

	(Rs. Crores)
2 Nos. independent 220 kV feeders including bays and transmission lines from 220 kV Jalpura and KP-5 GIS Substations of UPPTCL including GST	52.89
Contingency@10%	5.29
Total Cost - Transmission Network (A)	58.18
Metering Equipment - 220 kV - T/D Interface including GST	1.50
220/11 kV Substation including 7 Nos. 220/11 kV transformers of 55 MVA each including GST	75.03
Downstream 11 kV Distribution Network including consumer metering including GST	4.07
Land	2.47
G&A Expenses	0.50
Consultancy Expenses	0.54
Other Expenses, if any	1.00
Contingency@10%	8.51
Total Cost - Distribution Network (B)	93.63
Total (A+B)	151.81
Networth Required	30% of (B)
Networth Required (Rs. Crores)	28.09

26. The Commission observed that for the purpose of calculating 30% equity on the capital investment, the total cost of transmission network, being 58.18 Cr., and working capital requirement should also be added to the estimated cost of 93.63 Cr. Estimated working capital was calculated as - 45

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days of (average of annual ARR for 7 years) which comes out to be Rs. 4.92 Cr. Estimated ARR figures have been provided by the Applicant in its application. Therefore, the Commission computes the equity requirement as: 30% of (93.63 + 58.18 + 4.92), which comes out to be Rs. 50.46 Cr.

27. The Applicant had submitted in its application that the company was incorporated on 12.08.2020 and hence does not have the requisite financial statements for the last five years. It is, therefore, relying on the financial strength of Mr. Niranjan Hiranandani, the majority shareholder of the Petitioner and Chairman of the Hiranandani Group, for the purposes of capital adequacy requirements, which is permissible under The Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. The shareholding of the Applicant as submitted is reproduced below:

Sr. No.	Name of the Shareholder	Type of Shares	No. of shares held	Face Value(Rs.)	Shareholding (Rs.)	Share holding %
1	Infin Data Centre Holding Limited	Ordinary Equity Shares	9,999	10	99,990	0.22%
2	Yotta Data ServicesPrivate Limited	Ordinary Equity Shares	1	10	10	0.00%
3	Mr. Niranjan Hiranandani	Preference Shares	45,00,000	10	4,50,00,000	99.78%



Total Share Capital		45,10,000		4,51,00,000	100%
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28. However, the Applicant was asked to submit an affidavit before the Commission indicating the net worth of the promoter and his commitment to invest at least 30% equity on the capital investment required including working capital as per 'The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005'.
29. The Applicant filed an affidavit dated 09 May 2023 duly sworn by Mr. Niranjana Lakhmal Hiranandani, the majority shareholder of the Applicant company, and apprised the Commission about his net worth. It was submitted that the net worth of Mr. Hiranandani based on the audited books of accounts for the last five (5) financial years is as below:

Particulars	UOM	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Networth of Niranjana Lakhmal Hiranandani	Rs.	4,850.43	4,960.96	4,823.37	4,881.00	4,949.41
	Crores					

It was submitted that Mr. Hiranandani's share in the Internal Resource Generation (IRG) / Profit After Tax (PAT) of few Hiranandani Group Companies based on the audited books of accounts is as below:

Particulars	UOM	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
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Share of IRG / PAT of few Hiranandani Group Companies owned by Mr. Hiranandani based on his % Shareholding in the respective companies	Rs. Crores	70.56	74.81	59.38	183.93	88.51
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30. Pursuant to the Commission's query for a commitment of the promoter to invest at least 30% on the capital investment required including working capital amounting to approximately Rs. 50 crores, as per The Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, it has been further submitted on affidavit that Mr. Hiranandani gives his commitment, to invest up to Rs. 50.46 crores in the share capital of the Applicant as may be required from time to time, for the purpose of its distribution business.
31. Accordingly, it can be seen that the net worth of the promoter is many times than the required investment commitment of Rs. 50.46 crores. Hence the Applicant satisfies the requirement of Capital Adequacy also as laid down under The Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. However, it is being clarified and directed that the share of equity required in the investment should be used in developing the distribution system only rather than civil works for constructing data centre park buildings.

Credit Worthiness

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32. The Order dated 06.04.2011 passed by the Hon'ble APTEL in the Appeal No. 7 of 2010 in the matter of NPCL vs Paschimanchal Vidyut Vitran Nigam Ltd & UPERC has held that the *creditworthiness of the Applicant will have to be tested by considering whether external borrowing from the Banks or Financial Institutions will be available to the Applicant based on the fulfilment of the Capital Adequacy Norms*. The Applicant has submitted the copy of Sanction Letters dated 26.08.2021 and 10.10.2022 issued by its lender, HDFC Bank, confirming the availability of financing for the DC Park.
33. Based on above facts, the Commission is satisfied that the Applicant fulfils the requirement of credit worthiness also.

Code of Conduct

34. Rule 4 of Distribution of Electricity Licence Rules 2005 which provides for Code of conduct is reproduced below:

"4. Requirement of Code of Conduct.-

The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:

(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;

(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;

(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;

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(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;

(e) section 132 or section 135 of the Customs Act 1962,

and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts."

35. The Applicant in its application has submitted an undertaking with respect to 'Requirement of Code of Conduct'. The relevant portion is reproduced as follows:

"The Applicant has not been found guilty or has been disqualified under any of the following provisions within the last three years from the date of Application for grant of license:

1.1 Section 203, section 274, section 388B or section 397 of the Companies Act, 1956;

1.2 Section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;

1.3 Section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;

1.4 Clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;

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1.5 Section 132 or section 135 of the Customs Act 1962

The applicant is not a person in whose case licence was suspended under Section 24 or revoked under Section 19 of the Act, within the last three years from the date of application;

No petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts."

36. The Applicant has also submitted an affidavit dated 29th May 2023 with respect to undertaking on behalf of petitioner under rule 4 of Distribution of Electricity License (Additional requirements of capital adequacy, creditworthiness, and code of conduct) Rules, 2005.
37. Based on the submissions, the Commission is satisfied that NIDP meets the requirement of the Rule 4 of the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.
38. Accordingly, the Commission is satisfied that the applicant M/s NIDP Pvt Ltd fulfils the relevant requirements laid down under Electricity Act 2003 for the purpose of seeking the license and it also fulfils the mandate under Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, and its amendments, on the touchstone of following criteria

- a. Minimum Area of Supply
- b. Capital Adequacy
- c. Credit Worthiness
- d. Code of Conduct



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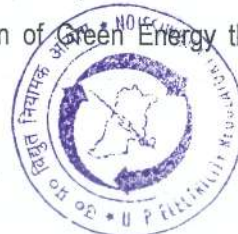
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39. Therefore, the Commission decides to issue the Distribution License to M/s NIDP Pvt Ltd (applicant) for carrying out the business of Distribution of electricity within the Area of Supply i.e. Data Centre Park situated at Plot No. 07, Knowledge Park – V, Greater Noida, Uttar Pradesh subject to following conditions as conditions of its Distribution License –

- i. The Uttar Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission"), in exercise of the powers conferred under Section 14 of the Electricity Act, 2003 (hereinafter referred to as "the Act"), hereby grants this license to NIDP Developers Pvt. Ltd. (hereinafter referred to as 'NIDP' or 'the licensee') a company incorporated under the Companies Act, 1956 and having its registered office at 514, Dalamal Towers, Nariman Point, Mumbai - 400021 for carrying out the business of Distribution of electricity within the Area of Supply i.e. Data Centre Park situated at Plot No. 07, Knowledge Park – V, Greater Noida, Uttar Pradesh as notified by the State Government vide its notification no. 444/24-P-3-2023 dated 10th March 2023 under Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness And Code Of Conduct) Rules, 2005, and its amendments dated 28th November 2022.
- ii. This License may be called "NIDP Developers Pvt. Ltd. (NIDP) Distribution License, 2023 (License No. 1 of 2023)".
- iii. This license shall come into effect from the date of its issue and unless revoked earlier, shall continue to be in force for a period of 25 (Twenty-Five) years.
- iv. From the date of issue this license, the licensee shall operate in the area specified above with its own distribution system in parallel to the existing distribution licensee(s).
- v. The license shall be subject to the terms & conditions contained in the Act, (in particular, Sections 17 to 24 thereof, both inclusive), and the Regulations specified by the Commission (herein after referred to as "the Regulations"), including but not limited to UPERC (General Conditions of Distribution License) Regulations, 2004, UP Electricity Grid Code, UPERC (Terms and Conditions for Open Access) Regulations 2019, UPERC Electricity Supply Code 2005, UPERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations 2007, UPERC (Consumer Grievance Redressal Forum) Regulations, 2022, UPERC (Promotion of Green Energy through Renewable

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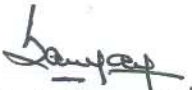
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Purchase Obligation) Regulations 2010, UPERC (Multi Year Tariff for Distribution and Transmission) Regulations 2019 & UPERC (Standards of Performance) Regulations 2019 including statutory amendments, modifications, reenactments thereof, which shall be read as part and parcel of this license.

- vi. The Electricity purchase and procurement process, including the price at which energy is procured, shall be regulated in accordance with Section 86(1)(b) of Electricity Act 2003, UPERC (Terms and Conditions of Generation Tariff) Regulations 2019 and UPERC (Modalities of Tariff Determination) Regulations 2023 including its amendments.
- vii. The licensee shall remain bound by the provisions of the Act including amendments/re-enactments if any and the Regulations framed thereunder, the standards specified by Central Electricity Authority and the orders and directions of the Commission issued from time to time.
- viii. The licensee must file its Annual Revenue Requirement as per the applicable UPERC (Multi Year Tariff for Distribution and Transmission) Regulations 2019 & its amendments, and bill its consumers as per the tariff approved by the Commission only. The Licensee must sell or supply electricity only as per the License conditions, tariffs and terms & conditions approved by the Commission.
- ix. The licensee may, with prior approval to the Commission, engage in any business for optimum utilization of its distribution assets.
- x. The licensee shall not, at any time, assign his license or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Commission.
- xi. The licensee shall not undertake any transaction to acquire by purchase or otherwise the utility of or the undertaking of, any other utility/licensee involved in the business of generation, transmission, distribution or supply of electricity without prior written approval of the Commission.
- xii. The licensee shall pay an annual license fee in accordance with UPERC (Fee & Fine) Regulations, 2019 and amendments/reenactments made thereof. The license fee for a part of the year shall be paid on a pro-rata basis. The year for the purpose of this clause shall mean a period of twelve months from 1st April of a year to 31st March of the following year.



- xiii. The licensee may lay down or place electric supply lines and other installations subject to provisions of section 67 to 69 and 159 to 161 of the Electricity Act, 2003.
- xiv. In public interest, these License conditions may be altered or amended as per section 18 of the Act, either on the Licensee's request or Suo moto by the Commission after following the due process.
- xv. The licensee shall obtain prior approval of the Commission before transacting with related party.
- xvi. The license may be revoked subject to Section 19 of Electricity Act 2003 at any time during its period of operation as provided in Electricity Act 2003.
40. In terms of above, Petition Number 1951 of 2023 is hereby disposed of.


(Sanjay Kumar Singh)

Member


(V.K. Srivastava)

Member (Law)


(Raj Pratap Singh)

Chairman

Place : Lucknow

Dated : 19:06:2023



Annexure 1

ISSUE NUMBER 1 -	NPCL's comments
NIDP has not justified/detailed the basis for arriving at the cost of each of the proposed capital expenditure towards the distribution network/system in the said Plan and/or its Petition/Application.	
NIDP's (Applicant) reply	
<i>NIDP has provided the Network Rollout and Business Plan wherein information about the capex of major expenditure items including the 220/11 kV sub-station has been set-out. NIDP has provided to the Commission the breakup of capex along with details of all cost components and phasing of the Project including copies of work orders and purchase order issued by NIDP so far with respect to the Project.</i>	
Commission's View	
NIDP has provided the requisite information. Further, the cost shown in purchase orders have also been verified from UPPTCL cost data book and the costs of transformers have been verified from CEA.	
ISSUE NUMBER 2 -	NPCL's comments
The licensee is to be in a position to supply electricity to the consumer, within 1 (one) month after receipt of the application requiring such supply. Thus, the capital investments towards the distribution network/system should be to the extent of providing electricity to any and every consumer in the proposed Data Centre Park, within 1 (one) month of the demand by the consumer. In any event, there cannot be a phased development of the distribution network as is being proposed by NIDP and, NIDP ought to first establish the distribution network before its License can be granted/made effective. NIDP cannot be allowed to cherry-pick few areas in the beginning at the cost of the existing licensee, which has been fulfilling its universal supply obligation for providing electricity to all the consumers in the said area, as per Section 43 of the Electricity Act.	
NIDP's (Applicant) reply	

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NIDP has preferred the accompanying Petition for grant of Distribution License for the area situated at Plot No. 7, Knowledge Park – V, Greater Noida, Uttar Pradesh admeasuring about 80961.56 sqm. ("Area of Supply"). It is denied that NIDP is cherry-picking few areas in the beginning at the cost of existing distribution licensee. It is submitted that NIDP is the developer of the Data Centre Park and is seeking grant of the distribution license for supply of electricity to all consumers within the Data Centre Park area i.e. to all consumers within its Area of Supply. Therefore, the issue of cherry picking of consumers does not arise. NIDP aims to provide and distribute electricity to the Data Centre Park consumers as and when the buildings develop in the Data Centre Park. While NIDP as a Distribution Licensee will endeavour to supply power its consumers as per the timelines specified in Section 43(1) of the Act, is pertinent to mention that the proviso to Section 43(1) which provides that "Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission". Accordingly, once the 220/11 kV sub-station is commissioned, NIDP will start supplying power to its consumers as per Section 43(1) of Act. Needless to mention that the condition of giving supply is regulated by the Hon'ble Commission through UPERC (Electricity Supply Code), 2005. The Hon'ble Commission has laid down the procedure under Regulation 4.8 for a New Connection where Extension of Distribution Mains or Commissioning of New Sub-Station/Enhancement of capacity of substation is required. Therefore, as per the provision of EA, 2003 and the regulations framed by the Hon'ble Commission there is no requirement to first establish the distribution network before its License can be granted/made effective.

Commission's view

The issue of cherry picking does not arise in case of a data centre park. Further, it was clarified by the Commission in the public hearing that the sequence is that the applicant will first apply for distribution license and then after grant of license and approval of roll out plan the licensee starts

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