

supplying in its area in accordance with roll out plan. It can never be a case that a person is asked to develop its entire electrical system before applying for the license.

**ISSUE NUMBER 3 -**

**NPCL's comments**

NIDP as a stand-alone entity does not satisfy the requirement under Rule 3(2) of the 2005 Rules i.e., on a norm of 30% equity on the proposed cost of investment (viz. Rs. 28.09 Crores), NIDP is not in a position to make available resources for such equity on the basis of its net worth and generation of internal resources of its business in the preceding 3 (three) years, excluding its other committed investments.

The Annual Reports/books of accounts/Financial Statements of NIDP for FY 2020-21 and 2021-22, fail to show any surplus available resources for meeting the requirements as envisaged in Rule 3(2) of the 2005 Rules.

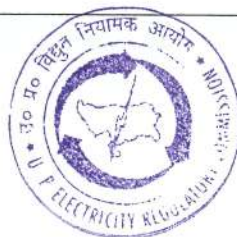
**NIDP's (Applicant) reply**

*In compliance with Rule 3(2) of the Distribution License Rules, 2005, NIDP has relied on the combined financials of the company/Petitioner as well as the net-worth of Mr. Niranjan Hiranandani. The borrowings and liabilities of NIDP are in relation to the long term and current liabilities for development of the Data Centre Park & associated infrastructure including power. The liabilities majorly include debts raised by NIDP for the development of the Data Centre Park, premium payable for leasehold land, payables towards capex, statutory dues and provisions for expenses. As far as the distribution business is concerned, Mr. Niranjan Hiranandani has already provided an Undertaking to the Hon'ble Commission for committing to invest in the share capital of the Petitioner and debt will be raised from time to time as required for the purposes of the distribution business.*

**Commission's view**

**Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 clearly provide that norm of 30% equity on cost of investment has**

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to be satisfied by the applicant including the net worth of the promoter. Otherwise also, NIDP is a new entity and hence the requirement will have to be seen by looking at the combined financials of NIDP as well as its promoter.

**ISSUE NUMBER 4 -**

**NPCL's comments**

NIDP has failed to place on record the audited annual reports and financial statements of Mr. Niranjan Hiranandani.

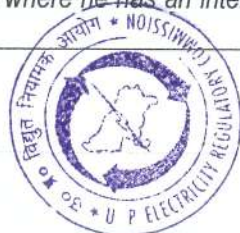
NIDP has annexed the CA certified turnover Certificate of Mr. Niranjan Hiranandani in the group companies (Roma Builders Pvt. Ltd. And Gamma Constructions Pvt. Ltd.) for FY 2018 to FY 2022, without having given any details regarding the involvement of Mr. Hiranandani in the said group companies. In any event, as per Entry 11 of Form-1 of the UPERC

Distribution License Regulations, the applicant (NIDP in the present case) is required to submit details of its annual turnover for the past 5 (five) years and not that of the group companies.

**NIDP's (Applicant) reply**

*NIDP has duly filed an affidavit of Mr. Niranjan Hiranandani dated 09.05.2023 thereby providing CA certified copies of Net- worth Certificates of Mr. Niranjan Hiranandani for the period FY 2017-18 to FY 2021-22 (including the certificate based on audited financials for FY 2017-18), Turnover Certificate for the period FY 2017-18 to FY 2021-22, Internal Resource Generation Certificate for the period FY 2017-18 to FY 2021-22 and other such documentary evidence as required by the Hon'ble Commission, along with an Undertaking for committing to invest in the share capital of the Petitioner at least 30% on the capital investment requirement including working capital amounting to Rs. 50 Crores (approximately). Since NIDP was incorporated in 12.08.2020, the occasion of filing annual turnover of NIDP for past five years would not arise. It is further clarified that since NIDP has relied on the net worth of Mr. Niranjan Hiranandani, the details of the group companies where he has an interest have been also provided along with the Petition. As far as*

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*the relationship between Mr. Hiranandani and these group companies is concerned, the same has been duly provided to the Hon'ble Commission.*

**Commission's View**

Although this issue has been partially dealt by the Commission in its view on the previous point however, the Commission has gone through the net worth certificates of Mr. Hiranandani along with his commitment to invest at least in the share capital of the Petitioner at least 30% on the capital investment requirement including working capital amounting to Rs. 50 Crores (approximately) and the Commission is satisfied with the NIDP's reply.

**ISSUE NUMBER 5 -**

**NPCL's comments**

Notification dated 10.03.2023 being in the nature of a substantive law, which creates/defines rights (by notifying the 'Data Centre Park' as 'minimum area of supply') cannot be made applicable retrospectively to the present case, wherein the Petition/Application for grant of a Distribution License was filed by NIDP before issuance of the Notification i.e., on 18.01.2023. It is a well settled position of law that any substantive law/notification, which creates and defines rights, is always prospective in nature, unless such law/notification by express enactment or necessary intendment makes its retrospective. NIDP's reliance upon the Letter of Comfort dated 01.07.2022 registering NIDP as a 'Data Centre Park' under the Data Centre Policy is of no relevance as such and cannot be used as a fulfilling requirement of minimum area of supply, in complete disregard of the provisions of the 2005 Rules.

**NIDP's (Applicant) reply**

*The Government of Uttar Pradesh has already issued a Letter of Comfort dated 01.07.2022 to NIDP thereby registering NIDP as Data Centre Park Developer under the DC Policy, 2021. Further, it is important to note that NIDP vide its Affidavit dated 16.03.2023 informed the Hon'ble Commission about the Notification No. 444/24-P-3-2023 dated 10.03.2023 and prayed before the Hon'ble Commission that the relief clause of the*

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accompanying Petition may be read in harmony with the Notification No. 444/24-P-3-2023 dated 10.03.2023. The Petitioner is squarely covered under the Notification of 10.03.2023 as the Petition was admitted vide Order dated 22.03.2023 of the Hon'ble Commission only after the issuance of the said Notification.

**Commission's view**

The Commission agrees with the reply of NIDP and the issue of retrospectivity does not apply in present case as the notification has come prior to the admittance of the petition.

**ISSUE NUMBER 6 -**

**NPCL's comments**

Ministry of Power, Central Government has notified a physical geographical area as the 'minimum area of supply'. However, in stark contrast to the intent of the Central Government, the UP Area Notification has notified each 'Data Centre Park' as a 'minimum area of supply' for the purposes of the sixth proviso to Section 14 of the Electricity Act. A 'Data Centre Park' under the Data Centre Policy is not a geographical area but has been defined as "6.1...A minimum 40 MW Data Centre capacity for locating Data Centre Unit(s) shall be considered under the definition of Data Centre Park."; and Data Centre Park is a description of the nature of business which will be carried out but does not ascribe to any geographical area.

The smaller area should have similar characteristic as in the case of an area covering either a Municipal Corporation as defined in Article 243Q of the Constitution of India or a Revenue District such as a Taluk, a block of division of district or a group of Panchayat having number of end users and installation of end use, where electricity is required to be distributed by laying down distribution system.

It is not NIDP's case that the area of 80961.56 sqm. of land situated at Plot No. 07, Knowledge Park-V, Greater Noida, Uttar Pradesh, qualifies as a 'minimum area of supply' but that the proposed 'Data Centre Park' satisfies the said criteria of 'minimum area of supply' for the purposes of grant of a Distribution License under the sixth proviso to Section 14 of the Electricity Act.

**NIDP's (Applicant) reply**



NIDP has applied for grant of the Distribution License for the area situated at Plot No. 7, Knowledge Park – V, Greater Noida, Uttar Pradesh admeasuring about 80961.56 sqm. as being the Area of Supply within the Data Centre Park. Reference to Data Centre Park is in the nature of a specific area housing data centre/s of a minimum prescribed capacity. It does not refer to a business but to a specific area within which, the activity of data centre is carried out. According to the Notification of 10.03.2023, the area of the data centre satisfies the criteria of minimum area of supply of the Distribution License Rules, 2005.

**Commission's view**

The notification of Government of Uttar Pradesh dated 10<sup>th</sup> March 2023 clearly provides “....the Governor is pleased to notify each area notified as “data centre park” within the State of Uttar Pradesh as “minimum area of supply” for the purposes of grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the said Act”, which leaves no room for any ambiguity regarding the interpretation of “minimum area of supply” in the case of applicant and hence, the contention of NPCL cannot be accepted.

**ISSUE NUMBER 7 -**

**NPCL's comments**

The Act has specifically provided for a person to get one point supply and deal with electricity supply in his area acting on behalf of the distribution licensee. The Data Centre Parks proposed is one such ideal scheme which is better serviced through the seventh proviso to Section 14 of the Electricity Act, rather than by grant of a separate distribution license.

**NIDP's (Applicant) reply**

**Commission's view**

NPCL is trying to indicate that the applicant should have preferred the “franchisee option” rather than the option of obtaining a separate license. But it is clearly a call, which is to be taken by the applicant and the mandate of the Act is very clear that in case the applicant applies for parallel

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distribution license then the same cannot be denied to it if it satisfies the requirements laid down under Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 & its amendments. Hence, the contention of NPCL is not acceptable.

**ISSUE NUMBER 8 -**

**NPCL's comments**

NIDP has in its Petition relied upon the expertise of its group entity/company viz. NUI Services Pvt. Ltd. (NUI Services), which purportedly is the utilities and power distribution arm of the group and has the technical know-how and relevant experience to develop, maintain and operate a distribution business. NIDP (a) has without any supporting documents and/or any substantiation made bald submissions regarding the expertise of its group entity i.e., NUI Services; (b) has merely placed on record the Curriculum Vitae of NUI Services Team; and (c) failed to place on record the supporting documents in relation to the expertise of NUI Services in the distribution business. NIDP does not have any organizational and managerial capability as on date and will be purportedly engaging with its group entities/companies as and when required at a later stage.

**NIDP's (Applicant) reply**

*NUI Services through its majority owned subsidiary Nidar Utilities Panvel LLP (hereinafter referred to as "NUPLLP") has been successfully running a Distribution Licensee for the past 4.5 years in Maharashtra and possesses the requisite experience and technical know-how to run a Distribution Licensee in the Data Centre Park. In this regard, NIDP has enclosed the Gazette Notification dated 26.05.2017 "Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution Licence applicable to Nidar Utilities Panvel LLP for Multi-Services SEZ at Panvel, District Raigad, Maharashtra) Regulations, 2017" along with a copy of the letter dated 03.10.2018 issued by NUPLLP to the Hon'ble MERC regarding commencement of distribution business operations at the Panvel SEZ in Maharashtra marked. It is denied that NIDP does not have any organizational and managerial capacity as on date for applying for a Distribution License. CVs*

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of the team are already provided in the Petition to substantiate its Managerial, Technical, Regulatory & Power Purchase, Projects, Finance, Procurement, HR and Operation and Maintenance competence.

**Commission's view**

The Commission is satisfied that NIDP does not lack the managerial and organizational capacity to develop, maintain and operate a distribution setup of a data centre park.

**ISSUE NUMBER 9 - NPCL's comments**

NIDP has failed to place on record the CVs/experience of the other members of the Team as per the organization structure provided by NIDP by way of Annexure-3 to its Reply. NIDP has further without any substantiation/proper plan stated that once the license is granted, NIDP will expand its Team according to the requirements of the distribution business. It thus appears that NIDP does not have adequate organizational and managerial capability as on date and will purportedly be engaging with its group entities/companies as and when required at a later stage.

**NIDP's (Applicant) reply**

**Commission's view**

This point has already been covered in the Commission's view under issue number 8.

**ISSUE NUMBER 10 - NPCL's comments**

It appears that NIDP is seeking a Distribution License for the supply of electricity for its own use and does not have any 'consumers' as such. An entity which utilizes the entire quantum of electricity for its own consumption and does not have any consumers as such, cannot be deemed/said to be a distribution licensee.

**NIDP's (Applicant) reply**

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<p><i>NIDP is merely the Data Centre Park Developer and will be leasing out the data center buildings within the park to various Data Centre Operators / Units. The Data Center Operators / Units would be the electricity consumers of NIDP.</i></p>	
<p><b>Commission's view</b></p>	
<p><b>The objection of NPCL does not carry any substance and hence not acceptable.</b></p>	
<p><b>ISSUE NUMBER 11 -</b></p>	<p><b>NPCL's comments</b></p>
<p>NIDP should showcase:</p> <p>(a) Detailed power procurement plan containing the requisite details on how medium-term/short-term power will be procured.</p> <p>(b) Long-term procurement of power, if any, and justification for the same.</p> <p>(c) Justification on how NIDP's power procurement plan will be cheaper than that of the incumbent licensee.</p> <p>(d) Details of how NIDP intends to fulfil RPO.</p> <p>(e) Details of Banking arrangement (if any).</p>	
<p><b>NIDP's (Applicant) reply</b></p>	
<p><b>Commission's view</b></p>	
<p><b>These are the aspects, which would be the concern of NIDP and the Commission is cognizant of the requirements that a licensee needs to follow and hence, these issues should not be concerns of NPCL accordingly, the contention of NPCL is not acceptable.</b></p>	
<p><b>ISSUE NUMBER 12 -</b></p>	<p><b>NPCL's comments</b></p>
<p>NIDP has contended that (a) the distribution of electricity in the Data Centre Park is very different from the normal function of distribution of electricity; (b) that the infrastructure to be developed for the Data Centre Park is designed to specifically cater to the needs of users/consumers of such Park; and (c) the obligations</p>	

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of the Licensee will be focused towards the specific requirements of the Data Centre Park and not for any other consumer.

The aforesaid contentions of NIDP are (i) in complete disregard of the universal supply obligation of a Licensee as envisaged under the Electricity Act read with the National Electricity Policy, 2005; and (ii) may also act as a very misleading precedent for any prospective Licensee/applicant to cherry-pick a certain category of consumers for the supply of power.

#### **NIDP's (Applicant) reply**

*NPCL's suggestions that NIDP has repeatedly contended that its obligations will be focussed towards the specific requirements of the Data Centre Park and not for any other consumer, is misplaced. Having regard to the nature of the area of supply and obligations under the Data Centre Policy, NIDP is only required to ensure supply to its Area of Supply. It is denied that the contentions of NIDP are in complete disregard of the universal obligation of a Licensee as envisaged under the Electricity Act, 2003 r/w National Electricity Policy, 2005. It is further vehemently denied that the grant of distribution license may act as a very misleading precedent for any prospective Licensee/applicant to cherry pick a certain category of consumers for the supply of power. These submissions clearly demonstrate the ignorance of NPCL towards the nature of the distribution business that will be required to meet the limited requirements of a Data Centre Park.*

#### **Commission's view**

**The contention of NPCL is clearly misplaced and it appears that NPCL does not want to lose its control on supply of Data Centres despite unambiguous notification of the State Government dated 10<sup>th</sup> March 2023. Most of the issues raised by NPCL are frivolous in nature so as to retain its control on supply to Data Centre park.**

**ISSUE NUMBER 13 -**

**NPCL's comments**

The submissions of NIDP regarding having exclusivity over the users in the Data Centre Park, go against the basic structure of parallel licensees under the Electricity Act, which is (i) to promote competition between

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the licensees operating in the same area of supply; so as to ultimately (ii) ensure supply of electricity at the most competitive and cost-effective tariff to the consumers in such area of supply. In this context, reference may also be had to the doctrine of essential facilities, which surfaced for the first time in 1912 in USA vs. Terminal Railroad Association of St. Louis (1912 SCC OnLine US SC 114); and is observed/rooted in various legislations, including the Electricity Act. The said doctrine imposes an anti-monopoly obligation on the dominant entities to share their essential facilities/infrastructure for the greater public/consumer good.

#### **NIDP's (Applicant) reply**

*Contents of Para No. 29 of the comments/objections on behalf of NPCL are incorrect and misconceived and are being vehemently denied. It is submitted that the reference of "doctrine of essential facilities" made by NPCL in the judgment of USA vs. Terminal Railroad Association of St. Louis (1912 SCC Online US SC 114) is utterly ill-founded and inapplicable to the present case. It is humbly submitted that NPCL is in fact, enjoying a dominant position and is clearly trying to retain such position and shutting out competition by raising frivolous objections against NIDP's Petition for grant of a distribution license. Furthermore, there is no question of establishing a monopoly if NIDP is granted the distribution license as NIDP is seeking a parallel distribution license and therefore this objection/comment is completely baseless. It will be open to the consumers of NIDP to decide whether they want to procure power from NIDP or from any other source.*

#### **Commission's view**

**The objection of NPCL does not cut any ground because if the applicant would have discovered that getting supply from NPCL will be more efficient and economical then they would not have chosen the route of seeking a parallel license. In fact, the nature of issues raised by NPCL appear to suggest that NPCL itself is trying to retain its dominant position thereby killing any possibility of applicant getting an economically efficient alternative. The contentions raised by NPCL somehow seems to suggest that it is inclined to maintain status - quo rather than letting emergence of a competitive market.**



**ISSUE NUMBER 14 -****NPCL's comments**

NIDP has made incoherent submissions regarding ownership of the 220kV EHV Substation as part of its distribution system for the Data Centre Park. In this regard, this Hon'ble Commission may direct NIDP to satisfy as to how a 220kV EHV Substation can be owned by a distribution licensee in terms of the applicable regulatory framework and the Electricity Act.

**NIDP's (Applicant) reply**

*It is denied that NIDP has made incoherent submissions regarding the ownership of the 220/11 kV EHV sub-station as part of its distribution system for the Data Centre Park. NIDP has provided the detailed justification for the inclusion of the 220/11 kV EHV sub-station as part of its distribution system in the Petition. It is nonetheless reiterated that the sub-station at the transmission < > distribution interface in the present case stands at a very different footing than other distribution licensees on account of the specific nature of Data Centre Park area and its requirement.*

**Commission's view**

**The 220/11 kV EHV sub-station shall be owned by STU/UPPTCL and the transmission assets of NIDP shall be considered as funded under deposit scheme, which shall not form part of the capital cost under ARR/Tariff of UPPTCL. However, the 220/11 kV EHV sub-station may be operated and maintained by M/s NIDP Pvt Ltd under the supervision of STU/UPPTCL.**

**ISSUE NUMBER 15 -****NPCL's comments**

NIDP has contended that its tariff will be structured in a manner that its Average Billing Rate will be equal to the Average Cost of supply of electricity, with zero cross subsidy and will not include the Cost to Serve approach. Further, NIDP has also claimed to introduce partial/full waiver of various charges as per the Data Centre Policy, which is subject to the specific conditions under the said Policy. In this regard, it is submitted that such contentions demonstrate that NIDP is overstepping on the exclusive jurisdiction of this Hon'ble Commission regarding determination of tariff under the Electricity Act.

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**NIDP's (Applicant) reply**

*It is strongly denied that NIDP is overstepping on the exclusive jurisdiction of the Hon'ble Commission regarding the determination of tariff under the Electricity Act, 2003 in any manner whatsoever. The Petition merely sets out the proposed business plan, position regarding cross subsidy and other issues related to tariff having regard to the specific nature of power distribution which is limited to the Data Centre Park. NIDP undertakes to abide by the Order and/or directions that the Hon'ble Commission may pass in this regard.*

**Commission's view**

**This is an issue to be regulated by the Commission within its regulatory framework hence, it should not be a concern of NPCL.**

The Commission has also gone through other smaller issues raised by NPCL, which are more or less similar to the issues framed in the table and hence, the Commission does not find any force behind the objections of NPCL.

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