

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 91 of 2022

Case of P-One Techpark Pvt. Ltd. for taking on record its deemed Distribution Licensee status for the notified IT/ITeS SEZ at Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune and for issuing the Specific Conditions of Distribution Licence applicable to the Petitioner

Coram

Sanjay Kumar, Chairperson
Mukesh Khullar, Member

P-One Techpark Private Ltd. (**P-One**)

..... Petitioner

Appearance:

For the Petitioner

: Shri Tabrejz Malawal (Adv.)

ORDER

Dated 6 October 2022

1. P-One Techpark Private Ltd. (**P-One**), S. No. 191/A/2A/1/2, Tech Park One, Tower E, Yerwada, Pune has filed a Petition on 27 April 2022 under Section 14 of the Electricity Act, 2003 (**EA**) for taking on record its deemed Distribution Licensee status for the notified Information Technology and Information Technology Enabled Service (**IT/ITeS**) Special Economic Zone (**SEZ**) at Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune and for issuing the Specific Conditions of Distribution Licence applicable to the Petitioner.
2. **The Petitioner's main prayers are as follows:**
 - i. *Take on record the deemed Distribution Licensee status of the Petitioner, M/s P-One Techpark Pvt. Ltd , under Section 14 of the Electricity Act, 2003 in terms of notification dated March 3, 2010, issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India.*
 - ii. *Issue Specific Conditions of Distribution Licence applicable to, M/s P-One Techpark Pvt. Ltd.*

- iii. *to allow the Petitioner, in the interim, to charge consumers in its licence area, the tariff that is applicable for the respective category of consumers in the MSEDCL area of supply, as modified from time to time, as the 'ceiling tariff' in its area of supply and approve the appropriate tariff schedule.*
- iv. *allow the Petitioner to charge consumers in its licence area the same Schedule of Charges that is applicable in the MSEDCL area of supply, as modified from time to time.*

3. **P-One's Petition states as follows:**

- 3.1 M/s P-One Techpark Private Ltd. is a Company incorporated under the provisions of the Companies Act, 2013, having its registered office at S. No. 191/A/2A/1/2, Tech Park One, Tower E, Yerwada, Pune, Maharashtra.
- 3.2 Maharashtra Industrial Development Corporation (**MIDC**), under Section 3 of the Special Economic Zones Act, 2005 (**SEZ Act**) is setting up a sector specific SEZ for IT & ITeS SEZ at MIDC, Hinjewadi Phase III, Pune.
- 3.3 The Ministry of Commerce and Industry (Department of Commerce), Government of India, SEZ Section, on being satisfied that the requirements under sub-section (8) of Section 3 of the SEZ Act, 2005, and other related requirements have been fulfilled, granted the Letter of Approval (**LoA**) dated 3 April 2006 and notified an area of 223.56 Hectares as SEZ area in the name of MIDC under sub-section (10) of Section 3 of the SEZ Act, 2005 for development, operation and maintenance of the sector Specific IT & ITeS SEZ at Hinjewadi, District Pune, in the State of Maharashtra .
- 3.4 MIDC has been notified as the Developer of the SEZ by the Ministry of Commerce and Industry (Department of Commerce), Government of India, vide Notification No. S.O. 934 (E) dated 7 June 2007.
- 3.5 As per Maharashtra IT/ITeS Policy 2015, the state of Maharashtra shares around 20% of IT exports of the country. The State ranks 2nd in IT exports based on overall performance. MIDC is taking efforts to ensure that Navi Mumbai and Pune are developed as IT hubs. To make State of Maharashtra more attractive for the IT industries, it is necessary to enable them with competitive power tariffs.
- 3.6 In order to attract IT industries to Maharashtra and especially Pune, which is a major IT hub of country, MIDC issued a notice dated 9 August 2021 inviting E-Tender for '*Selection of a Co-developer for undertaking the Power Distribution Business in MIDC IT/ITeS SEZ area through Distribution Licence*'. After following the bidding process as per the Request for Proposal (**RFP**), P-One Techpark Pvt. Ltd. emerged as the successful bidder. After due evaluation of the Tender documents, MIDC issued the Letter of Award to 'P-One Techpark Pvt. Ltd. ' on 18 January 2022.
- 3.7 Further, the 'Co-developer Agreement' between the Developer, 'MIDC' and co-developer, 'P-One Techpark Pvt. Ltd.' was executed on 3 March 2022.

- 3.8 The Ministry of Commerce and Industry (Department of Commerce), Government of India, vide its Letter of Approval dated 21 April 2022, recognised and recorded M/s P-One Techpark Pvt. Ltd. as Co-Developer for undertaking power distribution business along with related allied services including power purchase, setting up of substation and related infrastructure in the MIDC IT/ITeS SEZ Area.
- 3.9 The Ministry of Commerce and Industry, Government of India, vide its Notification dated 3 March 2010, under clause (b) of sub section (1) of Section 49 of the SEZ Act, 2005, specified that the Developer of the SEZ is deemed to be a Distribution Licensee under the provisions of the EA. The proviso inserted in clause (b) of Section 14 of the EA vide Notification No. S.O. 528 (E) is as under:
- “Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone”.*
- 3.10 In view of the above, the Petitioner is a deemed Distribution Licensee, due to its ‘Co-developer status’ in the Rajiv Gandhi Infotech Park, MIDC Hinjewadi Phase III, Pune.
- 3.11 Section 2 (f) and (g) of the SEZ Act 2005 defines the Developer and Co-developer of SEZ as follows:
- “(f) “Co-Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of section 3;*
- (g) “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under subsection (10) of section 3 and includes an Authority and a Co-Developer;”.*
- 3.12 In accordance with the provisions of the SEZ Act 2005, the Ministry of Commerce and Industry has given necessary approval vide Letter of Approval dated 21 April 2022.
- 3.13 It is prayed to take on record the deemed Distribution Licensee status of the Petitioner, under Section 14 of the EA in terms of notification dated 3 March 2010 issued by the Ministry of Commerce and Industry (Department of Commerce), Government of India and the consequent amendment to the EA read along with the SEZ Act, 2005.
- 3.14 MIDC is developing the IT/ITeS SEZ over an area of 223.56 Hectares. It is pertinent to mention that the SEZ area also overlaps with the Distribution Licence area of Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**).
- 3.15 The SEZ is having number of plots to accommodate Units related to IT and ITeS as well as certain commercial services, public services and residential townships and

buildings. Presently, the power is being supplied by MSEDCL to all these consumers inside the SEZ.

- 3.16 The consumer base of this Distribution Licensee would include diverse consumer categories, viz. industrial, commercial, residential, public lighting, public works, etc. The SEZ area is of 223.560 Hectares only.
- 3.17 The Petitioner understands that as per the provisions of EA and governing Regulations of the Commission, it is required to comply with the MERC (General Conditions of Distribution Licence) Regulations, 2006 and undertake all the functions as envisaged in the EA and under the various Regulations notified by the Commission.
- 3.18 Under Section 16 of the EA, the Commission is empowered to frame Specific Conditions applicable to a Licensee or class of Licensee.
- 3.19 There is sufficient regulatory precedence in India for similar SEZs, who have been wishful of taking up the responsibility of becoming the Distribution Licensee in the SEZ area as a Co-Developer, and various State Commissions, after due regulatory process, have taken on record the Distribution Licensee status and notified the Specific Conditions of Distribution Licence, including the approved map of the licence area.
- 3.20 The prayers sought by the Petitioner in this Petition are exactly the same as the Orders issued by Tamil Nadu Commission to M/s India Power Corporation (Tuticorin) Pvt. Ltd. and also by Hon'ble Appellate Tribunal for Electricity (ATE) in case of Torrent Energy Limited. These Orders given to other SEZs are relevant in this case too.
- 3.21 Hence, the Petitioner requests the Commission to take on record the status of Deemed Distribution Licensee in the name of "P-One Techpark Pvt. Ltd." and issue the following specific conditions of distribution licence applicable to M/s P-One Techpark Pvt. Ltd.:

A. Area of Supply

- 3.22 The Ministry of Commerce and Industry (Department of Commerce), Government of India, vide Notification No. S.O. 934 (E) dated 7 June 2007 has notified an area of 223.56 Hectares as SEZ area. The Commission is requested to specify the notified SEZ area of 223.56 Hectares, as 'area of supply', in the Specific Conditions of Distribution Licence applicable to the Petitioner.

B. Period/Term of distribution licence

- 3.23 As per the proviso inserted in clause (b) of Section 14 of the EA, the developer/Co-Developer of the SEZ notified under sub-section (1) of Section 4 of the SEZ Act shall be deemed to be a Licensee with effect from the date of notification of SEZ. As already mentioned earlier, M/s P-One Techpark Pvt. Ltd. was approved as the Co-developer of the SEZ vide Letter of Approval which was received subsequently.

Further, as per the EA, the period of licence is 25 years. Therefore, in case of the Petitioner, the distribution licence shall be valid for the 25-year period from the date of the Letter of Approval i.e., 21 April 2022. Accordingly, the Commission is requested to specify the ‘**period of licence**’ for the Petitioner as the 25-year period from the date of the Letter of Approval i.e., 21 April 2022, in the Specific Conditions of Distribution Licence applicable to the Petitioner.

- 3.24 To support the above period of licence, the Petitioner requests the Commission to refer to the Order dated 21 August 2018 in L.P No. 1 of 2017 passed by the Tamil Nadu State Electricity Regulatory Commission (**TNREC**), where the Specific conditions were issued to the Co-developer from the date of the Letter of Approval issued by the Ministry of Commerce and Industry, Government of India, as a co-developer. The relevant extract of the Order issued by TNERC reads as follows:

“5.15. The Petitioner has also sought approval of Specific Conditions of Distribution Licence applicable to it. In exercise of powers conferred by section 16 of the Electricity Act, 2003, the Commission hereby specifies the following Special Conditions for the Deemed Distribution Licensee viz. M/s. India Power Corporation (Tuticorin) Private Limited (IPCTPL):

A. Area of Supply: Notified SEZ area

*B. Period/Terms of distribution licence: 25 years from April 19, 2017 to April 18, 2042. (25 years from the date of notification of M/s. India Power Corporation (Tuticorin) Private Limited as **co-developer of the SEZ**).”*

- 3.25 The Commission is requested to issue the Specific Conditions of Distribution Licence applicable to M/s P-One Techpark Pvt. Ltd. thereby specifying area of supply and period of Licence.

Permission to Charge Ceiling Tariff

- 3.26 At present, there is no Power Purchase Agreement (**PPA**) in place for the Petitioner and the Tariff to be charged to the consumers also require approval of the Commission after its filing. It is envisaged that the Petitioner may require the following time frame:

#	Activity	Time Frame
1	Completion of the competitive bidding process for undertaking power purchase	June 2022
2	Submission of Petition for approval of PPA and adoption of Tariff discovered through competitive bidding	July 2022
3	Other activities such as setting up Distribution Licensee office, submission of DPR, formation of Consumer Grievance Redressal Forum	By October-2022
4	Commencement of operations as a Distribution Licensee	By October-2022

- 3.27 On submission of the respective Petitions, the Commission will undertake the regulatory process for granting approval for the same, which may take another 2-3

months. Once these approvals are in place, the Petitioner shall start the distribution operations and shall be in a position to file the Petition for approval of Annual Revenue Requirement (**ARR**) and Tariff based on the actual data at least after 12-15 months.

- 3.28 Hence, in the interim, until the approval of ARR and determination of Tariff for the Petitioner by the Commission, the Petitioner desires to undertake the electricity distribution activities in its area of supply in accordance with the various provisions of the EA and Rules and Regulations made thereunder.
- 3.29 The area of supply of the Petitioner overlaps with the area of supply of MSEDCL. Hence, the Petitioner is the second distribution licensee for its area of supply, with MSEDCL being the first licensee. The Commission is empowered to approve the ceiling Tariff in accordance with Section 62(1)(d) of the EA as reproduced below:

“Section 62. (Determination of tariff):-- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

...

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity” (emphasis added)

- 3.30 In this regard, the Commission, in its Order dated 12 June 2014 in Case No. 15 of 2014 in the matter of M/s Serene Properties Pvt. Ltd., allowed the Petitioner therein to charge consumers in its licence area, the Tariff that is applicable for the respective category of consumers in the MSEDCL’s area of supply, as the ‘Ceiling Tariff’ in its area of supply, and approved the appropriate Tariff Schedule within the licence area of the Petitioner.
- 3.31 On similar lines, the Petitioner prays the Commission to allow the Petitioner, in the interim, to charge consumers in its licence area, the Tariff that is applicable for the respective category of consumers in the MSEDCL’s area of supply, as the ‘ceiling Tariff’ in its area of supply and approve the appropriate Tariff Schedule.
- 3.32 The Petitioner envisages that the following Tariff Categories shall exist in the licence area of the Petitioner:
- a. LT I (A) - Residential -BPL
 - b. LT I (B) - Residential
 - c. LT II (A) – Non-residential or commercial 0-20 kW
 - d. LT II (B) – Non-residential or commercial Above 20 kW and upto 50 kW
 - e. LT II (C) – Non-residential or commercial Above 50 kW

- f. LT V (B) – LT Industry General
 - g. LT VII (B) – LT Temporary Supply Others
 - h. LT VIII- Electrical Vehicle Charging Station
 - i. HT I (A) – HT Industrial General
 - j. HT II – HT Commercial
 - k. HT VIII (B) - HT Temporary Supply Others
- 3.33 The Commission is requested to approve the applicable Tariff, including the Fuel Adjustment Charges (**FAC**), and as modified from time to time, as the applicable ceiling Tariff for the same categories, in the licence area of supply of the Petitioner.
- 3.34 The Commission is requested to allow the Petitioner to charge consumers in its licence area the same Schedule of Charges that is applicable in the MSEDCL's area of supply, as modified from time to time. The Petitioner requested the Commission to approve only the following Charges, which are relevant for the Petitioner's licence area:
- a. Administrative Charges for Cheque Bouncing
 - b. Processing Fees for Open Access
 - c. Operating Charges for Open Access
- 3.35 The Petitioner also undertakes to comply with provisions of the SEZ Act, 2005 and SEZ Rules, 2006 including Rule 5 A which provides for:
- “5A. Infrastructure Requirements Relating to Information Technology:- In case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:-*
- a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;*
 - b) reliable connectivity for uninterrupted and secure data transmission;*
 - c) provision for central air-conditioning system; and*
 - d) a ready to use, furnished plug and play facility for end users”*
- 3.36 In view of above, the present Petition may be allowed by the Commission as per prayers sought in the same.
4. On 7 July 2021, the Office of the Commission raised certain queries for getting additional details/clarifications on the Petition from P-One. Vide its email dated 15 July 2021, P-One submitted its responses. The issue-wise responses submitted by P-One are summarized below:
- a. Copy of incorporation certificate:**

P-One has submitted the copy of the Incorporation Certificates issued by Registrar of Companies according to which P-One Techpark Pvt. Ltd. was incorporated on 5 December 2019.

b. Present status of SEZ development and details of category-wise consumers (existing), present and projected load

Sr. No.	Required data	Remarks/Status
1.	Present status of SEZ development	Partially developed
2.	Number of premises developed	38
3.	Number of premises proposed to be developed	Approximately 29
4.	Number of category wise consumers	Industrial- 36 Commercial- 100
5.	Present load	55 MVA
6.	Projected load development	25 MVA of additional Load is expected in next two years.
7.	Present annual Consumption	100 MU
8.	Projected annual consumption	130 MU in next two years

c. Preparedness to undertake Distribution Business

P-One has provided the details of various activities which shall be undertaken by it as a part of carrying out the Distribution Business. These activities have been provided under the following heads:

- i. Obtaining transmission connectivity (in process)
- ii. Selection of generator through competitive bidding process
- iii. Filing of application for open access to Maharashtra State Load Dispatch Center and after following due regulatory process, commencement of power flow.
- iv. Operations and Maintenance of distribution network in the SEZ area
- v. Undertaking functions related to power purchase and regulatory compliances
- vi. Finance and Accounts function such as budget, MIS and other all statutory compliances with the Government
- vii. Undertaking billing of consumers and recovery of bills raised

- viii. IT related functions such as SCADA/Network operations, billing software, maintaining website etc.

d. Compliance of the requirement of 24x7 uninterrupted power supply to SEZ

P-One has stated that by adopting the following measures, the requirement of 24X7 uninterrupted power supply would be ensured:

- i. **24x7 Control Room:** Close co-ordination shall be done with generators/traders for ensuring 24x7 power supply. Dedicated staff shall be maintained in the control room. P-One shall ensure registration with Power Exchange platforms. In the event of any contingency, P-One will ensure availability of Power through Exchange platform.
 - ii. **Operation and maintenance:** Operation and maintenance of entire distribution network shall be undertaken as per the standards and recommendations of the Original Equipment Manufacturers. Periodic Meter testing, daily energy audits, periodic checking of electrical installation and maintaining safety standards shall be ensured.
 - iii. **SCADA based Monitoring:** Entire IT network shall be maintained with necessary hardware, software and other systems. Enough storage backup shall be ensured.
 - iv. **Maintaining redundancy:** The Petitioner has proposed two switching stations of 22 kV for MIDC, Hinjewadi Phase III area which will be fed through three nos. of feeders each from 220/22kV Hinjewadi Phase II Substation and 220/22 kV Pegasus Substation. Interconnectivity between two switching stations is proposed in order to achieve necessary redundancy. Further, the Petitioner shall propose Ring Main Units throughout MIDC Hinjewadi Phase III area for providing the uninterrupted supply to clients in case of emergency.
- e. Revised timelines for further activities such as PPA filing, ARR filing, CGRF establishment etc. since the timelines provided in the Petition has already expired.**

P-One has submitted following timelines for further activities such as PPA Petition filing, ARR Petition filing etc.

Sr. No.	Activity	Time Frame
1	Completion of the competitive bidding process for undertaking power purchase	August 2022
2	Submission of Petition for approval of PPA and adoption of tariff discovered through competitive bidding	September 2022

Sr. No.	Activity	Time Frame
3	Other Activities such as setting up Distribution Licensee office, CAPEX Detailed project Report (DPR), formation of Consumer Grievance Redressal Forum (CGRF)	By October 2022
4	Start of Power Distribution licensee	By October 2022

f. Clarifications regarding the residential, commercial and BPL consumers in the SEZ:

P-One stated that it is envisaging commercial category consumers like cafeteria, canteens, ATMs, banks, etc. Also, non-processing area of the SEZ shall have the residential consumers.

g. Submission of a map duly certified by the competent authority, i.e. the concerned Development Commissioner (SEZ), indicating the notified SEZ Area, processing area and non-processing area

P-One has stated as follows:

- i. For certification of map from competent authority, P-One has made the application to the Joint Development Commissioner (JDC), SEZ, Hinjewadi Phase III Pune vide letter dated 13 June 2022, However, the JDC has advised that the same shall be endorsed by MIDC.
- ii. P-One has requested endorsed map from MIDC vide letter dated 8 July 2022 addressed to Superintending Engineer (E&M).
- iii. Further, Superintending Engineer (E&M) has forwarded the letter to the Regional Officer (II) for endorsement on the map.
- iv. The endorsed map in order to be submitted to the JDC, SEZ is awaited. Once endorsement is received from MIDC, P-One shall forward the same for certification to the competent authority (Joint Development Commissioner), SEZ.
- v. On receipt of certified map from the JDC, P-One shall submit it to the Commission at the earliest opportunity.

h. Clarification on necessity of the approval of processing fees and operating charges for Open Access and submission of proposed charges that may be considered by the Commission for approval

P-One stated that it is envisaging some of the HT Consumers who are already under Open Access mode through MSEDCL to shift to P-One. Hence the applicability of processing fees and operating charges for Open Access is necessary.

i. Clarification on existing supply arrangement in the SEZ

P-One stated that the consumers in MIDC Hinjewadi Phase III are currently supplied by MSEDCL.

j. Details of network established by the Petitioner, if any, in the SEZ area

P-One stated that currently it has no network established in the said SEZ area. However, detailed project report for Capital Expenditure is under preparation and same will be submitted to the Commission for approval after the receipt of Taking on Record Order.

k. Clarification as to why MIDC was not made a formal party in the matter as MIDC being the developer of the SEZ, its NOC for the Petitioner's request for deemed Licensee status is essential

P-One submitted the No Objection Certificate from MIDC for not being a Party to the present proceeding.

l. Justification for the Petitioner's prayer seeking the term of licence to begin from date of approval of its status as a co-developer while as per the EA amendment, SEZ developer is a deemed Licensee from the date of SEZ notification

The Petitioner has responded stating the following:

- i. Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune has been notified as developer of SEZ by the Ministry of Commerce and Industry (Department of Commerce) vide notification no. S.O.934 (E) dated 7 June, 2007.
- ii. The Ministry of Commerce and Industry (Department of Commerce), Government of India vide its Notification dated 3 March 2010 under clause (b) of sub section (1) of Section 49 of the SEZ Act, 2005, specified that the Developer of the SEZ is deemed to be a Distribution Licensee under the provisions of the EA.
- iii. MIDC has appointed P-One as co-developer under bidding process and accordingly Letter of Award was issued and Co-developer Agreement was executed between the two parties. The Ministry of Commerce and Industry, Government of India has approved the status of the Petitioner as a co-developer for power distribution for Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune area vide Letter of Approval dated 21 April 2022.
- iv. MIDC has not exercised its right of power distribution as a developer since the date of its notification as a SEZ in its capacity as a developer. Further, P-One did not have any right of such power distribution before it received the Letter of Approval, by which its status of being a co-developer came into existence.
- v. Further, Section 2(f) and (g) of the SEZ Act has defined the Developer and Co-developer of SEZ.

vi. It is submitted that the Licence shall be issued in the name of P-One Techpark Private Limited due to its Co-developer status and the Developer includes co-developer as per above definition of Developer.

vii. Section 14 (b) of EA reads as:

“14. Grant of License:

The Appropriate Commission may, on an application made to it under section 15, grant a License to any person—

a) To transmit electricity as a transmission Licensee; or

b) To distribute electricity as a Distribution Licensee; or:

Provided that the Developer (includes co-developer) of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a Licensee for the purpose of this clause, with effect from the date of Notification of such Special Economic Zone; ...”

viii. In this case, the notification of SEZ is not in the name of co-developer. Hence, it cannot be said to be a deemed distribution Licensee from the date of Notification of SEZ, it can only be a Deemed Distribution Licensee from the date of approval from the Ministry of Commerce and Industry, Government of India of its co-developer status.

ix. As the co-developer will supply power in its own name and its own capacity, the Petitioner requests that the Licence period shall commence from the date of approval from the Ministry of Commerce and Industry, Government of India of its co-developer status. (i.e. 21 April 2022)

5. **At the E-Hearing held through video conferencing dated 15 July 2022:**

The Advocate of P-One reiterated its submissions as made out in the Petition and prayed for commencement of term of licence from the date of approval of P-One as a Co-Developer for the SEZ by the Ministry of Commerce and Industry, Government of India.

6. Vide its letter dated 25 July 2022, P-One submitted the copy of map of the SEZ, duly certified by the Office of the Development Commissioner, Pune Cluster.

Commission’s Analysis and Ruling

7. The Commission notes that vide Gazette Notification S.O. 934 (E) dated 7 June 2007, MIDC has been notified as the developer for the IT and ITeS SEZ admeasuring 223.56 Hectares at MIDC, Hinjewadi Phase III, Pune, Maharashtra, by the Ministry of Commerce and Industry (Department of Commerce), Government of India.

8. MIDC has executed a Co-Development Agreement with P-One on 3 March 2022. Further, the Ministry of Commerce and Industry (Department of Commerce), Government of India, vide letter dated 21 April 2022, approved P-One as Co-Developer for undertaking power distribution business along with related allied services including power purchase, setting up of substation and related infrastructure in the notified MIDC IT/ITeS SEZ Area.
9. The EA was amended through Notification dated 3 March, 2010 to add a proviso to Section 14 (b) (underlined below):

“14. Grant of Licence

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person –

- a) To transmit electricity as a transmission licensee; or*
- b) To distribute electricity as a Distribution Licensee; or :*

Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone;..”

10. The SEZ Act defines “Co-Developer” and “Developer” as follows:

“(f) "Co-Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of section 3;

“(g) “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under subsection (10) of section 3 and includes an Authority and a Co-Developer;”.

11. Thus, the developer of a SEZ is deemed to be a distribution licensee in accordance with the proviso to Section 14(b) of the EA. Further, in accordance with the SEZ Act, developer of the SEZ also includes the co-developer. Thus, from the conjoint reading of the aforesaid provisions, it is clear that co-developer of a SEZ is also deemed to be a distribution licensee for that notified SEZ. P-One has been approved by the Ministry of the Commerce and Industry, Government of India, as a co-developer for undertaking power distribution business along with related allied services including power purchase, setting up of substation and related infrastructure in the notified MIDC IT/ITeS SEZ Area.
12. P-One has submitted the map of the SEZ area, certified by the Office of the Development Commissioner, SEZ, Pune Cluster. P-One has indicated its plan to meet its obligations and discharge its duties as a Distribution Licensee as per the provisions of the EA and Rules and Regulations made thereunder.

13. **Considering the proviso introduced to Section 14(b) of the EA and the definition of “Developer” as given in the SEZ Act, the Commission hereby confirms the status of P-One as the deemed Distribution Licensee for this notified SEZ area under amended Section 14 of the EA.**
14. As deemed Distribution Licensee, P-one shall have to adhere to the following:
- (1) The relevant provisions of the EA and the applicable Rules, Regulations and Orders issued thereunder;
 - (2) The provisions of the SEZ Act, 2005 and SEZ Rules, 2006 including Rule 5A which provides as follows:
“5A. Infrastructure Requirements Relating to Information Technology In case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:-
 - a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;*
 - b) reliable connectivity for uninterrupted and secure data transmission;*
 - c) provision for central air-conditioning system; and*
 - d) a ready to use, furnished plug and play facility for end users.”*
15. The Commission notes that P-One has no PPA in place for fulfilling its Universal Service Obligation. In order to do so in accordance with Section 43 of the EA, P-One must make necessary filings for PPA approval, registration with Maharashtra State Load Despatch Centre (**MSLDC**) for scheduling of its contracted power and subsequent approval of its ARR and Tariff to be paid by its consumers for the SEZ area. P-One has sought approval of a ceiling Tariff and Schedule of Charges in the interim as is applicable in the MSEDCL’s area of supply on provisional basis till the PPA, ARR approvals and tariff determination are in place. It has proposed a timeframe till September 2022 for filing of the PPA Petition.
16. **Considering the fact that the timeframe proposed by P-One for filing the PPA Petition is on the verge of expiry, the Commission directs P-One to file its Petition for PPA approval and adoption of Tariff, discovered through competitive bidding in accordance with the Central Government’s Guidelines, under Section 63 of the EA by 31 October 2022 or well before the PPA commences.**
17. P-One has also requested the Commission to allow it to charge the consumers in its Licence areas the Interim Tariff that is applicable for the respective category of consumers in the MSEDCL’s area of supply, as the ‘ Ceiling Tariff’ in its areas of supply. P-One has cited Section 62(1)(d) of the EA and also earlier Order dated 12 June 2014 in Case No. 15 of 2014 passed by the Commission wherein the Petitioner therein, M/s Serene Properties Private Limited (**SPPL**), was allowed to levy MSEDCL’s Tariff as the Ceiling Tariff in the interim period.

18. The Commission notes that vide its Petitions in Case No. 67 of 2020 and 68 of 2020, M/s Eon Kharadi Infrastructure Private Limited had made a similar prayer and sought permission of the Commission to allow it to charge the consumers in its Licence areas the Interim Tariff that is applicable for the respective category of consumers in the MSEDCL's area of supply, as the 'Ceiling Tariff' in its areas of supply. The Commission, vide its Order dated 5 June 2020, held that the objective of allowing the ceiling Tariff, as interim arrangement till the tariff is determined, would not be achieved in that case and the ceiling Tariff was not allowed as there have been instances where some of Licensees, instead of filing their respective Tariff Petition, sought multiple extensions for the ceiling Tariff, citing one or the other reason. The relevant extract of the aforesaid Order is given below:

“ 15. The Commission notes that, in the past, few SEZ deemed Distribution Licensees had been allowed to levy MSEDCL's Tariff as a Ceiling Tariff in their respective SEZ areas, based on request made by them as an interim arrangement for a specified timeframe till the Tariff is determined for these Licensees. However, there have been instances where some of Licensees, instead of filing their respective Tariff Petition, sought multiple extensions for the ceiling Tariff, citing one or the other reason. Further, there are as many as twelve SEZ Deemed Distribution Licensees (including P-One) who have approached the Commission with a request to take on record their Deemed Distribution Licensee status and many such Deemed Distribution Licensees are likely to approach in future as well. In view of the above, the Commission deems it appropriate to reassess the position taken in the past on the ceiling Tariff issue.

16. In this context, it is imperative to examine the provision of EA under which the said relief has been sought by EON. Section 62 (1)(d) of EA reads as follows:

*“ **Section 62. (Determination of tariff):** --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

.....

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.”

17. It is observed that the fixation of ceiling Tariff under Section 62(1)(d) of EA has been envisaged in order to promote competition among the Distribution Licensees operating in the same area of supply. In the present case, MSEDCL and EON would be the Distribution Licensees having

authorization to supply electricity in both these SEZ areas. However, there are issues such as different consumer mix, sales and revenue mix , level of cross subsidy built in tariff , social obligations, significant difference in the area to be served etc. due to which these two Licensees are not on the same level playing field. Also, in case of approving ceiling tariff, there is a possibility of differential tariff applicability within a consumer category which may subsequently result in socializing the difference in the Aggregate Revenue Recovery (ARR). The Commission is not in favour of this possibility. Lastly, since the ARR is proposed to be filed shortly, by 31st August 2020, the dispensation about ceiling tariff may not be necessary. Hence, the objective of allowing the ceiling Tariff may not be achieved in the present case. In light of the above, the Commission is not inclined to accept the prayer of EON regarding ‘ Ceiling Tariff’. However, considering the need for levy of some provisional Tariff, on interim basis, the Commission allows EON to charge consumers in its Licence area, the Tariff as is applicable for the respective category of consumers in the MSEDCL’s area of supply without FAC component and apply the same Schedule of Charges as is applicable to the consumers of MSEDCL.

19. The Commission is of the view that the aforesaid ruling of the Commission is squarely applicable to the present case. Accordingly, the Commission is not inclined to accept the prayer of P-One regarding ‘Ceiling Tariff’ as an interim arrangement. However, considering the need for levy of some provisional Tariff, on interim basis, the Commission allows P-One to charge consumers in its Licence area, the Tariff as is applicable for the respective category of consumers in the MSEDCL’s area of supply without FAC component as is applicable to the consumers of MSEDCL.
20. The Petitioner has requested to allow it to charge consumers in its licence area the same Schedule of Charges that is applicable in the MSEDCL’s area of supply, as modified from time to time. The Petitioner has requested the Commission to approve the following charges, which are relevant for the Petitioner’s licence area:
 - a. Administrative Charges for Cheque Bouncing
 - b. Processing Fees for Open Access
 - c. Operating Charges for Open Access
21. The Commission accepts the aforesaid prayer of the Petitioner, and it is directed that in the interim till separate tariff and Schedule of Charges are determined for the Petitioner, the Petitioner is allowed to levy Schedule of Charges as determined for MSEDCL including the administrative charges for cheque bouncing, processing fees and operating charges for Open Access for the interim period.

22. P-One has also requested the Commission to specify the ‘period of licence’ of the distribution licence for the Petitioner as the 25-year period from the date of the Letter of approval i.e., 21 April 2022, in the Specific Conditions of Distribution Licence applicable to the Petitioner.
23. To allow such request, the Petitioner has relied upon the Order dated 21 August 2018 passed by TNERC in L.P No. 1 of 2017, where the Specific conditions were issued to the Co-developer from the date of approval of the Petitioner as a co-developer by the Ministry of Commerce and Industry, Government of India.
24. Further, P-One has provided the following justification for seeking the term of Licence from the date of its approval as a co-developer by the Ministry of Commerce and Industry, Government of India:
- i. MIDC has not exercised its right of power distribution as a developer since the date of its notification as an SEZ in its capacity as a developer. Further, P-One did not have any right of such power distribution before it received the Letter of Approval, by which its status of being a co-developer came into existence.
 - ii. As per definition under section 2 (f) and (g) of the SEZ Act defines the Developer and Co-developer of SEZ, as discussed at Para 10 of this Order.
 - iii. The Licence shall be issued in the name of P-One Techpark Private Limited due to its Co-developer status. The Developer includes co-developer as per above definition of developer.
 - iv. Section 14 (b) of EA provides that the Developer (includes co-developer) of a SEZ notified under sub-section (1) of Section 4 of the SEZ Act shall be deemed to be a Licensee for the purpose of this clause, with effect from the date of Notification of such SEZ.
 - v. In present case, the notification of SEZ is not in the name of co-developer. Hence, P-One cannot be said to be a deemed distribution Licensee from the date of Notification of SEZ and it can only be a Deemed Distribution Licensee from the date of approval from the Ministry of Commerce and Industry of its co-developer status.
 - vi. As the co-developer will supply power in its own name and its own capacity, hence, the Licence period needs to commence from the date of approval from the Ministry of Commerce and Industry, Government of India of its co-developer status. (i.e. 21 April 2022)
25. In this context, the Commission notes that as per the proviso to amended Section 14(b) of the EA, the SEZ developer is Deemed Distribution Licensee from the date of such SEZ Notification. The relevant extract is given below:

“Provided that the Developer of a Special Economic Zone notified under sub-section (1) under Section 4 of the Special Economic Zones Act, 2005,

shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone”.

26. The aforesaid provision is very clear and does not require any interpretation. In terms of the above proviso, MIDC, being Developer of this notified SEZ, is deemed Distribution Licensee for the notified SEZ with effect from 7 June 2007. Hence, the term of Licence needs to be twenty five years from 7 June 2007 i.e. up to 6 June 2032 as per the provisions of the EA specified in relation to the notification of the SEZ. Further, it does not make any exception for the cases where the co-developer comes into picture (by way of Co-development Agreement between the developer and co-developer) at a later point in time.
27. In past, few SEZ developers/co-developers had approached the Commission with a request to take on record their deemed Distribution Licensee status for their respective SEZs and relying on the EA amendment, the Commission has taken on record their deemed Licensee status with effect from the dates of their respective SEZ notifications. All these SEZs were established under Section 4 (1) of the SEZ Act and were having the specific dates for their notification. Except the case of SEEPZ SEZ (where, considering the peculiarities of that case, the Commission deemed it appropriate to decide the effective date of licence on prospective basis i.e. from the date of that Order), in all other cases the Commission has allowed the date of licence commencement from the date of respective SEZ Notification. In case of co-developers also, wherein the entities acting as co-developers were approved as co-developers by the Ministry of Commerce and Industry, at a much later date than the SEZ notification dates, similar treatment (i.e. approving the term of Licence as 25 years from the date of corresponding SEZ notification) has been given.
28. However, the Commission notes that the SEZ Act was enacted in 2005 i.e. almost seventeen years back. Many SEZs have been notified immediately after the enactment of SEZ Act in 2005. If the treatment mentioned above is applied to such SEZ cases, the SEZ developers would be deprived of a substantial portion of the twenty five year's term of licence and there would be a limited residual period of licence available for them to operate as a Distribution Licensee. Undertaking the Distribution Business involves undertaking capital expenditure for installing the distribution network in the licence area. In order to ensure recovery of such capital expenditure, it is also preferable to have a reasonable period of licence. Further, after expiry of the residual period, they will have to approach afresh seeking licence for the same area. **In view of the above, the Commission deems it appropriate to reassess the position taken in the past on the issue of approving the term of licence for the SEZ deemed Distribution Licensees.**
29. As far as present case of MIDC SEZ is concerned, the Commission notes the following:
 - i. MIDC SEZ has been notified in year 2007. If similar approach is adopted in present case (i.e. commencement of the Licence period from the date of SEZ

notification), the Licence for P-One will remain effective only for less than 10 years which would be insufficient period to fulfill the expectation from the Distribution Licensee and to effectively function as distribution licensee. Also, a shorter licence tenure may create difficulty for P-One in long term planning for Capex, arranging Funding, Grid Connectivity etc.

- ii. Giving licence retrospectively to a date when P-One was not in existence would also be a futile and infructuous exercise.
 - iii. After ten years, P-One would be required to approach afresh citing the same SEZ notification if there is no change in the existing legal framework.
 - iv. Further, it is not the case that any capital expenditure has already been incurred by the developer/ co-developer in the SEZ in past, which can be recognized on post facto basis which is possible with issuance of the retrospective licence from the date of SEZ notification.
30. The Commission notes that the reasons mentioned above warrant a pragmatic view on the issue of date of licence commencement although such view may be different from the view taken in past.
31. The Commission, under Section 16 of the EA, is empowered to issue specific conditions of Distribution Licence to a licensee or a class of licensees and while issuing the specific conditions of licence for a licensee, the Commission is required to specify, inter alia, the term of licence i.e. date of commencement of the licence and period for which the Licence shall be valid. In case of P-One also, the Commission would be required to exercise this power. **In light of circumstances discussed in preceding paragraph, the Commission deems it appropriate to take a pragmatic view and decide the effective date of licence on prospective basis i.e. from the date of this Order and this term will form part of the specific conditions to be issued for P-One.**
32. The Commission also notes that following conditions have been stipulated in the letter dated 21 April 2022 issued by the Ministry of Commerce and Industry, Government of India approving the co-developer status of the Petitioner.
- “viii. The validity of this approval is co-terminus with the validity of approval of the developer of the SEZ.*
- x. *This approval is liable to be suspended in case of violation of any of the terms and conditions stipulated herein.*
-
4. *This approval shall be subject to standard terms and conditions as per the SEZ Act and Rules. The lease period shall be in accordance with the DoC's instructions no. 98 dated 29.08.2019”*
33. Hence, the deemed licensee status of the Petitioner shall be co-terminus with the approval of the developer of the SEZ i.e. if the SEZ area gets de-notified either

partially or fully, the Petitioner shall lose its status as a Deemed Distribution Licensee for the corresponding area from the date of such notification. Similarly, in case of events such as suspension /termination of P-One as the co-developer for the SEZ or expiry of the lease period, P-One shall lose its status as a deemed licensee status from date of such event. However, the Commission may direct some interim arrangement of supply in the interest of the consumers in the said area. These conditions shall form part of the specific conditions to be issued for P-One.

34. P-One is also required to establish mechanisms to serve its consumers, including Internal Grievance Redressal Cell (**IGRC**), Consumer Grievance Redressal Forum (**CGRF**), Customer Care Centre for complaint handling, and systems and modalities for billing, releasing new connections, ensuring reliable and uninterrupted power supply, etc. Section 42(5) of the EA provides that the Distribution Licensee shall establish a forum for redressal of grievances of the consumers within six months of the date of grant of Licence. Accordingly, P-One is directed to establish its IGRC and CGRF and comply with the other requirements of the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 within six months from the issue of the Specific Conditions of its Licence for the SEZ area.
35. Under Section 16 of the EA, the Commission may specify general or specific conditions applicable to a Licensee, and these conditions shall be deemed to be conditions of its Licence. In view of the definition of the term ‘specified’ in Section 2(62), the specific conditions applicable to P-One are required to be laid down by way of Regulations framed after previous publication and cannot be stipulated through this Order. Accordingly, the Commission shall separately notify the Regulations specifying the specific conditions of Licence applicable to P-One for IT/ITeS SEZ at Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune.
36. Hence the following Order:

ORDER

1. **Case No. 91 of 2022 is partly allowed.**
2. **The Commission hereby confirms the status of P-One Techpark Private Ltd. as the deemed Distribution Licensee for the notified Information Technology and Information Technology Enable Services (IT& ITES) Special Economic Zone (SEZ) admeasuring 223.56 Hectares at Rajiv Gandhi Infotech Park, MIDC, Hinjewadi Phase III, Pune under Section 14 of the Electricity Act, 2003.**
3. **P-One Techpark Private Ltd. is directed to file its Petitions for Power Purchase Agreements/ Arrangements approval and adoption of Tariff, discovered through competitive bidding in accordance with the Central Government’s Guidelines, under Section 63 of the EA by 31 October 2022 or well before the Power Purchase Agreement commences.**

4. The Petitioner's prayer regarding ceiling Tariff is not considered for the reasons as mentioned in para. 17 to para. 19 of this Order. Till the approvals of Annual Revenue Requirement and tariff determination are in place for the Petitioner, as an interim arrangement, the Commission allows the Petitioner to charge consumers in the SEZ area, the Tariff (without FAC) applicable to the respective categories of Maharashtra State Electricity Distribution Company Ltd.'s consumers, as the provisional Tariff, and apply the same Schedule of Charges as is applicable to the consumers of Maharashtra State Electricity Distribution Company Ltd. Further, the Petitioner is allowed to levy the administrative charges for cheque bouncing, processing fees and operating charges for Open Access as determined for Maharashtra State Electricity Distribution Company Ltd. for the interim period.
5. The tenure of the licence for P-One Techpark Private Ltd. shall be 25 years from the date of this Order. However, in case of events such as SEZ denotifications (either partially or fully), suspension /termination of the Petitioner as the co-developer for the SEZ or expiry of the lease period, the Petitioner shall lose its status as a deemed licensee status from date of such event.
6. P-One Techpark Private Ltd. is directed to establish its Internal Grievance Redressal Cell and Consumer Grievance Redressal Forum and comply with the other requirements of the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 within six months from the issue of the Specific Conditions of its Licence for the Petitioner.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Sanjay Kumar)
Chairperson

