

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 44 of 2022

**Case of The Tata Power Company Limited-Distribution seeking compliance of
Commission's Order dated 7 January 2022 in Case No. 82 of 2021**

Coram

Sanjay Kumar, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member

Tata Power Company Ltd.-Distribution (TPC-D) Petitioner

V/s

Adani Electricity Mumbai Ltd.-Distribution (AEML-D)Respondent

Appearance:

For TPC-D : Shri Basava Prabhu Patil (Adv.)

For AEML-D : Shri Sanjay Sen (Adv.)

ORDER

Dated 7 July 2022

1. The Tata Power Company Ltd.-Distribution (TPC-D) has filed a Case on 5 February 2022, under Sections 86(1)(f), 142 and 146 of the Electricity Act, 2003 (EA) seeking compliance of Order dated 7 January 2022 passed by the Commission in Case No. 82

of 2021. It is also seeking action against Adani Electricity Mumbai Ltd.- Distribution (AEML-D) for delaying/denying the switchover of consumers in Mumbai Suburban area. It is the claim of TPC-D that AEML-D has failed to comply with the directions issued under Order dated 7 January 2022 passed by the Commission in Case No. 82 of 2021. TPC-D has also sought a direction to AEML-D that going forward, it shall carry out switchover of the consumers strictly in accordance with the Commission's Order dated 12 June 2017 in Case Nos. 182 of 2014 and 40 of 2015. TPC-D has also sought a declaration that the compensation is payable by AEML-D for non-compliance of the aforesaid Order and the consequential losses suffered by the consumers/ TPC-D.

2. The Petitioner's main prayers are as follows:

- i. *Hold and declare that AEML's actions of delaying/ denying the switchover of consumers is illegal and contrary to this Hon'ble Commission's Order dated 07.01.2022 in Case No. 82 of 2021;*
- ii. *Hold and declare that the aforesaid conduct of AEML is punishable under Sections 142, 146 and 149 of the Electricity Act, 2003 and direct appropriate action against AEML in this regard;*
- iii. *Direct AEML that going forward, it shall carry out migration of the consumers strictly in accordance with this Hon'ble Commission's Order dated 12.06.2017 in Case Nos. 182 of 2014 & 40 of 2015 read with Supply Code in a timely and non-discriminatory manner;*
- iv. *Hold and declare that compensation is payable by AEML for non-compliance of this Hon'ble Commission's Order dated 07.01.2022 and the consequential losses suffered by the consumers/ Tata Power in this regard.*

3. The Petitioner has stated as follows:

- 3.1 TPC-D is constrained to file the present Petition, invoking Sections 86, 142, 146 and 149 of the EA, seeking directions against AEML-D on account of its persistent and continuing defiance of the Commission's Orders qua carrying out of switchover of consumers from AEML-D to TPC-D in accordance with the applicable framework.
- 3.2 On 12 June 2017, the Commission had passed an Order in Case No. 182 of 2014 and 40 of 2015, inter-alia, laying down the principles and a detailed protocol on which switchover of existing consumers are permitted from one distribution licensee to another. In terms of the same, the procedure of switchover is to be completed within 30 days from completion of all formalities. Accordingly, both licensees are to coordinate and schedule a switchover within 30 days of receiving a disconnection notice from the consumer.
- 3.3 Aggrieved by AEML-D's conduct since May 2021 of denying legitimate right of consumers to switchover, TPC-D had filed Case No. 82 of 2021 seeking appropriate directions against AEML-D, including directions of forthwith switchover of consumers.
- 3.4 The Commission vide Order dated 7 January 2022 in Case No. 82 of 2021 held that

AEML-D's justification for delaying/ denying switchovers was not correct (including for seeking additional information for checking eligibility of switchover). Further, the Commission also directed as under:-

“In the interim, both the licensees are directed to follow the existing switchover protocol as laid down under the Order dated 12 June 2017 and ensure that consumers are switched over in the stipulated timeframe. All the pending switchover applications shall be decided on FIFO (First In First Out) basis instead of an adhoc approach and if operational convenience requires deviation from FIFO, same may be mutually discussed and agreed.”

- 3.5 The Commission, in its Order, held that AEML-D's excuses to not follow Order dated 12 June 2017 are unjustified and that licensees are bound to follow the switchover protocol as it exists today. Upon passing of the aforesaid Order, TPC-D sent various correspondences to AEML-D for scheduling switchover of consumers, including switchover of consumer on first in first out basis. However, despite clear directions of the Commission to forthwith carry out switchover of consumers, AEML-D has continued to deny/ delay switchovers of consumers solely on the pretext of non-receipt of additional information from TPC-D and the pendency of constitution of committee to look into the allegations raised by AEML-D in Case No. 135 of 2021.
- 3.6 The information sought by AEML-D (such as single line diagrams etc.) are beyond the mandate of the Order dated 12 June 2017. Thus, AEML-D's conduct is in gross violation of the Order dated 7 January 2022.
- 3.7 As far as carrying out switchover is concerned, AEML-D has not only failed to carry out switchovers as per the Commission's mandate, but has also now undertaken an approach of 'blatant defiance' of the Commission's directions owing to lack of any concern of consequential actions for such defiance. In fact, AEML-D has now taken a stand that the Commission's directions in the Order dated 7 January 2022 (i.e. to comply with Order dated 12 June 2017) has no consequence on AEML-D's decision to seek information beyond what is required as per the Order dated 12 June 2017.
- 3.8 Despite the clear mandate to carry out switchover as per the Order dated 12 June 2017, AEML-D has failed to effect more than 100 cases of switchovers for existing consumers.
- 3.9 It is the stand of AEML-D that the directions of the Order in Case No. 82 of 2021 have no bearing on the information required by AEML-D in order to assess the validity and legitimacy of the switchovers proposed by TPC-D. However, TPC-D submits that vide the Order in Case No. 182 of 2014, no discretion has been granted to any licensee to insist on any information not required as per the Order dated 12 June 2017 while carrying out switchovers.
- 3.10 AEML-D has continued to seek additional information to check the eligibility of the consumer for switchover. The said unilateral actions tantamount to AEML-D assuming the role of adjudicator in deciding the switchover applications, which power is alien to the regulatory framework.

- 3.11 AEML-D is not only in continuing contempt of the Order dated 12 June 2017, but is also in contempt of specific directions issued by the Commission in Order dated 7 January 2022 regarding carrying out switchover of existing consumers strictly in accordance with the Order dated 12 June 2017.
- 3.12 The justification regarding pendency of constitution of a committee is of no relevance at the present juncture. The recommendations of the committee are to be placed before the Commission for necessary Orders/ directions. Till the time necessary Orders/ directions are issued by the Commission including amendment of the Order dated 12 June 2017, the distribution licensees are required to follow Order dated 12 June 2017.
- 3.13 The alleged irregularities suggested by AEML-D have not been proven by AEML-D. The alleged irregularities have been strongly refuted by TPC-D and no findings have been returned by the Commission on the issue raised by AEML-D. In fact, it was observed that AEML-D's Case No. 135 of 2021 was only a counter blast to TPC-D's Case No. 82 of 2021. Irrespective of that, AEML-D cannot be defying the Orders of the Commission dated 12 June 2017 and 7 June 2022, and unilaterally decide to stop switchover of existing consumers.
- 3.14 AEML-D's continuing conduct of non-compliance despite the Commission passing an Order in a contempt Petition directing compliance shows AEML-D's high-handed and anti-consumer conduct, where even findings by the Commission on contemptuous conduct have no bearing. Thus, AEML-D's contumacious conduct is once again punishable under Section 142, Section 146 and Section 149 of the EA in as much as it willfully engages in non-compliance of the Commission's Order dated 7 January 2022, Supply Code, its license conditions as also Order dated 12 June 2017 to cause heavy prejudice to consumers.
4. **TPC-D, vide its Miscellaneous Application filed along with the main Petition, stated as below:**
- 4.1 AEML-D has failed to effect more than 100 cases of switchovers in a timely manner. This is the second time the Commission has been approached under contempt jurisdiction for the same continued non-compliance of a party. In view of the above, there is a *prima facie* case in favour of TPC-D as AEML-D's actions/ inaction has already been held to be contrary to the regulatory framework vide the Commission's Order dated 7 January 2022.
- 4.2 The balance of convenience is in favour of TPC-D and against AEML-D as no prejudice would be caused to AEML-D if interim reliefs sought by TPC-D are granted. In fact, it is in the interest of the consumers that switchovers forthwith be carried out.
- 4.3 Further, grave and irreparable harm/ injury will be caused to the consumers seeking switchovers in as much as they will suffer from levy of higher Tariff on each unit of consumption due to denial of switchover choice for no fault of theirs. Further, TPC-D will also have irreparable loss due to the loss of revenue on the units consumed by these consumers during the period of delay.

4.4 In view of the above, following prayer is made:

Grant an Ex-Parte Ad Interim Order directing AEML to forthwith carry out switchovers as sought by consumers in the past and future, in adherence to this Hon'ble Commission's Orders dated 12.06.2017 in Case Nos. 182 of 2014 and 40 of 2015, and 07.01.2022 in Case No. 82 of 2021 unconditionally and within a strict time frame.

5. **TPC-D, vide its Additional affidavit dated 25 February 2022, stated that:**

5.1 While the present Petition is pending adjudication, certain facts were brought to TPC-D's knowledge which are being placed on record. These facts are essential to demonstrate AEML-D's conduct as regards delaying/ denying switchover of existing consumers.

5.2 AEML-D has been selectively offering various incentives to the consumers who have already switched over from AEML-D to TPC-D for them to switchover back to AEML-D and to the consumers who have made applications for switchover from AEML-D to TPC-D.

5.3 It is TPC-D's understanding that, contrary to the regulatory framework:-

- i. AEML-D is offering a rebate/incentive by way of a 'loyalty programme' where the incentive offered are used for reducing the 'landed cost of electricity';
- ii. This rebate is offered in a discriminatory manner only to select few consumers and is not offered to all. The said 'loyalty programme' is discriminatory and contrary to consumers' interest at large. This rebate is offered by AEML-D based on the Tariff differential between AEML-D Tariff schedule and TPC-D Tariff schedule applicable for the relevant year.
- iii. The 'loyalty programme' is offered in an '*opaque manner*' without any public announcement and/ or prior approval of the Commission.

5.4 The relevant emails / letters are currently not being filed by TPC-D in consumer's interest and confidentiality. TPC-D undertakes to file the relevant emails / letters sent by AEML-D before the Commission in a sealed envelope without disclosing the details of the consumers, if so desired by the Commission.

5.5 It is TPC-D's understanding that as a result of the above, several consumers have not submitted their switchover application from AEML-D to TPC-D even after having made a preliminary enquiry for the same and despite TPC-D's competitive Tariff. Some consumers have asked TPC-D to not process their switchover application, on account of such '*loyalty programme*' being offered by AEML-D. It is pertinent to note that, in the past, withdrawal of switchover applications by the consumers were negligible.

5.6 The Commission may take due note of the above facts and initiate appropriate action to prevent such irregularities/ illegalities. The Commission may take appropriate steps to forthwith direct AEML-D to cease from continuing such practices contrary to the statutory framework. This action may also be essential to streamline the switchover

process which is being delayed or denied by AEML-D, despite several Orders of the Commission.

6. AEML-D, vide its reply dated 31 March 2022 stated that:

- 6.1 In the present Petition, TPC-D has also filed an additional affidavit on 24 February 2022, alleging that a loyalty programme initiated by AEML-D providing certain benefits in the form of rebate/ incentives to its consumers, is contrary to the ethos of competition under the EA. In this regard, Additional Affidavit filed by TPC-D is in no way connected to the allegations made, issues raised and relief sought in the present Petition. The scope of the proceeding initiated under the present Petition cannot be changed by filing an additional affidavit. There is no relationship between the relief sought in the present Petition and the allegations now made in the additional affidavit dated 24 February 2022. Therefore, the additional affidavit cannot be taken and read and should accordingly be rejected by the Commission.
- 6.2 From the Order of the Commission in Case No. 82 of 2021, it is clear that the Commission was pleased to observe that the dispute regarding eligibility of switchover has been raised, and that there is a need to verify the facts that would require an enquiry by an institutional mechanism. The Commission has held that illegal switchovers and unilateral switchovers are required to be avoided. The Commission specifically held that the Committee would also make recommendations regarding improvement of existing protocol of switchover in consultation with both the licensees.
- 6.3 The protocol being relied upon by TPC-D is a procedure containing various steps involved in the handling of switchover application. In addition, AEML-D as a licensee has the ability to seek information from TPC-D before giving consent allowing switchover of its consumers, in order to ensure that the protocol created under the Order dated 12 June 2017 is being followed in its letter and spirit. In this context, the Commission, in para 34 of the Order dated 7 January 2022, has noted that in order to switchover an existing consumer, a distribution licensee can only lay a service line from its existing mains without extension or augmentation of the distribution mains. Hence whether or not certain consumers are eligible for switchover is an issue which the Committee constituted by the said Order will necessarily have to examine, in order to 'improve' the existing protocol of switchover.
- 6.4 The protocol as laid down in the Order dated 12 June 2017 would only come in force if the switchover application is valid and that the consumer is eligible for switchover i.e., where network development by the Licensee intending to switchover involves merely laying a service line, without extension or augmentation of distribution mains.
- 6.5 It is in this context that AEML-D, in the past, has sought information from TPC-D qua switchover applications, so as to ensure that that the distribution mains have not been illegally extended or augmented by violating the said Order, in order to carry out switchovers.
- 6.6 Further, TPC-D, in its Petition has alleged that AEML-D is seeking information which is not mentioned in the above Order dated 12 June 2017. In this regard, it is submitted