by TPC-D, ought to be not taken on record.
- 10.2 As on date, out of 149 pending applications referred by TPC-D, only 18 applications are left, which would be processed in due course. Hence, there is no question of any violation of the aforesaid Order by AEML-D.
- 10.3 The ongoing pandemic situation is not getting better in the city of Mumbai, rather, the same is getting even worse. In fact, the Hon'ble Mayor of Mumbai on 7 September 2021 issued a press release thereby stating that the third wave of COVID-19 has hit the city. Hence, TPC-D cannot at all make submissions without taking into consideration the dire situation of the city qua the on-going COVID-19 pandemic.
- 10.4 TPC-D itself made oral submissions before the Commission on 13 August 2021, that it does not wish to press for any initiation of proceedings under Sections 142 and 146 of the EA. This submission of TPC-D was not qualified with any condition or riders. Furthermore, based on the aforesaid oral submission of TPC-D, AEML-D submitted that it does not wish to go into the details or merits as to how the present Petition is not maintainable. TPC-D is abusing the process of law, by filing the aforesaid Affidavit dated 31 August 2021 wherein it is seeking to press its Petition for orders under Section 142 and 146, which cannot be permitted, contrary to its own oral submissions.
- 10.5 In the original Petition, the subject matter pertained to only 149 cases. However, vide the additional affidavit, TPC-D is trying to increase the scope of the Petition by alleging and bringing in additional cases in the realm of the present Petition, which cannot at all be allowed by the Commission. TPC-D, by way of the additional affidavit, cannot enlarge the scope of the petition. Therefore, in view of the above, there is no merit in the affidavit dated 31 August 2021 filed by TPC-D.
- 10.6 When the matter was reserved for final orders, the total pending switchover applications out of the aforesaid 149 applications, was 28. At present, the total number of applications has further come down to 18. It is clear that AEML-D is processing the switchover applications, as and when it is practicable and feasible, despite the fact that the practice directions dated 26 March 2020 issued by the Commission are still in force.
- 10.7 TPC-D has been repeatedly scheduling the same switchover cases on daily basis, which could not be scheduled by AEML-D on account of non-availability of enough manpower due to the ongoing COVID-19 pandemic. TPC-D cannot deny the threat

which is imposed by the pandemic and every corporate entity has to conduct its business, keeping in mind the safety of its employees, and the impending third wave which is already prevalent in southern India and which has already hit the shores of Mumbai.

- 10.8 In order to carry out the works efficiently, AEML-D is accumulating the switchover cases and executing the same once a week, so that the only priority for all the available manpower at AEML-D's disposal, is to schedule switchovers on that particular day. None of the other works are carried out by AEML on the day when switchover applications are processed.
- 10.9 The covid-19 cases are rising in Mumbai, and that Mumbai reported 496 number of cases on 5 September 2021, which is a 52-day high. Hence, the Affidavit dated 31 August 2021 filed by TPC-D is inhumane.
- 10.10 The averments made by TPC-D qua the number of changeover applications scheduled by AEML-D, as compared to the number of switchover applications, is completely baseless and without taking into account the technical, as well as the practical difference between the aforesaid protocols. AEML-D submits that manpower requirement towards changeover protocol is totally different as compared to the manpower requirement under the switchover protocol. Further, the changeover protocol is not so complex as in the case of switchover. Scheduling of switchover requires technical functions such as meter reading, disconnection of service line, and various other technical requirements, etc., In fact, the said process of switchover is much longer as compared to that of changeover. Further, specialized manpower is also required for carrying out switchovers. As such, there cannot at all be a comparison between the aforesaid two protocols which are completely different and distinct. Hence, there is no merit in the averment of TPC-D and the same deserves to be rejected by the Commission.
- 10.11 TPC-D has mentioned that AEML-D has carried out 228 switchovers (from 9 May 2021 to 30 August 2021), when the correct figure is 256. The Commission has already reserved the matter for final orders. In fact, TPC-D was given a chance to file its written submissions, which it deliberately failed to do. Hence, the Commission is requested to not take the affidavit dated 31 August 2021 on record, and reject the present Petition filed by TPC-D, with exemplary costs.
- 11 **At the E-hearing dated 30 November 2021 held through video conferencing:**
- 11.1 The Advocate appearing on behalf of TPC-D reiterated its submission as made out in the Petition and the additional affidavit and further stated that:
- i. The present Petition was filed on 12 July 2021 and 149 cases for switchover were pending due to delay on part of AEML-D. The matter was heard on 13 August 2021. At the hearing, AEML-D stated that 105 cases have been completed. TPC-D also stated that it was not keen on contempt directions and was only interested in ensuring timely switchovers by AEML-D. At the hearing dated 13 August 2021, the matter was closed for Orders. However, AEML-D continued its non-

compliance of delaying/denying switchover activities. Hence TPC-D was constrained to file additional affidavit to bring this non-compliance on record.

- ii. AEML-D has taken shelter of the Practice directions of the Commission for its non-compliance, however, other activities are being undertaken by AEML-D without any hindrance.
- iii. AEML-D has filed its replies on the additional affidavit filed by TPC-D. In its reply, AEML-D has not denied the delay on its part and has only cited the perceived threat of third wave of Covid 19.

11.2 The Advocate appearing on behalf of AEML-D stated that:

- i. In its Petition, TPC-D has admitted that in past, AEML-D had been carrying out switchovers within stipulated timeframe. However, the delay has been in only recent times when the COVID pandemic began since March 2020.
- ii. At the time of filing of present Petition, 149 cases were pending, however despite Covid 19 related difficulties, all these 149 cases have been completed as on date.
- iii. Out of these 149 cases, 17 cases were kept on hold as AEML-D had apprehension about eligibility of these cases. Accordingly, prior to scheduling these 17 cases, AEML-D sought certain details from TPC-D to clarify the doubts regarding eligibility of these cases since as per AEML-D's information, TPC-D did not have its distribution mains for releasing service lines, however, TPC-D denied to provide the details stating that the Order dated 12 June 2017 in Case No. 182 of 2014 does not require TPC-D to provide these details to AEML-D. Subsequently, these cases have been unilaterally switched over to TPC-D without scheduling of these cases by AEML-D.
- iv. AEML-D has filed a separate case (Case No. 135 of 2021) on the issue of such illegal switchovers undertaken by TPC-D detailing the violation of Order dated 12 June 2017 and AEML-D is seeking investigation of all such illegal switchovers.
- v. TPC-D has filed its reply in Case No. 135 of 2021 claiming that it had not undertaken augmentation of its distribution mains for carrying out switchovers and it already had the distribution mains in existence much before the switchovers. However, these are false claims being made by TPC-D.
- vi. AEML-D is of the view that the switchover protocol as laid down under Case No.182 of 2014 needs to be followed by the Parties in a transparent manner and presently, there is lack of transparency among both the Parties at ground level. Hence, the Commission's intervention would be required to resolve this issue.
- vii. As far as 149 cases highlighted by TPC-D in present Petition (Case No.82 of 2021) are concerned, all switchover cases have been completed and hence nothing survives in Case No. 82 of 2021.

11.3 In response, the Advocate of TPC-D presented its notes of arguments and stated that:



- i. If there is any violation on part of TPC-D while carrying out switchovers, TPC-D will face the consequences, however, violations on part of TPC-D cannot be defence for AEML-D for his delaying/denying the switchovers.
- ii. On the date of hearing dated 13 August 2021, AEML-D had undertaken 105 switchovers, 43 cases were pending and 1 switchover was cancelled. As of now, out of original 149 cases, 17 cases are still pending. Also, new switchover cases are also to be undertaken by AEML-D.
- iii. From the date of hearing dated 13 August 2021 till 30 August 2021 (the date when TPC-D filed its additional affidavit), only 7 cases were undertaken and that too at its whims and fancies and additional 111 cases became pending. Till 25 November 2021, the pendency increased to 170 cases. AEML-D has been rejecting all switchover cases and disrespecting the mandate of Case No. 182 of 2014.
- iv. It is a settled principle of law that irrespective of intent, the defaulting Party is liable for contempt proceeding.
- v. Practice directions issued by the Commission should not be exploited by AEML-D as per its own convenience.
- vi. On account of wilful non-compliance on part of AEML-D, action should be initiated against AEML-D under Section 142 and 146 of the EA and also AEML-D should be directed to complete all pending switchover applications.

11.4 Responding to TPC-D's arguments, advocate for AEML-D stated that:

- i. TPC-D has contended that AEML-D has been carrying out other activities, however that does not take away existence of the Practice Directions issued by the Commission. TPC-D could have approached the Commission either to recall the practice directions or to seek clarification about its application on switchover requests.
- ii. There has been surge in switchover cases which is on account of the fact TPC-D has been augmenting its distribution mains so as to bring itself in a position to release connections through service lines and switchover the consumers from AEML-D's network to TPC-D's network. Hence, there is a need to carry out investigation of this illegal conduct of TPC-D. Either M-DNAC constituted under Case No. 182 of 2014 or any other separate committee should carry out the investigation.
- iii. Both these cases i.e. Case No. 135 of 2021 filed by AEML-D and present Case No. 82 of 2021 filed by TPC-D, have bearing on each other.

11.5 The Commission expressed that there were differences in the claims of both Parties about number of pending cases as on date out of original 149 cases. Also, the issues such as determining exact delay for each consumer, scope of Consumer Grievance Redressal Forum (**CGRF**) or any other Institutional Mechanism for determining such delays, verification of the ground realities etc. need to be adjudicated in the matter. In response, advocate of TPC-D stated that the Order in Case No. 182 of 2014 has already

stipulated the role of Distribution Licensees for switchover activity along with the timeframe for such activity. If any Distribution Licensee is not adhering such timeframe, it has to face contempt. If any modification is to be done in the current parallel licensing operational modalities, same need to be done under the Case No. 182 of 2014 and not through present proceeding. In response to the query raised by the Commission, the advocate of TPC-D stated that in order to ensure compliance of Commission's Order in Case No. 182 of 2014 on switchover related aspects, penal provision is the only mechanism which would be deterrent for the defaulting licensees.

**12 On 23 December 2021, AEML-D filed its additional written submission in reply to the written notes of arguments shared by TPC-D during hearing dated 30 November 2021 and stated that:**

12.1 At the end of the hearing on 30 November 2021, the Commission reserved the case for final order. During the course of the hearing, TPC-D referred to a written note dated 30 November 2021, which was not served in advance upon AEML-D. Hence, the present additional submissions were filed in order to address the submissions/ arguments put forth by TPC-D in the aforesaid written note.

12.2 In the present Petition, TPC-D alleged that from March 2020 till the date of filing of the Petition (i.e., till 12 July 2021), there were allegedly 149 consumers for whom switchover requests were pending with AEML-D. Now the issue didn't remain with the requisite switchovers having been already carried out, except those where either there was cancellation or postponement of switchover requests by consumers, or there were pending arrears of the consumers which were/ are not cleared, or on account of willful default on the part of TPC-D to share requisite information as sought by AEML-D in order to ensure compliance of the Order dated 12 June 2017 passed by the Commission in Case No. 182 of 2014 (for which AEML-D had already filed a Petition, being Case No. 135 of 2021).

12.3 In aid of foregoing, a detailed break-up of the aforesaid 149 consumers is provided in the tabular form hereinbelow:

Category	Switchover done mutually	Switchover done unilaterally by TPC	Cancelled by consumer	Consumer postponed Switchover on mail	Pending		Pending due to arrears	Total	As per TPC-D's Petition
HT I – Industry			1	1				2	2
HT III - Group Housing Society (Resi)	1							1	1
LT I(B) - Residential	122						3	125	125
LT II(A) - Commercial upto 20 kW	3	5	1				2	11	11

LT II(B) - Commercial 20 to 50 kW	1	1						2	2
LT III(B) - Industrial > 20 kW		1		4	3			8	8
<b>GRAND TOTAL</b>	<b>127</b>	<b>7</b>	<b>2</b>	<b>5</b>	<b>3</b>		<b>5</b>	<b>149</b>	<b>149</b>

12.4 From the aforesaid table, the following is evident:

- i. Out of the 149 consumers, 127 consumers have been duly switched-over by AEML-D.
- ii. Further, 7 out of the aforesaid 149 consumers were unilaterally switched-over by TPC-D (as TPC-D never supplied information about compliance of Order dated 12 June 2017 passed by the Commission in Case Nos. 182 of 2014 and 40 of 2015, as sought by AEML-D).
- iii. 7 consumers out of the above 149 consumers have themselves cancelled/postponed their switchover.
- iv. 3 out of the above 149 consumers have not been switched-over, since TPC-D has not provided the requisite information sought by AEML-D about network development carried out for the purpose of switchover. Hence, in view of the various irregularities observed by AEML-D in switchover cases, it has not given consent for switchover and in these cases, TPC-D has not proceeded unilaterally, so far either. In fact, AEML-D has sent emails to TPC-D seeking for details of the said pending case, however, TPC-D has refused to provide any such details.
- v. For 5 out of the above 149 consumers, switchover is pending on account of non-clearance of their respective arrears.

12.5 Further, it is pertinent to mention herein that due to the continuous irregularities in the switchover protocol, AEML-D has filed a Petition before the Commission, being Case No. 135 of 2021, wherein it is demonstrated by way of e-mails and site photographs that TPC-D indulged in illegally switching over the consumers of AEML-D, in contravention of the Order dated 12 June 2017 passed by the Commission in Case Nos. 182 of 2014 and 40 of 2015.

12.6 Further, since April 2020 till date, AEML-D has carried out a total of 1298 switchover of consumers for which requests were received from TPC-D. Additionally, a total of 33 consumers have been unilaterally switched-over by TPC-D in an illegal manner.

12.7 AEML-D has acted in a bonafide manner thereby carrying out the switchovers and has been in compliance of the Order in Case Nos. 182 of 2014 and 40 of 2015.

12.8 It is however reiterated herein that TPC-D has been carrying out illegal switchovers by extending/ augmenting its distribution mains, thereby deliberately acting in contravention of the mandate of the aforesaid Order dated 12 June 2017. In fact, AEML-D carried out its investigation and found out various irregularities at various sites.

Accordingly, by way of documentary evidence, AEML-D has separately filed Case No. 135 of 2021 before the Commission for seeking necessary directions against TPC-D, which is pending adjudication.

- 12.9 As such, it is of utmost importance that the Commission takes into account the above-mentioned misconduct of TPC-D while deciding the present Petition. Furthermore, the Commission has to take a holistic view of the fact that AEML has processed 1298 switchovers starting from April 2020, till date. This aspect cannot at all be ignored while deciding the present Petition.
- 12.10 Even otherwise, it is submitted that there is absolutely no case made out qua any violation of the Order dated 12 June 2017 since the practice directions dated 26 March 2020 issued by the Commission are still in operation.
- 12.11 It is therefore, stated that TPC-D, in its zeal to effect switchovers, cannot lose sight of the aforesaid practice directions and the ever-evolving situation with respect to the COVID-19 pandemic. Being a responsible licensee, it is expected that TPC-D does not lean on absurdity and try and build a case based on submissions which are alien to ground realities.
- 12.12 Hence, no case is made out by TPC-D in the present Petition, and therefore, the same deserves to be rejected by the Commission.

**Commission's Analysis and Ruling:**

- 13 TPC-D has stated that vide its Order in Case No. 182 of 2014 and 40 of 2015, the Commission has laid down the protocol for migration of consumers in common licence area of TPC-D and AEML-D. According to this protocol, on a request made by a consumer, the consumer ought to be switched over from the network of one licensee to another licensee's network in a time bound manner with necessary coordination among both licensees. In terms of the aforesaid Order read with the Supply Code and SoP Regulations, switchover needs to be scheduled within the 30<sup>th</sup> day of receiving a disconnection notice from the consumer. It is the case of TPC-D that AEML-D had been delaying/disallowing the switchover of consumers from AEML-D's network to TPC-D's network beyond the stipulated period of 30 days on the ground of practice directions dated 26 March 2020 and hence TPC-D has filed present Petition seeking action against AEML-D under Section 142 and Section 146 of the EA claiming that AEML-D has violated the Commission's Order dated 12 June 2017 in Case Nos. 182 of 2014 and 40 of 2015 read with the Supply Code and SoP Regulations. TPC-D's primary grievance of delaying/disallowing switchover pertains to the period from 9 May 2021 onwards. TPC-D has also stated that AEML-D is continuing to take consumers by way of changeover from TPC-D while refusing to switchover from AEML-D to TPC-D under the guise of practice directions dated 26 March 2020. Also, AEML-D has been preferring to carry out switchovers of only residential consumers in selective manner and delaying/denying switchover of other consumers including commercial and industrial category consumers. Thus, AEML-D is discriminating amongst consumers by providing switchover services to some consumers while denying other consumers.

- 14 On the contrary, AEML-D has claimed it could not adhere to the timeframe for switchover on account of the Covid 19 related difficulties such as lack of adequate manpower during the pandemic, unavailability of local trains for movement etc. As per AEML-D, vide Practice Direction dated 26 March 2020, it was inter-alia directed that the Distribution Licensees may suspend the “non-essential” services, including release of new connections and switchover of consumers is a non-essential activity. It is also the claim of AEML-D that the aforesaid practice directions are still in force and therefore, there cannot be any violation when AEML-D has been carrying out its functions strictly in accordance with the aforesaid directions. AEML-D has also stated that switchover is a different activity, which requires own manpower only, because it involves permanent changes to AEML-D’s network, which could impact other connected consumers also. Further, from October 2020 onwards, AEML-D has resumed switchover activities as the Covid situation had improved and thus AEML-D has not deliberately withheld switchover. Also, certain switchovers have been done by TPC-D in an illegal manner and there is a need to investigate such switchovers.
- 15 In view of these key contentions, it is important to examine the stipulations of Order dated 12 June 2017 in Case No. 182 of 2014 and 40 of 2015 on the switchover aspect. Para. 5 of the Annexure C of the aforesaid Order provides the protocol for switchover of consumers. The relevant extract of the protocol reads as under:

“

***5. Protocol for Switch-over of existing consumers***

.....

***5.3. Application for Switch-over:***

....

*d. The Application for Switch-over shall be submitted by the consumer to Licensee B, along with a copy of the Application made to Licensee A for Permanent Disconnection.*

...

***5.4. Processing of Application for Switch-over:***

*a. Licensee B shall scrutinise the Switch-over Application of the consumer to determine if it is eligible for Switch-over. If the consumer is not eligible for Switch-over, Licensee B shall reject the Application, citing reasons; or shall seek, within 3 days from the receipt of the Application, any clarification or details that may be required.*

*b. The Application shall be treated as complete upon receipt of the additional information.*

*c. The Licensee B shall forward a copy of the completed Application to Licensee A within 3 days of its receipt.*

*d. Licensee A shall intimate the consumer and Licensee B details of any arrears, shortfall in Security Deposit, etc. in respect of the consumer proposing to Switch-over, within 3 days of the receipt of the Application copy from Licensee B.*

*e. The consumer shall pay the pending arrears, if any, to Licensee A within 5 days of being informed by it, under intimation to Licensee B.*

*f. Within 3 days of receipt of payment, Licensee A shall issue a provisional 'no dues' certificate to the consumer with a copy to Licensee B.*

**5.5. Process of Switch-over:**

*a. Licensee B shall inspect the premises of the consumer within the period specified in the SoP Regulations.*

*b. Licensee B shall intimate, within 3 days of receipt of the provisional 'no dues' certificate, the Security Deposit and applicable charges payable by the consumer.*

*c. Licensee B shall schedule the Switch-over in co-ordination with Licensee A, with intimation to the consumer, within 7 days from the payment of the Security Deposit and applicable charges to Licensee B, and of execution of the Agreement if applicable.*

***d. After receipt of the completed Application, the period within which Switch-over is to be effected shall be as specified in the Supply Code, the SoP Regulations and the Practice Directions of the Commission.***

16 Thus, while the Order has stipulated the timeframes for individual activities in switchover such as forwarding the copy of application to existing licensee by the new licensee, intimation of dues by existing licensee, payment of dues by the consumer etc., the Order provides that after receipt of the completed Application, the period within which switchover is to be effected shall be as specified in the Supply Code and SoP Regulations and the Practice Directions of the Commission.

17 The switchover requires disconnection by Licensee A and a new connection by Licensee B. As an existing Distribution Licensee, AEML-D's main role was to disconnect the consumer (i.e., the consumer opting for switchover to TPC-D) from AEML-D's network. The Supply Code and SoP Regulations have provided the following timeframes for responding to the disconnection requests of the consumers. The Relevant extract is given below:

***“ 7.4 A Consumer may terminate the agreement after giving a notice of Thirty (30) days to the Distribution Licensee:***

*Provided that whenever an agreement is terminated by notice given by the Consumer, the Distribution Licensee shall give a written intimation to the Consumer within Fourteen (14) days after termination failing which it shall be construed that such intimation has been given to the Consumer:*

*Provided further that the Licensee on receipt of the termination notice shall arrange for a special meter reading and prepare a final bill:*

*Provided further that disconnection shall be done immediately after payment of the final bill. The balance amount due to any consumption between the final reading and the permanent disconnection, if any, may be adjusted against the security amount with the Distribution Licensee. The remaining security deposit shall be refunded within Seven (7) days to the Consumer.”*

- 18 Thus, the Supply Code and SoP Regulations requires the disconnection to be carried out within a period of 30 days.
- 19 AEML-D has stated that it has been carrying out its functions strictly as per the aforesaid practice directions and in light of these directions, it had decided to temporarily suspend switchover activities. Hence, it is important to examine the aforesaid practice directions dated 26 March 2020 which has been issued by the Commission under the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (the then prevailing Supply Code Regulations). The relevant extract of the practice directions reads as under:

***“ Preamble:***

*The Commission is aware that all out efforts are afoot to contain the rapid spread of Coronavirus (COVID-19) epidemic in the Country including Maharashtra. The Central Government and the State Government of Maharashtra have advised people to stay indoors and maintain social distancing. To ensure strict adherence to the advisory , the Government has imposed strict restrictions on the movement of general public.*

*Electricity being essential service, is exempted from such restriction and maintenance of uninterrupted power supply needs to be ensured by the Distribution licensee.*

*However, apart from maintaining continuous electricity supply, Distribution Licensee has to perform various consumer services such as meter reading, bill distribution, bill collection, redressal of consumer grievances etc which involves public interface. Further, all these activities are required to be performed as per procedure prescribed under MERC Supply Code Regulations, 2005 and within the timeline stipulated under MERC SoP Regulations, 2014.*

*TPC-D and AEML-D have informed the Commission that in view of COVID19, they may not be able to perform certain activities/duties as mandated in the MERC Supply Code Regulations, 2005 and MERC SoP Regulations, 2014.*

***Considering the critical situation and to ensure full implementation of the Government directives to ensure social distance in order to control the spread of COVID-19 and in order to minimise public interface of Distribution Licensee’s personnel, the Commission deems it fit to provide certain relaxation in the Supply code to all the Distribution Licensees from performance of services which are not directly linked to maintaining continuity of power supply.***

**Accordingly, using its power vested under Regulation 22 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, the Commission issues following practice direction:**

***Practice Direction:***

*a. Distribution Licensee shall ensure continuity of supply. Complaints related to restoration of supply as also the safety related complaints shall continue to be attended by Distribution Licensee.*

***b. The Distribution Licensees may suspend other non-essential services which require visiting consumer premises or meeting consumer in person i.e. Meter reading, Billing, Offline Bill Collection at Bill Payment Centres, release of new connections etc.***

.....

***This Practice Direction shall remain in vogue till such time restrictions on account of COVID-19 is in force. ”***

- 20 Thus, these practice directions provided relaxations to the Distribution Licensees from performance of services which are not directly linked to maintaining continuity of power supply. It is important to note the circumstances under which these practice directions were issued. These practice directions had been issued on 26 March 2020, immediately after the nationwide lockdown was ordered by the Government of India on 24 March 2020 and directed to be implemented with effect from 25 March 2020. Although electricity services were exceptions, it was directed that these offices should work with minimum number of employees. All transport services including the rail and roadways had been suspended except for the transportation for the essential goods and other emergency services. Acknowledging various guidelines issued by the Central Government and the State Government and also considering the requests made by the Distribution Licensees, the Commission thought it necessary and appropriate to issue the above practice directions providing certain relaxation in the Supply code to all the Distribution Licensees from performance of services which were not directly linked to maintaining continuity of power supply. Though these practice directions have not been withdrawn by the Commission, it has been directed that these practice directions shall be in operation till such time the restrictions on account of Covid 19 are in force.
- 21 However, subsequently, the Governments (Central Government as well as the State Government) have issued various Orders from time to time considering the prevailing severity of pandemic and through subsequent Orders, the earlier restrictions imposed were relaxed in phased manner. Thus, the circumstances under which the aforesaid practice directions had been issued on 26 March 2020, changed and relaxed over the period of time.
- 22 Further, vide practice directions, it was stated that only the activities necessary for maintaining continuity of supply (such as supply restoration and safety related activities) were the essential activities to be performed by the Distribution Licensees and all other activities such as Meter reading, Billing, Offline Bill Collection at Bill Payment Centres,



release of new connections etc. were categorized as non-essential services for which relaxation was provided to the Distribution Licensees. However, it is a matter of fact that all the Distribution Licensees in the State (including AEML-D) commenced carrying out all these activities as the restrictions were relaxed in phased manner.

- 23 Further, by no stretch of imagination, the practice direction provided the Distribution Licensees a selective discretion while performing their obligations. When the Distribution Licensees started performing other obligations apart from the activities necessary for maintaining continuity of supply, selective performance of the obligations in parallel licensing regime cannot be expected.
- 24 In view of the above, the Commission is of the view that AEML-D has misunderstood the practice direction and its claim that it has acted in accordance with the practice direction is misconstrued and unjustified.
- 25 AEML-D has also cited a reason of limited manpower and stated that the availability of manpower was not only stressed due to a large number of COVID positive cases among the concerned employees and their families, but also due to unavailability of local trains for movement, which remained unavailable till long after the “unlocking” began. In this context, the Commission notes the contention of TPC-D that AEML-D has been doing all other activities such as meter reading, billing, releasing of new connections, changeover, reverse changeover etc. AEML-D has neither denied this contention of TPC-D nor brought on record a material indicating that there had been delays in other activities as well. While manpower constraints under the challenging situations of COVID pandemic are quite understandable but selective performance of obligation is not justified. In order to perform various obligations during this long and continued pandemic period, the licensees are expected to adopt appropriate innovative measures rather than selectively citing the pandemic for non-performance or delay in obligations.
- 26 AEML-D has stated that certain cases of switchover applications were kept on hold as it had apprehension about eligibility of these cases. Accordingly, prior to scheduling these cases, AEML-D sought certain details from TPC-D to clarify the doubts regarding eligibility of these cases, however, TPC-D denied to provide the details stating that the Order dated 12 June 2017 in Case No. 182 of 2014 and 40 of 2015 does not require TPC-D to provide these details to AEML-D. Subsequently, these cases have allegedly been unilaterally switched over to TPC-D without scheduling of these cases by AEML-D. AEML-D has filed a separate case (Case No. 135 of 2021) on the issue of such illegal switchovers undertaken by TPC-D detailing the violation of Order dated 12 June 2017 and AEML-D is seeking investigation of all such illegal switchovers. However, it is observed that the Petition regarding illegal switchovers by TPC-D has been filed by AEML-D only after filing of present Petition by TPC-D. The Commission is yet to hear this Petition of AEML-D
- 27 In view of the aforesaid discussion, the Commission is not convinced with the reasons put forward by AEML-D for justifying its delay in undertaking the switchovers.
- 28 The other key allegation raised by TPC-D is about selective switchovers carried out by AEML-D. In this context, the Commission notes that AEML-D has neither expressly

denied nor responded to the contention of TPC-D that within a single society, few switchovers were allowed leaving other applications unattended.

- 29 From the additional submission dated 23 December 2021 of AEML-D (as recorded at para. 12.4 of this Order), it is also observed that out of total 149 cases which were pending as on date of filing of the present Petition, seven cases have been unilaterally switched over by TPC-D as per claims of AEML-D, meaning thereby either AEML-D had sought certain details from TPC-D about eligibility of these switchover applications or there was a delay from AEML-D to concur with these switchovers. It is seen that all these cases pertain to commercial and industrial category consumers. Further, no consumer of industrial category has been mutually switched-over out of total 10 cases, although as per AEML-D's claims, 1 consumer has been unilaterally switched over, 6 consumers have cancelled/postponed switchover and only 3 consumers are to be switched over, for which AEML-D sought certain details about eligibility of switchover. As regards residential consumers, it is observed that, out of 125 cases, 122 cases have been mutually switched over and rest of the three cases could not be switched over due to non-payment of arrears by the concerned consumers. Thus, prima facie, it is observed that disputes regarding eligibility of switchover have been raised in case of mainly industrial category consumers and to some extent for commercial consumers also. In view of the aforesaid facts and the contentions, there is a need to verify the facts which would require institution of an enquiry to ascertain whether there had been undue delays on part of AEML-D in case of certain category of consumers and whether a selective approach had been adopted while allowing switchover requests so also the unilateral switch over of certain consumers by TPC-D. Verifying the facts relating to the contentions related to unilateral switchovers by TPC-D would also be important considering the fact that as per the Order in Case No. 182 of 2014 and 40 of 2015, the new Licensee B has to schedule the switchover in co-ordination with the existing Licensee and the final meter reading as on the date of switchover has to be taken by the existing Licensee for the purpose of issuing final bill to the consumer.
- 30 Further, it is seen that both the Licensees have been making contradictory claims regarding pending number of switchover cases which need to be verified/enquired before taking any decision about deciding anything further on this issue especially since the same needs to be looked into as per the directions of the Order in Case No. 182 of 2014 and 40 of 2015.
- 31 Under parallel licensing regime, there appears to be insufficient trust, coordination, and cooperation between both the licensees which is resulting into the delay in services to the common consumers. As per Regulation 5.1 of the Supply Code and SoP Regulations, 2021, all applications for new supply are to be submitted through online portal for Urban Areas after 6 months of notification of these Regulations. As per these Regulations, the Applications for new supply also include changeover and switchover applications. These Regulations have been notified on 24 February 2021. It is learnt that TPC-D has provided a facility for online submission of changeover and switchover applications and same is yet to be done by AEML-D although AEML-D has made facility available for other online applications. Online facility would ensure better transparency in switchover process. Hence, the Commission is of the view that there is a need to improve

transparency in the process in the larger interest of consumers and that the provisions of the Supply Code and SoP Regulations need to be followed by all the Licensees in true letter and spirit.

- 32 The process may also require a re-look so as to deter the existing licensee to indulge into intentional delaying of the genuine switchover cases or to prevent wrongful disallowances. At the same time, illegal switchovers and unilateral switchovers are also to be avoided which, as per AEML-D's contention has happened in some cases.
- 33 Thus, while claims regarding selective switchovers, pending number of cases, intentional delays etc. need to be verified from examination of facts and ground realities, going forward, there is also a need to revisit and improve the existing switchover protocol based on experiences and also based on issues raised in present Petition.
- 34 The Commission notes that vide Order dated 12 June 2021 in Case No. 182 of 2014 and 40 of 2015, the Commission has decided an Institutional Mechanism called Mumbai Distribution Network Assessment Committee (M-DNAC). The primary role of M-DNAC is to evaluate network development proposals in certain scenarios (i.e. scenario 53(d) where neither Licensee completely covers the area/location but either or both have HT Distribution mains), having substantial cost (involving installation of 11/0.415 kV Substation and/or upstream network), from TPC-D and AEML-D for releasing new connections and to decide the least cost Licensee (i.e. Licensee among TPC-D and AEML-D, who can release new connection at lower cost). M-DNAC is also mandated to confirm scenario if there is disagreement between the Licensees about scenario classification for new connection requests. Thus, while for new connections, there is an Institution Mechanism, as far as switchover is concerned, there is no Institutional Mechanism and the eligibility of switchover cases has been specified as follows:

*"86. Commission's view*

*Switch-over can be permitted only in Scenario 53 (b). The Committee's recommendation to freeze the list of consumers eligible for switch-over follows from its recommendation that only those consumers who already have service wires from both Distribution Licensees should be allowed to switch-over. However, in Chapter 5 of this Order, the Commission has not accepted this recommendation and ruled **that the Distribution Licensee can lay its service line from its existing distribution mains for switching over consumers. Thus, the consumers in the area where the Distribution Licensee has distribution mains and to whom connection can be given by laying service lines would become eligible for switch-over.** In these circumstances, drawing up and freezing the list of consumers eligible for switch-over is neither justified nor practicable."*

- 35 Apart from this eligibility condition, a detailed protocol has been specified in the Order, which essentially stipulated the process to be followed by the Distribution Licensees upon receipt of the Application for switchover. The Order also states that the protocol may be reviewed and revised by the Commission through administrative orders. The relevant extract of the Order reads as under:

“  
ANNEXURE C

*(of Order dated 12 June, 2017 in Case Nos. 182 of 2014 and 40 of 2015)*

***PROTOCOL FOR MIGRATION OF CONSUMERS FROM ONE DISTRIBUTION LICENSEE TO ANOTHER, AND RELEASE OF NEW CONNECTIONS***

*1. This Protocol shall be read with the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 ('Supply Code') and the MERC (Standards of Performance (SoP) of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 ('SoP Regulations'), 2014 as amended from time to time; and with the Commission's Order dated 12 June, 2017 in Case No. 182 of 2014 and Case No. 40 of 2015.*

***2. The details of this Protocol may be reviewed and revised by the Commission from time to time through administrative orders."***

- 36 In light of the aforesaid discussions at **para. 28 to para. 35**, the Commission deems it necessary to appoint a Committee to look into the allegations regarding selective switchovers and intentional delay. Apart from this, the Committee would also look into the unilateral switchover (if any) vis-à-vis procedure set out in the Order in Case No. 182 of 2014 and 40 of 2015. The Committee would also make recommendations regarding improvement of existing protocol of switchover in consultation with both the licensees. The improvement in protocol may be considered on the following main aspects:
- i. Remedy for the consumers for raising their grievances about delay in switchover
  - ii. Compensation/penalties for delayed switchovers
  - iii. Recommendations for avoiding selective switchovers
  - iv. Recommendations to ensure avoidance of unilateral switchover in contravention of the directions given in Case No. 182 of 2014 and 40 of 2015
  - v. Remedy for the consumers for raising their grievances about inappropriate rejection of switchover by the existing licensee.
  - vi. Recommendation for improved co-ordination between the licensees
  - vii. Need for information sharing among the licensees through online portal etc.
  - viii. Any other important aspect
- 37 Formation of the Committee, its terms of reference and the time frame for submission of the Report shall be specified in a separate notification of the Commission. TPC-D and AEML-D are directed to make available all data /records / documents as required by the Committee.
- 38 In the interim, both the licensees are directed to follow the existing switchover protocol as laid down under the Order dated 12 June 2017 and ensure that consumers are switched over in the stipulated timeframe. All the pending switchover applications shall be decided on FIFO (First In First Out) basis instead of an adhoc approach and if operational convenience requires deviation from FIFO, same may be mutually discussed and agreed.
- 39 As mentioned earlier, AEML-D has also filed another Petition (Case No. 135 of 2021) seeking investigation of the certain unilateral switchovers undertaken by TPC-D which

according to AEML-D are not conforming to the eligibility condition mentioned in Case No. 182 of 2014. The Petition is under consideration of the Commission and appropriate Order in that matter shall be passed after further hearing in the matter.

40 Hence, the following Order:


### **ORDER**

1. Case No. 82 of 2021 is partly allowed.
2. It is directed that a Committee shall be appointed to enquire and examine into the truths of allegation regarding selective switchovers and intentional delays. Apart from this, the Committee would make recommendations regarding improvement of existing protocol in consultation with both the licensees.
3. Formation of the Committee, its terms of reference and the time frame for submission of the Report shall be specified in a separate notification of the Commission. Tata Power Company Ltd.-Distribution and Adani Electricity Mumbai Ltd.-Distribution are directed to make available all data /records / documents as required by the Committee.
4. After receipt of the report of the aforesaid Committee, the Commission would take further decision in the matter according to provisions of the Electricity Act, 2003.
5. In the interim, both the licensees are directed to follow the existing switchover protocol as laid down under the Order dated 12 June 2017 and ensure that consumers are switched over in the stipulated timeframe. All the pending switchover applications shall be decided on FIFO (First In First Out) basis instead of an adhoc approach and if operational convenience requires deviation from FIFO, same may be mutually discussed and agreed.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Dr. Rajendra G. Ambekar)  
Secretary (I/c)

