

that while the said Order has not set out the information which needs to be exchanged between the parties before effecting switchovers, however the same does not mean that TPC-D could simply extend/ augment distribution mains for carrying out switchover. For this, there needs to be mutual satisfaction/ agreement prior to switchover of existing consumers, and the same is implied. The information sought, is the minimum information which needs to be sought and verified. This does not mean that AEML-D cannot seek an information aimed at preventing TPC-D from violating the mandate of switchover protocol provided in the above Order.

- 6.7 In the present case, the information which is being sought by AEML-D is in the nature of Single Line Diagram (**SLD**) and date of commissioning of LT mains from where switchover of existing consumers is proposed. There cannot, at all, be any perceivable prejudice which can be caused to TPC-D if it gives the aforesaid information, which is solely meant to ensure that the LT mains have been laid down in accordance with law, and not illegally to enable switchover bypassing the protocol contained in the Order dated 12 June 2017.
- 6.8 However, TPC-D, while initially providing SLD (but later refusing to do so), never provided date of commissioning of distribution mains, under the pretext that the Order dated 12 June 2017 does not mandate AEML-D to seek such information. Further, TPC-D has been providing SLD in case of switchover of HT consumers and AEML-D, after verifying the same, has carried out switchover of all such consumers. This proves that AEML-D has not indulged in any selective denial of switchover as HT consumers are subsidizing consumers and their switchovers have been jointly executed as required information was provided by TPC-D and verified by AEML-D. This also proves that switchovers are being held up solely because TPC-D is steadfastly refusing to share information about network development in case of LT consumers. In the face of irregularities observed in network development by TPC-D, there is an environment of distrust created due to TPC-D not disclosing any information and carrying out unilateral switchovers. At least, 724 consumers have been unilaterally switched over by TPC-D since October 2021.
- 6.9 The Order dated 12 June 2017 does not mandate a Licensee to illegally extend distribution mains to carry out switchovers. Since the Order provides that only those cases of switchover which conform to the requirements of network laying as laid down in the Order are permissible, there can be no objection for providing information necessary for such determination. AEML-D in its Petition in Case No. 135 of 2021, has already highlighted a variety of cases where the same has been done by TPC-D in blatant non-compliance of the said Order. Vide the present reply, AEML-D also places on record some additional examples whereby TPC-D has illegally extended/ augmented its distribution mains.
- 6.10 If all switchovers are legal as TPC-D claims, then AEML-D fails to understand as to why it is refusing to provide such basic information as sought for by AEML-D.
- 6.11 AEML-D has never blocked or denied switchovers that are prima facie valid. However, there is a need to determine whether the request for switchover is valid or not. For this

to go forward, TPC-D has to mandatorily establish (with requisite information) whether or not there has been any augmentation or extension of the distribution mains. No Licensee can claim that it has an unfretted right to switchover and the other Licensee has no option but to allow the switchover. Such a right exists only in case of those applications of switchover which are in compliance with the Order and terms of switchover. Furthermore, even if one case of non-compliance comes to light, it puts a shadow of doubt on the entire list of applications. In fact, various cases have already been pointed out by AEML-D in Case No. 135 of 2021, which is pending adjudication before the Commission and more are being highlighted in the instant affidavit.

- 6.12 Surely, the Order dated 7 January 2022 of the Commission could not have directed that switchover protocol has to be followed and, regardless of whether the same is in compliance to the Order dated 12 June 2017. Further, if TPC-D really cares about consumers and their convenience, it could easily demonstrate its compliance with network development framework with respect to each application, instead of stubbornly refusing to share any information. Such a refusal goes on to prove that TPC-D is only attempting to hide its violation of the Order dated 12 June 2017, under the pretext that such information cannot be sought by AEML-D.
- 6.13 AEML-D places on record certain additional examples/ cases of network development violation by TPC-D, which exist, both, where unilateral switchover is carried out or where switchover is requested by TPC-D, but the same is pending for want of network related information. In following cases, TPC-D has augmented its distribution mains for switchovers of existing consumers:

Pending switchovers:

- i. Malwani Shri Krishna CHS, Malad (W)
- ii. Malwani Shri Swami Samarth CHS,
- iii. Narmada Empire CHS, Dahisar (E),
- iv. Pooja Park B-1 CHS Ltd. Mira Bhainder,
- v. BEC Chemicals Pvt. Ltd., Marol, Andheri (E),

Switchovers executed:

- i. Mungekar Estate (Imperial Industrial Company and Sahara Plastic), Goregaon
- ii. Akurli Shivsagar CHS Ltd. (2 consumers),
- iii. Kandivali, Rashmi Hetal Phase II CHS Ltd., Mira Bhayander,
- iv. Dev Chhaya Building, Dahisar (E),
- v. Shri Vighnaharta CHS Ltd, Bhayander (E),
- vi. Mira Sagar CHS Ltd., Bhainder (E),
- vii. Veena Enclave CHS Ltd. Bhayander (E),
- viii. Nirmal House, New Andheri Ghatkopar Link Rd,

- ix. Vijay Vikram CHS Ltd., Dahisar (E),
 - x. Sai Sugandh CHS Ltd. Dahisar (E),
 - xi. Ramchintan and Sadashiv SRA CHS, Bandra,
 - xii. Linnet CHS, Santacruz (E), Mumbai,
 - xiii. Himanshu Mandir CHS, Santacruz (E),
 - xiv. Neelai Heights, Chembur,
 - xv. Hotel Saroj, Chembur,
- 6.14 The above list clearly demonstrates that TPC-D is continuing to develop, extend, augment its distribution network in blatant disregard to the protocol decided in the Order dated 12 June 2017 and is using the network to effect illegal switchover of consumers. Further, in addition to the above, TPC-D has constantly been reluctant to share network related details with AEML-D.
- 6.15 In effect, by submitting that no information can be sought by AEML-D and that switchover requests are to be accepted by AEML-D at face value, TPC-D is attempting to present a fait accompli to the Commission, because after a consumer is connected, even if the said connection was made illegally, the consumer would not be disconnected and TPC-D would continue to have the consumer for all times. This is exactly the approach TPC-D adopted in the case of a consumer viz., M/s Vital Developers, which is pending for adjudication before the Commission in Case No. 163 of 2021.
- 6.16 In that case also, TPC-D has not only laid more than 1 km LT cable, but has erected 5 to 6 LT Pillars along the way. The consumer is already connected. The infrastructure may be significantly under-utilised at present, but it allows TPC-D with the ability to acquire and switchover more such consumers and take load on the available distribution mains in future, under the pretext that the distribution mains were commissioned to release new load of Vital Developers and hence pre-existing.
- 6.17 Further, it is also pertinent to mention herein that TPC-D, which is accusing AEML-D of contempt of the Commission's Orders, is itself indulging in rejection of migration applications from consumers. The changeover consumers (availing supply from TPC-D on AEML-D network) who wish to revert to AEML-D for supply, submit an application to AEML-D for the said purpose and then jointly, the migration of such consumers is scheduled. However, it is seen that TPC-D is rejecting the migration of such consumers without providing any valid reason. This phenomenon is seen only in high end commercial consumers and hence is also selective. It is stated that cherry picking of consumers is TPC-D's business objective. The examples of 5 such cases of LT-III(B) Commercial consumers are given below,
- i. Dilip Dhruv (Saraswat Bank),
 - ii. H. J. Nain (HDFC Bank Bandra),
 - iii. M. S. Lovely Hotel Pvt. Ltd.,

- iv. Crescent Chemicals,
- v. Crescent Organics Pvt. Ltd.

6.18 Thus, it is abundantly clear that TPC-D itself is in non-compliance of the Order dated 12 June 2017.

6.19 As already mentioned, AEML-D has filed a Petition before the Commission (Case No. 135 of 2021) which is pending adjudication. In the said Petition, AEML-D, by way of photographic and line diagram evidence, has demonstrated various consumer examples, which have been switched over to TPC-D on account of illegal conduct of the said Licensee in extending/ augmenting its distribution mains. Further, by way of the present reply, AEML-D has further placed on record some more examples of consumers for which TPC-D is continuing to lay illegal distribution network.

6.20 Thus, it is of utmost importance that, till the Commission decides the aforementioned Case No. 135 of 2021, the status quo should be maintained and the switchover protocol should be put on hold. In any event, and without prejudice to the aforesaid, the Commission has directed formation of a committee, which will make an inquiry and by a report, make recommendations regarding improvement in the existing protocol. Hence, TPC-D should be directed to await such inquiry and recommendation before initiating any further illegal switchovers.

6.21 Hence, the present Petition as well as the application filed by TPC-D deserves to be rejected.

7. At the E-Hearing held through video conferencing on 8 April 2022:

7.1 The advocate appearing on behalf of TPC-D reiterated its submission as made on the Petition, its MA filed along with the Petition and also the additional affidavit and stated that:

- i. AEML-D has not challenged the Order dated 7 January 2022, however, it has failed to comply with the directions issued under that Order which mandated AEML-D, in the interim, to execute all pending switchover cases as per the existing switchover.
- ii. As per the existing switchover protocol, only the Licensee B (i.e. the new Licensee to whom the existing consumer wishes to switchover to, can determine the eligibility of consumer for switchover and not the Licensee A (i.e. existing Licensee). In present case, AEML-D which is the Licensee A is doubting eligibility of the consumers which is contrary to the switchover protocol.
- iii. The apprehensions of AEML-D about eligibility on consumers for switchover were recorded by the Commission in the Order dated 7 January 2022, still the Commission directed to execute all pending switchover cases.

7.2 Advocate appearing on behalf of AEML-D reiterated its submission as made out in the reply and further stated that:

- i. Apart from pendency or delay in switchovers, there are more issues involved in the present matter.
 - ii. The Judgment dated 28 November 2014 passed by the Hon'ble Appellate Tribunal for Electricity (ATE) had put certain restrictions on network laying by TPC-D and as per this Judgment, network duplication should be avoided in the Mumbai Suburban area. This Judgment has attained finality as no party has challenged it.
 - iii. The switchover protocol cannot be dehors of the Order and same should be read along with the Order.
 - iv. TPC-D has been carrying out extension of its Distribution mains for switchover of existing consumers, however it is hiding the network details under the defense of process.
 - v. The process is just a process, but the principles are laid in the Order. If the principles of the Order are getting defeated, same is not acceptable to AEML-D.
 - vi. A procedure cannot defeat the substantive law and procedure is meant for implementation of the substantive law.
 - vii. The switchover process can come into picture only for eligible consumers and the Commission's Order dated 7 January 2022 in Case No. 82 of 2021 cannot defeat the Order dated 12 June 2017 in Case No. 182 of 2014.
- 7.3 On the query raised by the Commission regarding pending number of switchover cases pertaining to original Case No. 82 of 2021, it was informed by TPC-D that seven cases were yet to be executed. However, AEML-D stated that only three cases were pending for visible network extension issue. AEML-D further stated that it was ready to execute these cases also, subject to condition that TPC-D would have to face the consequences if TPC-D's violation for these cases is established in future.
- 7.4 After hearing both the Parties, the Commission directed the Parties to file their respective written submissions within three days.
8. **TPC-D, in its written submissions dated 13 April 2022, stated that:**
- 8.1 The scope of the Case No. 82 of 2021 was not restricted to original set of 149 consumers basis which the Petition was filed. This is evident from the fact that:-
- i. The language of the prayers (i) and (ii) does not restrict the scope to initial 149 consumers alone.
 - ii. TPC-D, by its Affidavit dated 1 September 2021, had highlighted the issue of continuous non-compliance by AEML-D and provided a list of other consumers which have not been switched over by AEML-D. This was objected to by AEML-D in its Affidavit dated 6 October 2021. However, the objections raised by AEML-D were rejected by the Commission. This is evident from the findings returned and the constitution of committee by the Commission, which considers

the submissions and data provided by TPC-D in its Additional Affidavit dated 1 September 2021 and was not restricted to the instances mentioned by TPC-D in its Petition alone.

- iii. The findings returned by the Commission nowhere restricts the scope of the Order to only 149 consumers. Furthermore, the Commission in first sentence of para 38, had directed that the existing switchover protocol must be followed by both the licensees (i.e. the same be followed for past as well as future switchover cases) while the second sentence of the said Para is exclusively only for pending switchover cases.
 - iv. This aspect is also fortified by AEML-D's letter dated 24 January 2022 and its Affidavit dated 31 March 2022, wherein AEML-D had not pleaded that the scope of the Order dated 7 January 2022 is restricted to original 149 consumers alone.
 - v. Even the Committee constituted by the Commission pursuant to Order dated 7 January 2022, has sought for information qua all pending cases of switchover (until end of February 2022) and not just 149 cases. This demonstrates that the Committee's understanding of the Order dated 7 January 2022 too, is that it covers all pending cases of switchover including the 149 cases.
- 8.2 It is AEML-D's intent to stop switchover of consumers from AEML-D to TPC-D in one way or another. It is evident from the following:-
- i. Prayers sought by AEML-D in Appeal No. 195 of 2017 and in IA No. 495 of 2017 filed by it before the Hon'ble Appellate Tribunal for Electricity (ATE) wherein it had prayed for stay on switchover. While no stay has been granted by the Hon'ble ATE, it is AEML-D who has arbitrarily decided not to process the switchover application, thereby achieving the said objective.
 - ii. Initially, it was AEML-D's contention that it is not able to switchover the consumers on account of COVID-19, travel restrictions due to COVID-19 and manpower shortage. When TPC-D, vide its Affidavit dated 1 September 2021, submitted that there is no merit in these excuses/ excuses were arbitrary and illogical, AEML-D changed its stand and has taken a stand that it suspects that these consumers are not eligible for switchover.
 - iii. The Commission in Para 26 of the Order dated 7 January 2022 has recorded AEML-D's apprehension of eligibility of consumers seeking switchover and immediately in the next Para (i.e. Para 27), the Commission, in no uncertain terms, has specifically rejected all the explanation put forth by AEML-D for justifying the delay.
 - iv. Even after the Order dated 7 January 2021, AEML-D has not processed switchover applications on the ground that it apprehends the apprehension of eligibility of consumers, which was specifically rejected by the Commission in its Order dated 7 January 2022.

8.3 Scope of the present proceedings is not restricted only to seeking punishment against