

area as may be notified by the Appropriate Government shall be the minimum area of supply."

The purpose of the Rules is to only provide the minimum area of supply. Once the qualification is established on the minimum area, the Rules go out of consideration and thereafter, the applicant is at liberty to add any area for the purpose of applying parallel license. Mr. Sen also agreed with the Commission that cherry-picking high value area should be prevented in order to protect the overall interest of the State. He stated that the Commission has all options and power available at its disposal to regulate how the license area will be devised/rolled out. Once the qualification of the Applicant to apply for licence is established, the modalities of licence, area of supply and other impacts can be worked out. On the query of whether the proposed license area is contiguous, Mr. Sen submitted that as per the instructions of his client the entire area is contiguous, and they will submit a clarification/justification on this issue to satisfy the Commission so that the contiguous nature of the licence area can be conclusively interpreted. He iterated that once the qualification of the Applicant is established on the touchstone of minimum area and other benchmarks, it is for the Commission to decide the modalities of licence. The Commission will take a conclusive stand in the matter subsequently upon submission of the information by the Applicant.

10. The Commission observed that the Applicant has not provided a detailed breakdown of the proposed investment, which is listed as Rs. 4,865 Cr. The Commission sought clarification on the basis and rationale behind this estimated investment and requested that the Applicant substantiate it with granular details and supporting documents, including the cost of various equipment and components of the parallel electricity distribution network to be laid out as per relevant cost data books. The Commission emphasized that the Applicant should align this investment with the proposed rollout to ensure proportional coverage of industrial, commercial, domestic, agricultural and other consumers, rather than focusing primarily on industrial and commercial areas/consumers. It is crucial to ensure that the applicant does not cease providing coverage to the entire area after securing the high-value consumer regions. Cherry-picking of consumers and distortion in cross-subsidy would undermine the level playing field for distribution licensees operating in the same area. The Commission also instructed the Applicant to submit information regarding its business plan, working capital requirements, etc.

11. The Commission emphasized the need for the Applicant to address capital adequacy and creditworthiness concerns which have to be met as per the Rules. During a preliminary assessment of the Applicant's net worth, it was noted that the submitted figures were based on the consolidated accounts of Adani Transmission Limited and its subsidiary companies. However, the Commission contends that only the standalone financial accounts of Adani Transmission Limited, the applicant and parent company of Adani Electricity Jewar Limited, should be used to calculate net worth.
12. Upon examining the 2021-22 Balance Sheet and Annual Accounts of M/S ATL, the Commission noted that the total assets were at Rs. 12,666.37 Crores and total liabilities were Rs. 8,689.56 Crores. Additionally, an equity share capital of Rs. 1,099.81 Crore and an "unsecured perpetual equity instrument" of Rs. 3,131.28 Crore were reported. Note 18 of the Balance Sheet FY 21-22 on the "unsecured perpetual equity instrument" states that the instrument, issued to Adani Infra (India) Limited, is perpetual with no maturity or redemption and is callable only at the option of the Company. The distribution on part of this instrument is fixed at a coupon rate of 11.80% p.a. compounded annually, and the repayment obligation ranks pari passu with other parity securities and senior to preference and equity share capital and other securities at par with preference and equity share capital.
13. As per IndAS-32 (Indian Accounting Standards), an instrument with a contractual obligation to deliver cash or a financial asset to another entity is deemed a liability. In this case, the "instrument" has a contractual obligation to pay a fixed coupon rate of 11.8% p.a. and holds seniority over equity share and ranks pari-passu in relation to any other security, classifying it as a liability. Adding this to the disclosed liability of Rs. 8,689.56 Crores significantly reduces the net worth of M/S ATL, potentially failing to meet the capital adequacy and creditworthiness requirements outlined in Rule 3(2) of The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. As a result, the Commission asked the Applicant to address these concerns by providing updated figures from the Balance Sheet/Annual Account for FY 2022-23 or infusing additional equity.
14. The Commission further directed the Applicant to clearly demonstrate that the net worth is solely for the purposes of the current parallel license application in Uttar Pradesh and is not committed to any other projects, such as seeking a parallel license in Maharashtra or elsewhere so that it may not adversely impact the Applicant's ability and capacity to invest in the proposed parallel distribution network under the applied license area.



15. During the course of the hearing, Sh. Avadhesh Verma, consumer representative and a Member of UPERC State Advisory Committee, wished to speak and was accorded approval by the Commission. He strongly expressed his views on the admittance of the licence petition and submitted that as per 'Explanation' to Rule 3 of Amended Distribution License Rules, the Applicant can select only one of the three options available as the proposed area of license. That by adding a district to a Municipal Corporation as the proposed licence area, the Applicant has gone beyond the Rules and therefore the petition should not be admitted by the Commission. He further submitted that the question of capital adequacy and creditworthiness of the Applicant should not be dealt with as the petition shouldn't be admitted. He also expressed surprise that the present distribution licensee i.e., PVVNL, did not attend the hearing.
16. While the Commission will separately address the Applicant's qualifications concerning the minimum area of supply for the proposed license area, the Applicant is required to submit the following information through an affidavit:
- a) A clear and concise description of the proposed license area, with a legible map and single-line diagram of the parallel distribution network to be implemented.
 - b) A confirmation that the entire proposed license area is contiguous, with no regions omitted from the proposed Municipal Corporation of Ghaziabad and Revenue District of Gautam Buddha Nagar.
 - c) An explanation of the basis and rationale for the estimated investment calculation, supported by comprehensive documentation and cost breakdowns for various equipment and elements according to relevant cost data books. This should include granular details of the proposed distribution network components, such as transformer capacity, substation type (GIS/AIS), coverage and length of HT & LT lines, protection systems, PCC/ST poles, land costs, and more. Connectivity details with the transmission system and the status of Right of Way approvals for laying down the distribution system should also be provided.
 - d) A 5-year business plan outlining year-wise rollout and capital investment, including working capital requirements.

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- e) Submission of capital adequacy and creditworthiness information regarding Net Worth and internal resource generation, in accordance with this order and "The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness, and Code of Conduct) Rules, 2005." The relevant point of the rule, i.e., point no. 3, is reproduced below:

"3. Requirements of capital adequacy and creditworthiness - (1) The Appropriate Commission shall, upon receipt of an application for grant of a license for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for the distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.

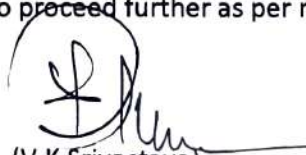
(2) The applicant for grant of a license shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on the cost of investment as determined under sub-rule (1), he, including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of the net worth and generation of internal resources of his business, including promoters, in the preceding three years after excluding his other committed investments."

For instance, if the fixed asset investment amounts to Rs. 8,000 Cr. and the working capital requirement is Rs. 1,000 Cr., the total capital requirement will be Rs. 9,000 Cr. Based on a 30% equity norm per the above rules, the promoter must have an equity of Rs. 2,700 Cr., which should be justified by their net worth.

17. The Applicant is directed to submit above information within 2 weeks from the date of issue of this order to enable the commission to proceed further as per rules.


(Sanjay Kumar Singh)

Member


(V.K. Srivastava)

Member (Law)


(Raj Pratap Singh)

Chairman

Place: Lucknow

Dated: 08.05.2023