

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 2 of 2022

In the matter of
Case of M/s. AEML SEEPZ Limited for taking on record its Deemed Distribution Licensee status and for issuance of Specific Conditions of Distribution Licence applicable to it

And

Impleadment Application dated 30 March 2022 filed by TPC-D

Coram

Sanjay Kumar, Chairperson
Mukesh Khullar, Member

AEML SEEPZ Ltd. Petitioner

The Development Commissioner, SEEPZ SEZ Authority Respondent

Appearance

For the Petitioner : Smt. Deepa Chavan (Adv.)

For the Respondent : Shri. C.P.S. Chauhan (Rep.)

ORDER

Date: 6 June 2022

1. M/s AEML SEEPZ Ltd. (**ASL**) has filed a Petition on 8 December 2021, under Section 14 read with Section 16 of the Electricity Act, 2003 (**EA**) and Regulation 8.16.2 of the MERC (General Conditions of Distribution Licensee) Regulation, 2006 (**MERC Regulations, 2006**) for taking on record its Deemed Distribution Licensee status for the Santacruz Electronic Export Processing Zone (**SEEPZ**) Special Economic Zone (**SEZ**) and for issuance of Specific Conditions of Distribution License applicable to it.
2. **The main prayers of ASL are as follows-**
 - i. *Recognize the Petitioner i.e., ASL as a Distribution Licensee, in terms of the Deemed Licensee status of the said Petitioner, under Section 14 of the Electricity Act, 2003 read with the Notification dated 03.03.2010, issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India under Clause (b) of sub-section (1) of the Section 49 of the Special Economic Zones Act, 2005;*
 - ii. *Issue specific conditions of Distribution License applicable to the Petitioner i.e., ASL for the period of 25 years from 26.10.2021, to undertake Distribution business in the SEZ notified area of SEEPZ, Andheri, Mumbai;*
 - iii. *Pursuant to the grant of prayers (a) and (b), allow the Petitioner to charge provisional Tariffs for Retail Supply and Wheeling to the consumers in its licensed area, as approved by this Hon'ble Commission, till the determination of Tariff of ASL;*
3. **ASL's Petition states as follows:**
 - 3.1 M/s AEML-D SEEPZ Ltd. is a company incorporated under the Companies Act, 1956 of India, having its registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G Highway, Khodiyar, Ahmedabad – 382421.
 - 3.2 SEEPZ was set-up on 1 May 1973 as a uni-product Export Processing Zone (**EPZ**) for exclusive manufacturing and export of electronic items. Pursuant to the SEZ Policy of 2000, SEEPZ was converted from EPZ to SEEPZ SEZ w.e.f. 1 November 2000. An additional area of 11 acres known as SEEPZ++ was merged with SEEPZ SEZ vide Notification dated 7 January 2002. Pursuant to the said merger, the SEEPZ SEZ became a multi-unit SEZ for the purpose of encouraging export of gems and jewellery and for earning foreign exchange on export of various kinds of hardware/ software.
 - 3.3 The Ministry of Commerce & Industry (Department of Commerce), Government of India vide its Notification dated 3 March 2010 issued under clause (b) of sub section (1) of Section 49 of the Special Economic Zones Act, 2005 (**SEZ Act**) has specified that the Developer of the SEZ is deemed to be a Distribution Licensee under the provisions of the EA.

- 3.4 The SEEPZ SEZ Authority had issued a Letter of Award (**LoA**) dated 22 June 2021 to ASL for operationalizing the deemed distribution licence of SEEPZ SEZ as a co-developer. The scope of work and terms and conditions within which ASL is required to function is provided in the above award. ASL, vide letter dated 5 July 2021, accepted the LoA issued by the SEEPZ SEZ Authority.
- 3.5 Subsequently, ASL has executed a Co-Developer Agreement dated 8 September 2021, with the SEEPZ SEZ Authority (**Respondent**). The Department of Commerce, Ministry of Commerce and Industry, Government of India (**GoI**) vide its letter dated 26 October 2021 has approved the status of ASL as a Co-Developer for the SEEPZ SEZ.
- 3.6 By virtue of provisions of Section 14 and 16 of the EA read with the notification dated 3 March 2010 issued by the Central Government under Clause (b) of sub-section (1) of the Section 49 of the SEZ Act, ASL be recognized as a Co-Developer of the SEEPZ SEZ, and also a deemed distribution licensee for the said SEZ. In view of the same, present Petition has been filed to take on record the deemed distribution licensee status of ASL in terms of the aforesaid provisions and for incidental modalities pursuant thereto, including issuance of specific Conditions of Distribution License.
- 3.7 The Petitioner has to ensure 24x7 power supply in the SEEPZ SEZ, as mandated under the SEZ Act.
- 3.8 The Petitioner will establish mechanism to serve its consumers, including 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.
- 3.9 In furtherance of the objective of both the EA and SEZ Act, ASL has approached the Commission to complete all procedural and legal mandate thereunder so as to ensure that the operationalization of the deemed licence is in consonance with both the Acts.

Specific Conditions of Distribution Licence for ASL

- 3.10 Under Section 14 and 16 of EA read with the Regulation 8.16.2 of MERC Regulations 2006, the Commission is empowered to issue Specific Conditions of Licence to a Licensee or a class of Licensees, and these conditions shall be deemed to be the conditions of such Licence. Accordingly, the Commission is requested to issue the Specific Conditions of Distribution Licence for ASL, specifying the area of supply and term of Licence.

Area of Supply

- 3.11 The Board of Approval of SEZ has notified an area of approximately 103 acres as SEZ Area. The details are as follows:
- i. Plot No. F-1 admeasuring 375013 sq. mtr. i.e. 92 acres 26 gunthas and 12 annas, leased out by Maharashtra Industrial Development Corporation (**MIDC**) to SEEPZ,

vide Lease Deed dated 20 January 1975 for 99 years w.e.f. 1 June 1973.

- ii. An additional area of 11 acres known as SEEPZ++, which has been merged with the SEEPZ SEZ vide Notification dated 7 January 2002 leased out by MIDC vide Lease Deed dated 28 June 2005 together with all rights of, easements and appurtenances for 95 years from 1st January 2002.

- 3.12 The Commission is requested to specify the aforesaid SEZ Area as an ‘area of supply’ in the Specific Conditions of Distribution Licence applicable to ASL.

Term of Distribution Licence

- 3.13 As per proviso to Section 14(b) of the EA, the developer of a SEZ notified under the SEZ Act shall be deemed to be a Licensee with effect from the date of Notification of the SEZ.
- 3.14 SEEPZ SEZ is an existing deemed SEZ set up on 1 May 1973 as EPZ. The Petitioner has been approved as a Co-Developer of SEEPZ SEZ with effect from 26 October 2021.
- 3.15 Therefore, the Commission is requested to specify the “Period of Licence” as 25 years from the date of approval of the Petitioner as Co-Developer i.e., 25 years from 26 October 2021 and not from the date of Notification of SEEPZ SEZ.

Permission to charge Provisional Tariff for retail supply to consumers in SEEPZ SEZ

- 3.16 The Petitioner will abide by all the Regulations of the Commission and approach the Commission for its power purchase requirement and Tariff determination, as per law. Furthermore, in order to fulfil its obligation as a Distribution Licensee in SEEPZ SEZ, it has to supply power to the consumers at the rates which are competitive compared to the other Distribution Licensees presently supplying in SEEPZ SEZ.
- 3.17 After issuance of the Licence conditions, the Petitioner would be undertaking power procurement either through assignment of Power Purchase Agreement (**PPA**) from Adani Electricity Mumbai Ltd.-Distribution (**AEML-D**), i.e., the Holding company of the Petitioner and/or other means permitted within the EA. The details for arrangement and allocation of resources/ cost, shall be provided to the Commission in its Petition for determination of ARR and Tariff.
- 3.18 Subject to the relevant approvals of the Commission on Licence conditions, the Petitioner would be in a position to file the Petition for approval of Annual Revenue Requirement (**ARR**) and Tariff, within a short span of time. Thus, pending the approval of ARR and determination of Tariff, the Petitioner intends to undertake the electricity Distribution activities as per the mandates of EA and as per the Rules and Regulations made thereunder. Accordingly it is prayed that it may be permitted to charge a provisional Tariff till the final Tariff determination by the Commission in the ARR/ Tariff Petition.

- 3.19 The estimated load in the SEEPZ SEZ is around 35 MW. The consumer base of a typical Distribution Licensee includes diverse consumer categories, viz, residential, industrial, commercial, agriculture, public services, Public Water Work, Street Lighting, etc. However, SEEPZ SEZ is a developed SEZ with manufacturing units of Gems and Jewellery, other products and services along with Information Technology (IT) and IT enabled services. Accordingly, the Petitioner has envisaged the following Tariff categories in its concerned area of supply:
- i. LT II (A) – Commercial 0-20 kW
 - ii. LT II (B) – Commercial Above 20 kW and upto 50 kW
 - iii. LT II (C) – Commercial Above 50 kW
 - iv. LT III (A) – Industrial upto 20 kW
 - v. LT III (B) – Industrial > 20 kW
 - vi. HT I – HT Industrial
 - vii. HT II – HT Commercial
- 3.20 The Petitioner expects the consumer load of SEEPZ SEZ to migrate to ASL, subsequent to effectiveness of its Distribution Licence and transfer of assets from its Holding company i.e., AEML-D. This could entail a period for each consumer wherein it would remain a consumer of AEML-D for supply, while using the Petitioner's network (after the asset transfer from AEML-D). Accordingly, it would be necessary that both Retail Tariff and Wheeling Charges for the Petitioner are separately determined on a provisional basis, till the time of final determination.
- 3.21 Under Section 62(1)(d) of EA, the Commission has ample regulatory powers to approve the provisional Tariff in the intervening period where power is to be supplied by a Distribution Licensee, pending the Tariff determination.
- 3.22 One of the terms in LoA is that the supply by Petitioner in SEEPZ SEZ is to be competitive to that of current supply by AEML-D and Tata Power Company Ltd. (TPC-D) and in no case, it should be higher than what has been submitted in its commercial proposal. However, the Petitioner, in its acceptance letter dated 5 July 2021 to the said LOA, has mentioned that the actual cost of supply will depend on the ARR approved by the Commission and the Distribution Licensee under the EA is mandated to charge the Tariff as approved by the Commission.
- Transfer of Assets by AEML-D to the Petitioner for SEEPZ SEZ**
- 3.23 As per the LOA by the Respondent read with the Co-Developer agreement, the Petitioner is under a mandate to supply electricity within SEEPZ SEZ at competitive rates to that of AEML-D and TPC-D. As per the terms therein, ASL is required to comply with

provisions of the SEZ Act with respect to quality of supply and continuous power in the SEEPZ SEZ.

- 3.24 Further, as per the Rule 5.5 (C) of the SEZ Rules 2006, the Deemed Distribution Licensee is required to supply uninterrupted power within the SEEPZ SEZ.
- 3.25 In order to supply power to the consumers at competitive rates, it is required for the Petitioner to have its own network within the SEEPZ SEZ for supply of power to the consumers situated therein.
- 3.26 The acquisition of an electricity distribution network can be achieved by way of the transfer of distribution assets of AEML-D, located in the SEEPZ SEZ, to the Petitioner.
- 3.27 Hence, the Commission is requested for consideration of the separate Petition filed by AEML-D (in Case No. 3 of 2022), seeking transfer of its entire distribution assets located within the SEEPZ SEZ, to the Petitioner.
- 3.28 This will ensure reliable and quality supply of electricity by the Petitioner to meet the new load requirements and natural load growth within the SEZ area.
- 3.29 The Petitioner will supply power to the consumers within SEEPZ SEZ using the assets of its Holding company i.e., AEML-D once the existing assets of AEML-D are transferred to the Petitioner. In such a scenario, there would not be any duplication of the network.

PPA Allocation, Utilization of AEML-D services for O&M and corresponding cost Allocation

- 3.30 Once the Licence conditions are issued, the Petitioner would be undertaking its power procurement through assignment of PPAs from AEML-D proportionate to the load of the SEEPZ SEZ and/or through other means as permitted under the EA.
- 3.31 Furthermore, the Petitioner will be required to carry out all other necessary activities of a Distribution Licensee such as O&M of network, customer complaint handling, etc. Same will be done through services provided by AEML-D, for which suitable cost allocation in transparent manner will be done from AEML-D.
- 3.32 The details of the arrangement and allocation of resources/cost shall be provided by the Petitioner to the Commission along with its Petition for determination of ARR and Tariff, which is yet to be filed.

4. SEEPZ SEZ Authority, in its replies dated 25 February 2022, has stated as follows:

- 4.1 Presently, there are two existing Distribution Licensees namely AEML-D and TPC-D who are supplying electricity to the units (consumers) within SEEPZ SEZ through their own network.
- 4.2 The Tariff applicable to the consumers of SEEPZ for both the Licensees are as approved by Commission and are same as applicable to their other consumers of same Tariff category outside SEEPZ SEZ. The Tariff of power presently being supplied by AEML-D

and TPC-D is approximately in the range of Rs 9 to Rs.10 per unit for various categories of consumers within the SEEPZ SEZ as against Tariff in other SEZs in the country which are much lower and varies from Rs 5 to Rs 7 per unit.

- 4.3 The Respondent is receiving multiple representations from the units within SEEPZ SEZ to reduce the Tariff for electricity.
- 4.4 SEEPZ SEZ had earlier approached the Commission for operationalizing its own Distribution Licence, however, the Commission vide its Order dated 24 January 2018 had directed the Respondent to approach again with its network roll out plan given that there already exists a reliable network of other Distribution Licensees. Thereupon, the Respondent has been trying to operationalize its own Distribution Licence since last 5 to 8 years so as to have lower Tariff applicable in SEEPZ SEZ.
- 4.5 The Respondent had subsequently invited an Expression of Interest (**EOI**) dated 10 December 2020 from interested bidders for developing a methodology for reducing current Electricity Tariff within SEEPZ SEZ. Pursuant to the response to EOI, the Respondent had then issued a Letter of Award (**LoA**) dated 22 June 2021 to the Petitioner for operationalizing the Deemed Distribution Licence of SEEPZ SEZ as a Co-Developer.
- 4.6 The proviso to Section 14 of the EA, inserted by GoI vide its Notification dated 3 March 2010, specifies that the developer of SEZ is deemed to be a Distribution Licensee from the date of SEZ notification. Accordingly, the Respondent has no objection to taking on record the Deemed Distribution Licensee status of the Petitioner and the Commission may issue specific conditions of Distribution Licence to the Petitioner.

5. At the E-hearing dated 25 March 2022 held through video conferencing:

- 5.1. The Advocate appearing on behalf of the Petitioner reiterated its submissions as made out in the Petition and further stated that:
 - i. ASL, initially, had requested that the date of commencement of the term of licence should be the date of approval of the Petitioner as Co-Developer. However, ASL now prays that date of commencement of the term of licence should be the date of the Order to be issued by the Commission in the present matter.
 - ii. If the licence is made effective from the date of approval of the Petitioner as Co-Developer, it would amount to retrospective commencement of the Licence.
 - iii. No Act or Law allows retrospective operation of provisions contained therein.
 - iv. In terms of the observations of the Hon'ble Supreme Court in its Judgment in the matter of *Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission, (2014)*, the licence needs to be made effective on prospective basis only.
- 5.2. The representative appearing on behalf of the SEEPZ SEZ reiterated its submission as made out in its replies and further stated that SEEPZ was converted from EPZ to SEZ in

2000, hence the licence needs to be made effective at least from 2005 when the SEZ Act was enacted, however since ASL has been approved as a co-developer for SEEPZ SEZ in October 2021, the Commission may allow the licence to be made effective from October 2021.

- 5.3. The Commission observed that the Petitioner and the Respondent were making contrasting submissions on the issue of effective date of licence i.e. date of commencement of the term of licence. It was also observed that the EA amendment dated 3 March 2010 was very clear which provided that the SEZ developers were to be deemed licensees from the date of their respective notifications of SEZ whereas ASL was now presenting interpretation of the Judgment of the Hon'ble Supreme Court to seek a licence effective from the date of Order in present matter. Accordingly, the Commission enquired as to whether before floating the EOI, SEEPZ SEZ Authority had taken any legal opinion regarding applicability of the EA amendment dated 3 March 2010 to SEEPZ SEZ. The Commission further enquired with Respondent whether any separate Notification was issued by the Ministry of Commerce & Industry, GOI after enactment of SEZ Act and SEZ Rules 2006 framed thereunder. Responding to this query, it was informed by ASL and the Respondent that they would file additional submissions along with legal justifications supporting their prayers.
- 5.4. The Petitioner also assured to submit the replies to data gaps raised by the Office of the Commission vide email dated 16 March 2022.
6. **Vide its email dated 7 April, 2022, ASL submitted its responses. The issue-wise responses submitted by ASL are summarized below:**

a. Copy of Notification of SEEPZ SEZ and amendment therein by Ministry of Commerce, GoI:

The Petitioner has submitted following documents:

- i. Resolution dated 23 December 1972 regarding setting up of the EPZ i.e. SEEPZ under administrative control of the Ministry of Foreign Trade, GoI.
- ii. Resolution dated 1 November 2000 issued by the Ministry of Commerce and Industry, GoI regarding conversion of SEEPZ from EPZ to SEEPZ SEZ under the Export Policy 2000.
- iii. Clarification dated 3 August 2006 issued by the Ministry of Commerce, GoI, clarifying that the activities relating to SEZs are guided by the provisions contained in the SEZ Act and SEZ Rules, 2006.

b. Submission of Company formation documents etc. (Incorporation Certificate, Articles of Association, Memorandum of Association, Financial statements and share Holding pattern):

The Petitioner has submitted copies of these documents.

- c. Consumer wise details of connected load, contracted demand, sales etc. taking supply from AEML-D within SEEPZ SEZ. Voltage to which such consumers are connected along with the mention of the network provider (network and metering facilities):**

The Petitioner has enclosed information on category-wise consumers, consumer-wise connected load, contracted demand, billed sales quantum for the period from April 2021 to February 2022, for AEML-D network as well as supply.

- d. Present status of SEZ development, number of premises developed/proposed to be developed, number and category of consumers, present load and projected load development, category-wise present sales and projected sales:**

There are about 410 Units already operational in SEEPZ Area. There are seven Standard Design Factories and three Gem and Jewelry Factories, two Towers in SEEPZ++ area and one multi-storied building. The Plots are leased for 30 years. There is also a well-connected network of central roads, and a Business Facilitation Centre. There are other facilities such as Bank, ATM, Telephone Exchange, Residential Hotel, Foreign Post Office, Gymnasium etc.

Also, there is a plan for gradual reconstruction of entire SEEPZ SEZ in next 3 to 5 years and investment layout of Rs. 200 Cr. has been approved by the GoI. A Mega Common Facility Centre for Gems and Jewelry at SEEPZ Mumbai is also planned with an investment of Rs. 70 Crore. Accordingly, the Petitioner has envisaged that load growth in SEEPZ SEZ would be slightly more than AEML-D area load growth, which is ~2%.

- e. Details as to how the Petitioner proposes to keep the Tariff in SEEPZ SEZ competitive as compared to that of AEML-D or TPC-D, which is the basic premise/ criteria for its selection as a Co-Developer:**

The Petitioner's Holding company i.e., AEML-D has filed a separate Petition seeking transfer of its network assets to the Petitioner which will assist it to have a lower capital expenditure. Further, due to favorable consumer mix in SEEPZ SEZ, there is non-requirement of cross-subsidization. Also, the load profile is expected to keep the power procurement cost at a lower level. All these factors shall contribute in keeping Tariff in SEEPZ area competitive vis-à-vis Tariff of both AEML-D and TPC-D..

- f. How the Petitioner proposes to supply to such consumers in SEEPZ SEZ if they approach the Petitioner for power supply but are on TPC-D network:**

Such consumer who wishes to procure supply from it but are still on TPC-D's network, the Petitioner would require to follow the protocol for supply of power as per the framework laid down in the Orders dated 15 October 2009, in Case No. 50 of

2009 and Order dated 12 June 2017 in Case No. 182 of 2014, subject to the Commission's approval.

g. The Petitioner's justification along with supporting regulatory provisions for seeking licence for a period of 25 years from the date of approval as Co-Developer instead from the date of SEZ Notification:

SEEPZ SEZ was set up in the year 1973 and SEZ Act was notified in 2005. As per notification dated 3 March 2010 issued by Central Government, SEZ developer has been conferred with the status of a deemed distribution licensee. SEZ developers are considered deemed distribution licensees from the date of notification of the SEZ, as the SEZ developers were engaged in distribution activities since inception. The aforesaid notification dated 3 March 2010 only provides an exemption from filing an application seeking distribution licence, however, the SEZ has to still satisfy the other provisions of the EA. This issue has been settled by the Hon'ble Supreme Court, in the matter of *Sesa Sterlite Ltd. v. OERC*. In terms of the law settled by the Hon'ble Supreme Court, the notification dated 3 March 2010 issued by Ministry of Commerce and Industry, only exempts from the requirement of formally filing an application for grant of licence under Section 14(b) of the EA, however, ASL has to seek the approval of the Commission with respect to other terms and conditions in terms of the provisions of the EA, other than Section 14(b). The same would mean that the said terms and conditions would include the term of licence, network development, supply to various consumers, amongst others.

The SEZ Authority being the developer, never engaged itself in the business of distribution of electricity, rather, said function has been performed by AEML-D and TPC-D. Since ASL, being a co-developer wishes to engage in distribution of electricity, the "deemed licensee" status shall be conferred prospectively. Even though, the Petitioner has prayed for the licence commencement to be from the date of approval of ASL as a co-developer i.e. 26 October 2021, the Commission is now requested to grant licence to ASL for a period of 25 years from the date when the Commission allows the present Petition, as the same shall be in consonance with the principle settled by the Hon'ble Supreme Court in *Sesa Sterlite* matter. Therefore, the Commission is fully empowered to issue Specific Conditions of Licence from the date of operationalization of Licence, including the period/ term of the licence.

h. Whether Petitioner has got approval from Board of Directors of AEML-D for utilizing its services and if there is any agreement /MoU to the effect:

The Petitioner will undertake all functions of a Distribution Licensee and for this, it could have an agreement with AEML-D for provision of Distribution services. Furthermore, the concerned agreement as per the Petitioner, is in process and will be duly submitted to the Commission.

- i. Whether option of assignment of existing PPAs of AEML-D to ASL is permitted under the terms of such PPA and if there is any board approval to the effect? Also, clarification as to how assignment of existing PPAs with Tariff already approved by the Commission would result in competitive Tariff to that of AEML-D & TPC-D in SEEPZ SEZ:**

The power procurement will be through assignment of PPA and/or any other means as given under EA. The PPAs of AEML-D have an assignment clause. Further, allocation of capacity from existing PPAs/assignment of PPAs /sourcing of power from external sources under prescribed regulatory framework, will be decided based on cost optimization constraints and other requirements, including timeline for demand growth (through gradual migration of consumers to the Petitioner's supply), etc.

- j. The Petitioner's competence/readiness to function as a Distribution Licensee, in compliance of all relevant Regulations, without depending on its parent company i.e., AEML-D, considering that the consumers of SEZ are already availing power supply, i.e., no waiting period, AND**

- k. How the Petitioner plans to meet its obligations as Distribution Licensee as per the provisions of EA and how it would comply the requirements of 24*7 uninterrupted power supply to the SEZ:**

ASL intends to enter into service agreements with AEML-D for performing all its functions and discharge of obligation (O&M, meter reading, billing & collection, CGRF etc.) as a Distribution Licensee as per the EA and Regulations thereunder. Over time, as per requirement, ASL could develop some competency and resources of its own or could continue to have service agreements with AEML-D for the reasons of cost optimization, etc.

As the consumers are already connected to the network and are receiving supply, there would be no waiting period except to the extent of time involved in processing of supply applications and taking the consumers on records of the Petitioner. Therefore, the fastest and most efficient way to immediately perform its obligations as a Distribution Licensee is service agreements with AEML-D (i.e., outsourcing to AEML-D at a consideration). This is like outsourcing of services by ASL to AEML at a consideration, which is already performing all services in the area. All distribution licensees are fully at liberty to perform these functions through their own staff and employees or outsource the same and distribution licensees, including AEML-D, are already doing such outsourcing at different levels. These service arrangements between ASL and AEML-D will be on an arm's length basis. ASL shall meet its obligations and discharge its duties as a Distribution Licensee as per EA and Rule and Regulations framed thereunder.

l. Provisional Tariff (category wise fixed cost and energy charges) and wheeling charge, the Petitioner proposes to charge in SEEPZ SEZ:

Although ASL has not proposed a Provisional Tariff in its Petition, it has indicated that provisional Tariff for Supply and Wheeling is to be determined separately by the Commission. The basic premise of the arrangement is competitive Tariff vis-à-vis existing Distribution Licensees in SEEPZ SEZ. Therefore, the Commission may allow the Petitioner to charge both Wheeling and Supply Tariff as minimum of AEML-D and TPC-D, till the final Tariff determination.

m. Clarification as to how the existing mechanism/protocols decided for Switchover/Changeover for AEML-D and TPC-D will operate:

Once the Commission approves the Petition for transfer of assets from AEML-D to ASL, ASL shall own the distribution network (earlier belonging to AEML-D to which consumers are already connected). As provisional Tariff and final Tariff of ASL will be comparatively attractive, these connected consumers could then apply for supply from ASL and will gradually shift to ASL supply. In the intervening period, till such time consumer remains connected to ASL's network and AEML-D's supply, the consumer will be charged ASL provisional / final wheeling Tariff and AEML-D's supply Tariff. Subsequent to migration to ASL's supply, the consumer will be charged ASL provisional / final wheeling Tariff and ASL's provisional / final supply Tariff.

In case, any of TPC-D's consumer wants to opt for ASL supply, then ASL proposes that it could follow the protocol for supply of power as per the framework laid down in Order dated 15 October 2009 in Case No. 50 of 2009 and Order dated 12 June 2017 in Case No. 182 of 2014, subject to approval of the Commission.

n. The timelines for further activities such as PPA filing, ARR filing, CGRF establishment etc.:

The Petitioner would be in a position to file the Petition for ARR and Tariff and other compliances, once all the approvals of the Commission are in place, including the approval of transfer of assets from AEML-D. The support service agreement, which would be executed in the future, will include the utilization of services of AEML-D which are necessary for ASL to meet its roles and responsibilities of a deemed distribution licensee as per the Rules and Regulations issued by the Statutory Authorities from time to time. ASL will commence process of establishment of CGRF immediately upon issuance of Specific Conditions of Licence and shall comply with Regulation 3.1 of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020.

7. ASL, vide its additional submission dated 7 April 2022, stated that:

- 7.1 The Hon'ble Supreme Court, in its Judgment in the matter of Sesa Sterlite Ltd. v. OERC, held that Sesa Sterlite Ltd. is exempted from applying for grant of Distribution licence, being a SEZ Developer, however, it has to fulfil other obligations of a Licensee. The SEZ developer cannot be treated as Distribution Licensee in absence of fulfilment of various functions/ obligations of such a Licensee as per the EA.
- 7.2 ASL is eligible to be treated as Co-Developer from its approval date i.e., 26 October 2021. However, as per the law settled in the aforesaid Judgment, the licence is to take effect from the date, the various terms and conditions associated with the licence are approved for fulfilment by the Commission. Hence, the date of commencement of term of licence should be the date when the Commission allows the present Petition.
- 7.3 Instead of literal interpretation, a purposive interpretation of the amendment to Section 14 of EA vide Notification dated 3 March, 2010, should be adopted having regard to both the object and subject of the said amendment.
- 7.4 A strict interpretation to the amendment to Section 14 of EA would lead to a situation where a developer will be considered a Deemed Licensee even prior to its incorporation.
- 7.5 The Petitioner has also relied on the legal maxim- *LEX NON COGIT AD IMPOSSIBILIA* and Binani Zinc Ltd. v. Kerala SEB, (2009), which provides that a statute i.e. the amendment to Section 14 of EA in this case, does not envisage something which is impossible to be done. Therefore, ASL cannot be conferred/ recognized as a Distribution Licensee from the date of Notification of SEZ, by virtue of being a Co-Developer as it has not come into existence at the time of Notification of SEZ.
- 7.6 Accordingly, the Commission is requested to issue the Specific Conditions of Distribution Licence in its favour providing for the 'Area of Supply' and 'Period of License' as per the submissions made by it in this regard.

Commission's Analysis and Ruling:

8. ASL has filed the present Petition for taking on record its status as a deemed distribution licensee under Section 14 of the EA and for issuance of Specific Conditions of Distribution Licence under Section 16 of the EA, for the Petitioner for the SEEPZ SEZ Area. Through the present Petition ASL also requested to allow it to charge provisional Tariffs for Retail Supply and Wheeling to the consumers in its licensed area as approved by the Commission till the determination of Tariff of ASL.
9. The Commission notes that SEEPZ was set-up on 1 May 1973 as a uni-product EPZ for exclusive manufacturing and export of electronic items in an area of 92 acres 26 gunthas and 12 annas and pursuant to the SEZ Policy of 2000, SEEPZ was converted from EPZ to SEZ w.e.f. 1 November 2000. Subsequently, an additional area of 11 acres known as SEEPZ++ was merged with SEEPZ SEZ vide Notification dated 7 January 2002.

10. Upon enactment of the SEZ Act on 23 June 2005, all existing SEZs were deemed to be notified and established in accordance with the provisions of the SEZ Act. The relevant provision of the SEZ Act reads as under:

“4. Establishment of Special Economic Zone and approval and authorization to operate to, Developer:

(1) ...

Provides that an existing Special Economic Zone shall be deemed to have been notified and established in accordance with the provision of this Act and the provisions of this Act shall, as far as may be, apply to such Zone accordingly: ...”

11. In terms of the above provision, the SEEPZ SEZ is deemed notified and established in accordance with the SEZ Act.
12. The EA was amended through Notification dated 3 March, 2010 to add a proviso to Section 14 (b) :

“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 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;.....” [Emphasis added]

13. SEEPZ SEZ Authority appointed ASL as Co-Developer under bidding process and post issuance of the LOA, Co-Developer Agreement was executed on 8 September 2021. ASL was entrusted with the development, operation and maintenance of the electricity distribution network and other related infrastructure in SEEPZ SEZ area in order to provide reliable and continuous power to the consumers in the said area in terms of the provisions of the EA and the Rules and Regulations made thereunder, read with the SEZ Act.
14. The Department of Commerce, Ministry of Commerce and Industry, GoI, vide its letter dated 26 October 2021 has approved the status of the Petitioner as a Co-Developer for SEEPZ SEZ area.

15. As mentioned earlier, the amendment made in EA provides that the Developer of a SEZ is deemed to be a Distribution Licensee from the date of notification of such SEZ.
16. Further, as per the definition in Section 2(g) of the SEZ Act, the term ‘Developer’ includes the Co-Developer also and this definition reads as follows:

(g) “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer;
17. By virtue of provisions of the Section 14 (b) of the EA and being a Co-Developer of SEEPZ SEZ duly approved by the Ministry of Commerce and Industry, GoI, ASL is entitled to be a Deemed Distribution Licensee for the said SEZ.
18. ASL has submitted the map indicating the layout of SEZ which is certified by the Office of Development Commissioner, SEEPZ SEZ. ASL has also provided its preparedness to function as a Distribution Licensee and fulfil the obligations as a Distribution Licensee in compliance with the relevant EA provisions and the applicable Regulations made thereunder. AEML-D has filed a separate Petition before the Commission (Case No. 3 of 2022) for transfer of assets from SEEPZ SEZ in favour of ASL which is under consideration of the Commission.
19. **Considering the proviso introduced to Section 14(b) of the EA and also considering the preparedness of ASL to act as a Distribution Licensee, the Commission hereby confirms the status of ASL as the deemed Distribution Licensee for SEEPZ SEZ area under Section 14 of the EA.**
20. Having taken on record the Deemed Distribution Licensee status of ASL, it would be necessary to take a view and provide ruling on other aspects relevant in the present matter as discussed in the following paragraphs of this Order.
21. The area of SEZ for which ASL would be authorized to supply and distribute electricity, needs to be specified in the Specific Conditions of Distribution Licence applicable to ASL.
22. The amendment made in EA provides that the Developer of a SEZ is deemed to be a Distribution Licensee from the date of SEZ notification issued under Section 4 of the SEZ Act. However, in the present case, there is no notification for SEEPZ SEZ as envisaged under Section 4 of the SEZ Act and it is deemed notified SEZ under the SEZ Act. Accordingly, the date of commencement of licence term needs to be decided by the Commission under the provisions of the EA.
23. ASL has also prayed that it may be permitted to charge a provisional Tariff till the final Tariff is determined by the Commission on the ARR/ Tariff Petition filed by ASL. In response to data gaps, it has requested that it may be allowed to charge both Wheeling and Supply Tariff as minimum of respective Tariff of AEML-D and TPC-D for

respective category of consumers, provisionally, till the time its final Tariff is determined. Hence, a view needs to be taken on this request of AEML-D that too considering the parallel Distribution Licensing scenario in the Mumbai Suburban area where SEEPZ SEZ is located.

24. Accordingly, following issues arise for consideration of the Commission:
- a. *What should be the basis for specifying the area of supply in the Specific Conditions of Licence applicable to ASL?*
 - b. *In absence of specific date of notification for SEEPZ SEZ, what would be the start date/ effective date for the 25-year licence period under the provisions of the EA?*
 - c. *What should be the Provisional Tariff for ASL being 3rd distribution licensee in SEEPZ SEZ area apart from TPC-D and AEML-D?*
 - d. *Assessing applicability of the changeover/switchover protocols for ASL being 3rd distribution licensee in SEEPZ SEZ area.*
25. The aforesaid issues have been dealt with in the following para.
26. *Issue 1: What should be the basis for specifying the area of supply in the Specific Conditions of Licence applicable to ASL?*
- 26.1 As per the amendment to EA, the SEZ developer is a Deemed Distribution Licensee for the SEZ area from the date of notification of such SEZ. Further, this notification issued under Section 4 (1) of the SEZ Act, notifies the SEZ area which is specified as the area of supply for such Deemed Distribution Licensee. However, SEEPZ SEZ is the deemed SEZ established under SEZ Act and hence, no such notification under Section 4 (1) of the SEZ Act is applicable in the present case.
- 26.2 The Commission notes that the Petitioner has submitted the area of the SEEPZ SEZ as 103 acres. The Petitioner has also submitted a map indicating the layout of SEZ which is certified by the Office of Development Commissioner, SEEPZ SEZ. As a part of verification for the SEZ area, the Commission has perused the Co-Developer Agreement executed between the Petitioner and the Respondent on 8 September 2021. This Co-Developer Agreement has mentioned the area of SEEPZ SEZ as 103 acres of land leased out by MIDC vide lease deed dated 20 January 1975 and vide another lease deed dated 28 May 2005. Further, as per the approval of ASL as Co-Developer by the Ministry of Commerce and Industry, GOI vide letter dated 26 October 2021, it is mentioned that the Co-Developer agreement shall also form part of the approval.
- 26.3 **In view of the above, the Commission deems it appropriate to consider the Co-developer Agreement as the basis for ascertaining area of SEEPZ SEZ and accordingly, the area of supply for ASL shall be 103 acres which is the land area of SEEPZ SEZ leased out by MIDC vide lease deed dated 20 January 1975 and vide another lease deed dated 28 May 2005.**

27. ***Issue 2: In absence of specific date of notification for SEEPZ SEZ, what would be the start date/ effective date for the 25-year licence period under the provisions of the EA?***
- 27.1 As per the amendment to EA, the SEZ developer is a Deemed Distribution Licensee for the SEZ area from the date of notification of such SEZ. However, SEEPZ SEZ is the SEZ deemed notified and established under the SEZ Act and hence, no such notification date under Section 4 (1) of the SEZ Act is available in the present case.
- 27.2 In its Petition, the Petitioner had prayed for the Licence period to be effective from the date of approval of the Petitioner as a Co-Developer i.e., from 26 October 2021. However, in its subsequent submission, it has requested for 25-year licence period to be effective from the date, the Commission allows the present Petition. For seeking its revised prayer for commencement of term of licence from the date of Order in present Petition, ASL has relied on the Judgment passed by the Hon'ble Supreme Court in Sesa Sterlite matter and it is the claim of ASL that specifying such term of licence shall be in consonance with the principle settled by the Hon'ble Supreme Court in the aforesaid Judgment. ASL has also claimed that in terms of the law settled by the Hon'ble Supreme Court in the aforesaid matter, the notification dated 3 March 2010 issued by Ministry of Commerce and Industry only exempts from the requirement of formally filing an application for grant of licence under Section 14(b) of the EA, however, ASL has to seek the approval of the Commission with respect to other terms and conditions in terms of the provisions of the EA, other than Section 14(b). The same would mean that the said terms and conditions would include the term of licence, network development, supply to various consumers, amongst others.
- 27.3 The Commission has examined the Judgment passed by the Hon'ble Supreme Court in Sesa Sterlite matter and it is observed that the Hon'ble Supreme Court has essentially ruled that as per the EA amendment, the SEZ developer is treated as deemed Distribution licensee for its SEZ areas, however, it only gets exemption from specifically applying for licence under Section 14 of the EA and in order to avail further benefits under the EA, it is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. Hence, the Judgment referred by ASL is totally on a different issue and the issue as to whether the commencement of term of licence for a SEZ developer could be retrospective or same has to be necessarily prospective, has not been dealt with by the Hon'ble Supreme Court in the aforesaid Judgment.
- 27.4 Further, the amendment in EA is very specific and clear provision of the EA wherein the proviso to Section 14(b) of the EA provides that the SEZ developer is treated as deemed Distribution Licensee for the SEZ from the date of notification of such SEZ. Thus, the EA provision does not require any interpretation

- 27.5 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.
- 27.6 Having said that, the Commission notes that the SEEPZ SEZ's case is a peculiar one as there is no such notification date for SEEPZ SEZ under Section 4 of the SEZ Act, from where the commencement of term of licence can be specified and accordingly, such date needs to be decided among the various relevant dates.
- 27.7 The Commission has examined various dates for consideration of commencement of Licence in the following para:
- i. SEEPZ was set-up on 1 May 1973 as a uni-product EPZ for exclusive manufacturing and export of electronic items. However, the licence cannot be made effective from this date since on this date, it was set up as an EPZ.
 - ii. On 1 November 2000, SEEPZ was converted from EPZ to SEZ. This is merely a date of SEZ conversion and not a specific notification date for SEZ. Further during the period between 1 November 2000 to 9 February 2006, SEEPZ SEZ was operational under the then Foreign Trade Policy and not under the SEZ Act. Additionally, if 1 November 2000 is considered as the start date of licence period, it would lead to a scenario where Licence will remain effective only for around 3.5 years which would be insufficient period and may not be practical also, to function as distribution licensee. Also, a shorter licence tenure may create difficulty for ASL in long term planning for Power Purchase, Capex, Funding, Grid Connectivity etc. Hence, the 25-year License period cannot be made effective from the date of conversion of SEEPZ EPZ into SEEPZ SEZ i.e., 1 November 2000.
 - iii. The Commission also notes that proviso to section 4(1) of the SEZ Act provides that the existing SEZ shall be deemed to have been notified and established in accordance with the provisions of SEZ Act and provisions of SEZ Act shall apply to such Zone. The SEZ Act was enacted on 23 June 2005. Further, vide its letter dated 3 August 2006, the Ministry of Commerce & Industry (Department of Commerce), Government of India, clarified that SEZ Act and SEZ Rules have become operative with effect from 10 February 2006 and hence, all the activities relating to the SEZ shall be guided by the provisions contained in SEZ Act and SEZ Rules. Hence, the date of SEZ Act becoming operative i.e. 10 February 2006 can be considered as the date of licence commencement, however, deciding this date would still be based on interpretation of relevant provisions of the SEZ Act read with the clarification issued by the Ministry of Commerce and Industry,

Government of India since though SEEPZ SEZ is deemed SEZ under SEZ Act, the same does not expressly indicate any notification date for such existing SEZ. Further, it will also lead to a shorter licence period and the associated issues as mentioned above.

- iv. Similarly, the date of EA amendment i.e. 3 March 2010 and the date as prayed originally by ASL i.e. the date of approval of ASL as the Co-Developer would lack a proper legal basis.

- 27.8 In light of the above, the Commission notes the peculiarities of the SEEPZ SEZ as under:
- a. SEEPZ was formed as EPZ in 1973 and later on, converted into SEZ on 1 November 2000
 - b. SEEPZ SEZ was deemed to be notified under SEZ Act but no such date of notification of SEZ has been specified.
 - c. SEEPZ SEZ is the only SEZ in Maharashtra which has been established before enactment of SEZ Act and hence, a unique case for dispensation.
 - d. All the dates discussed in preceding para. for consideration of licence date are either impractical due to a shorter balance period of licence or these dates are based on the certain interpretations.
- 27.9 The Commission also notes that the present case of SEEPZ SEZ is on a different footing as compared to earlier cases where the Commission has taken on record the deemed distribution licensee status of respective Developers/ Co-Developers based on their respective notification dates under Section 4(1) of SEZ Act which is unavailable in case of SEEPZ SEZ as it has been established much prior to enactment of SEZ Act.
- 27.10 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 ASL also, the Commission would be required to exercise this power. In light of circumstances discussed in preceding paragraphs and considering the peculiarity of the present case wherein SEEPZ SEZ has been set up much prior to the enactment of the SEZ Act and wherein there is no notification date available for SEZ under Section 4 of the SEZ Act, 2005, **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 ASL.**

28. ***Issue 3: What should be the Provisional Tariff for ASL being 3rd distribution licensee in SEEPZ SEZ area apart from TPC-D and AEML-D?***
- 28.1 The Petitioner, in its response to data gaps, has requested the Commission to allow it to charge the minimum of AEML-D's Tariff and TPC-D's Tariff for both Wheeling and Supply Tariff as the provisional Tariff in SEEPZ SEZ, till the final Tariff determination is undertaken based on Tariff and ARR Petition of ASL. The Petitioner has cited Section 62(1)(d) of the EA and has stated that the basic premise in the instant case is that the Petitioner's Tariff should be competitive as compared to that of AEML-D and TPC-D.
- 28.2 The Commission notes that AEML-D has filed a separate Petition (in Case No. 3 of 2022), seeking transfer of its entire distribution assets located within the SEEPZ SEZ, to the Petitioner so as to enable the Petitioner to undertake Distribution activities. This Petition is under regulatory process and yet to be decided. Hence, as on date, ASL does not have any distribution network in place and necessary clarity on availability of distribution infrastructure to ASL would be there, only after disposal of asset transfer Petition of AEML-D.
- 28.3 Further, in case provisional Tariff is allowed in present proceeding, it may result into consumers making an application for switchover/ changeover from existing licensees to ASL without having clarity/ knowledge on likely final Tariff scenario. The possibility cannot be ruled out where the consumers gets switched over to ASL considering a lower provisional Tariff and subsequently would have to bear a higher Tariff based on final Tariff determination for ASL. Accordingly, the migration of consumers based on a provisional Tariff would not be appropriate. Hence, even if the provisional Tariff is allowed, it would be applicable to new consumers only, however, in absence of network availability till disposal of asset transfer Petition, ASL would not be able to fulfill its universal service obligations.
- 28.4 The Commission also notes that in past, the Commission has allowed provisional Tariff for SEZ Deemed Distribution Licensees as these SEZ developers/co-developers were either having or likely to develop their own distribution infrastructure in their respective SEZ areas and hence there was ample clarity at that point in time when such provisional Tariff were allowed, whereas as mentioned earlier, in the present case, necessary clarity on availability of distribution infrastructure to ASL would be there, only after disposal of asset transfer Petition of AEML-D.
- 28.5 **In light of the above, it would be premature to allow any provisional Tariff to ASL and hence, the Commission is not inclined to grant the prayer of ASL for provisional Tariff in the present proceeding.**
29. ***Issue 4: Assessing applicability of the changeover/switchover protocols for ASL being 3rd distribution licensee in SEEPZ SEZ area***

- 29.1 The Commission notes that ASL would become the third Distribution Licensee in the SEEPZ SEZ area where there exists a parallel licensing scenario which allows the consumers to migrate from one Distribution Licensee to another using the migration protocols (i.e. changeover protocol and switchover protocol) approved by the Commission. ASL, in its replies to the data gaps, has stated that these protocols for supply of power as per the framework laid down under the Order dated 15 October 2009 in Case No. 50 of 2009 and Order dated 12 June 2017 in Case No. 182 of 2014, shall be followed subject to approval of the Commission.
- 29.2 The Commission notes that the existing protocols laid down under the Order dated 15 October 2009 in Case No. 50 of 2009 and the Order dated 12 June 2017 in Case No.182 of 2014 were framed primarily considering the existence of two Distribution Licensees i.e. TPC-D and AEML-D only and did not envisage any other new Licensees. ASL would be the third Licensee in the SEEPZ SEZ area and therefore the existing protocols as given under the aforesaid Orders may require a certain re-adjustment to accommodate ASL as a third competing Licensee. However, the manner in which **ASL could be made a part of these protocols, could be decided once ASL fully operationalizes its Distribution Business with Tariff determined by the Commission on the ARR and Tariff Petition filed by ASL. Hence, the process for modification of migration protocols accommodating the Petitioner as the third competing licensee would be dealt with separately after finalization of Case No. 3 of 2022 upon a separate Petition by ASL for that purpose. Till such time, any consumer migration to ASL for seeking supply from ASL, either through changeover or switchover, would not be allowed.**
30. The Commission is also aware of the fact that the Office of the Commission has received an Impleadment Application from TPC-D which has been filed on 30 March 2022 after the E-hearing dated 25 March 2022 wherein the present Case was reserved for Orders.
31. TPC-D, in its application, has stated that as such it does not have any objection qua recognition of the deemed licensee status to the Petitioner, however, TPC-D happened to attend the hearing dated 25 March 2022, wherein upon query raised by the Commission, it transpired that the Petitioner, in its arrangement for supplying cheaper power to SEEPZ, had offered a capped Tariff. From the documents available in public domain, no such proposal of Tariff capping was found and hence TPC-D did not deem it necessary to seek impleadment in the matter till date of hearing, however, being parallel distribution licensee in the area, TPC-D would be affected by the decision of the Commission qua capping of Tariff without following due process of law for Tariff determination based on ARR Petition of the other parallel Distribution Licensee and TPC-D.
32. The Commission, in the present Order, has not issued any direction regarding capped Tariff as no provisional Tariff has been allowed to ASL. **Hence, the Commission is of the view that TPC-D's concern regarding capped Tariff getting allowed in the**

present proceeding, has been addressed and as such, there is no need to pass a separate Order on impleadment Application of TPC-D. Having said that, if TPC-D, still has some grievance/suggestions/objections, it can make its submissions at the time of Asset Transfer Petition of AEML-D or at the time of Tariff proceeding of ASL wherein public consultation would happen.

33. As a Deemed Distribution Licensee, the Petitioner shall have to adhere to the following:
- a. The relevant provisions of the EA and the applicable Rules, Regulations and Orders issued thereunder;
 - b. Guidelines of the Commission for in-principle approval of its proposed capital investment schemes;
 - c. 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.”*
34. 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, the Petitioner is directed 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. and such other requirements as given under MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 within six months from the issue of the Specific Conditions of its Licence for the SEEPZ SEZ.**
35. Under Section 16 of the EA, 2003, the Commission may specify general or specific conditions applicable to a Licensee, and these conditions shall be deemed to be conditions of its License. In view of the definition of the term ‘specified’ in Section 2(62), the specific conditions 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 the Petitioner i.e., ASL for the SEEPZ SEZ.**

36. The Commission notes that the Petition filed by AEML-D seeking transfer of its Distribution Assets to ASL (i.e. Case No. 3 of 2022) is a connected matter to the present proceeding as without such transfer, ASL would not be able to operationalize its distribution licence. That Petition is under consideration of the Commission and will be decided after following the due regulatory process. Hence, it is clarified that the reliefs granted in present proceeding are subject to outcome of that Petition. **Hence, the process for notification of the Regulations specifying the specific conditions of Licence applicable to the Petitioner i.e., ASL for the SEEPZ SEZ would be initiated after finalization of Case No. 3 of 2022.**
37. Hence the following Order.

ORDER

1. **The Case No. 2 of 2022 is partly allowed to the extent of taking on record the deemed distribution licensee status of AEML SEEPZ Ltd. for the SEEPZ SEZ area.**
2. **The Commission hereby confirms the status of AEML SEEPZ Ltd. as the Deemed Distribution Licensee for the Multi-Product SEZ admeasuring 103 acres at SEEPZ-Special Economic Zone (SEEPZ SEZ) Govt. of India, Ministry of Commerce & Industry, Andheri (East), Mumbai-400096, Maharashtra under Section 14 of the Electricity Act, 2003.**
3. **The tenure of the licence for AEML SEEPZ Ltd. shall be 25 years from the date of this Order.**
4. **The Commission, in the present Order, has not issued any direction regarding capped Tariff as no provisional Tariff has been allowed to AEML SEEPZ Ltd. Hence, Tata Power Company-Distribution's (TPC-D) concern regarding capped Tariff getting allowed in the present proceeding, has been addressed and as such, there is no need to pass a separate Order on impleadment Application of TPC-D. Having said that, if TPC-D, still has some grievance/suggestions/objections, it can make its submissions at the time of Asset Transfer Petition of Adani Electricity Mumbai Ltd. -Distribution in Case No. 3 of 2022 or at the time of Tariff proceeding of ASL wherein public consultation would happen.**
5. **The manner in which AEML SEEPZ Ltd. could be made a part of the switchover and changeover protocols laid down under the Order dated 15 October 2009 in Case No. 50 of 2009 and the Order dated 12 June 2017 in Case No. 182 of 2014, would be decided once AEML SEEPZ Ltd. fully operationalizes its Distribution Business with Tariff determined by the Commission on the Annual Revenue Requirement and Tariff Petition filed by AEML SEEPZ Ltd. and hence, the process for modification of**

migration protocols accommodating the Petitioner as the third competing licensee would be dealt with separately after finalization of Case No. 3 of 2022 upon a separate Petition by AEML SEEPZ Ltd. for that purpose. Till such time, any consumer migration to AEML SEEPZ Ltd. for seeking supply from AEML SEEPZ Ltd., either through changeover or switchover, would not be allowed.

6. AEML SEEPZ Ltd. is also directed to establish Internal Grievance Redressal Cell, Consumer Grievance Redressal Forum, Customer Care Centre for complaint handling, and systems and modalities for billing, releasing new connections, ensuring reliable and uninterrupted power supply, etc. and such other requirements as given under MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 within six months from the issue of the Specific Conditions of its Licence for the SEEPZ SEZ.
7. The Petition filed by Adani Electricity Mumbai Ltd.-Distribution seeking transfer of its Distribution Assets to AEML SEEPZ Ltd. (i.e. Case No. 3 of 2022) is a connected matter to the present proceeding as without such transfer, AEML SEEPZ Ltd. would not be able to operationalize its distribution licence. That Petition is under consideration of the Commission and will be decided after following the due regulatory process. Hence, it is clarified that the reliefs granted in present proceeding are subject to outcome of that Petition. Hence, the process for notification of the Regulations specifying the specific conditions of Licence applicable to the Petitioner i.e., AEML SEEPZ Ltd. for the SEEPZ SEZ would be initiated after finalization of Case No. 3 of 2022.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary


MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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