



## Resources and Livelihoods Group

Initiatives in Health, Energy and Learning & Parenthood

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Date: 14 May 2007

To,  
Mr. S. V. Sodal  
Secretary,  
Maharashtra Water Resources Regulatory Authority,  
Mumbai.

Subject: Suggestions for the process of preparing the Regulations

Respected Sir,

We thank you for inviting our suggestions on the regulations which are currently being prepared by the MWRRA. We see this as an opportunity for civil society actors to participate in the process of making the regulations.

We feel that the formulation of the regulations of the MWRRA is one of the most important processes, as it will define the future course of the functioning of the MWRRA. Further, in view of possible reforms in water sector in other states of India, these regulations are critical as they would set an example which other states would follow. Thus, these regulations will play a crucial role in shaping not only the future of the water sector in Maharashtra, but will also provide a benchmark for other states in India. Formulation of the regulations is a challenging task, as it requires an interdisciplinary approach and careful consideration of many procedural, technological, and legal issues. It also requires very good understanding of ground realities and flexibility to address upcoming issues.

Prayas has been working in the area of policy research and analysis, with the aim of protecting the public interest. It has actively participated in the regulatory system in the electricity sector at the central as well as in Maharashtra and some other states since 1998. This experience enabled us to understand the potential of the regulatory system and processes in India, if used in the broader public interest.

After comparing the MWRRA act with the Electricity Act 2003, we came to the conclusion that the MWRRA does not offer much space for civil society actors to participate in the functioning of the water sector. This has been discussed in detail in the accompanying notes. This serious lacuna can be overcome, at least to some extent, through the appropriate regulations, which could define processes for participation of public and civil society organizations in the

decision-making of this sector. This puts the onus on the MWRRA of formulating the regulations even more carefully and with the purpose of creating appropriate spaces for public participation, and thus, overcoming weaknesses in the Act.

Our analysis of the infrastructure sector reforms at the global level as well as in India suggests that it is a paradigm shift that will have long-term impact on economy, society and even culture in many countries. This paradigm shift involves moving gradually away from the “state-centered” paradigm of decision-making in the infrastructure sector toward the “market-centered” paradigm. The state-centered paradigm, dominant in India until 1990, assumes important role of the state institution in planning, implementation, and regulation of the infrastructure sector. The development of infrastructure sector was viewed as crucial for achieving the broader objectives of economic growth and poverty reduction and, therefore, as a matter of concern for the society as a whole. The market-centered paradigm, on the contrary, believes in reduction of the role of the state and relies, with varying degrees, on the market mechanism for functioning of the infrastructure sector. It views the infrastructure sector as an arena of a purely “economic” activity, wherein various actors participate through various means (viz., capital, labour, technology, skills, and purchasing power) to achieve their own limited 'private' interests.

We feel that this “economic” view of the water sector would prove severely inadequate in a country like India, where the contribution of the water sector will continue to be critical in achieving broader national objectives. Considering continued critical importance of the public interest issues such as equity, social justice, and sustainability, and considering the unique role that water plays in sustaining life on this planet, the undue emphasis on the “market-centered” or “economic” view of this sector emphasizing on full freedom to 'private' interests of those who have purchasing power could be dangerous, if not disastrous.

We feel that, even after restructuring, the water sector in India cannot absolve itself of its “political” responsibility, i.e., responsibility towards the wider objectives and long-term interests of the society as a whole. Although, it could be necessary to adopt some elements of the “market-centered” paradigm in the process of restructuring, the interests of common and poor people need to remain at the center of any affair in the sector. The restructuring process offers an opportunity for different sections to represent themselves through the regulatory process. This requires that the regulatory system and processes will remain transparent, accountable, and participatory (TAP) not only to “economic” actors but also to people at large. It is noteworthy that lack of effective TAP in the functioning of the all-powerful state was the main lacuna in the earlier paradigm, which led to deterioration of the sector.

However, it is evident that most sections of populations will not be able to participate in the upcoming regulatory process on their own. The role of civil society institutions is vital in this regard, as they can make an attempt to represent different sections of society. But, there is lack of awareness, skills, and capabilities on the part of most civil society organizations that are expected to participate effectively in the regulatory system. This has further reduced chances of their participating in the regulatory process and benefiting from new opportunities. Although many organizations have close contact with people and very good understanding of ground-level issues, they tend to neglect newly emerging forums like the regulatory authority and overlook importance of converting their analysis into concrete suggestions.

On this background, it is essential for the newly emerging regulatory system to take up the task of ensuring promotion of broader societal objectives. It is imperative in this situation to take

some extra steps to overcome the above-cited barriers posed by ground realities. We feel that the newly forming regulatory system should undertake the following three major steps in this situation:

- Operationalising transparency through mandatory and comprehensive provisions for transparency;
- Enhancing effectiveness of provisions related to accountability and participation; and
- Capacity building of civil society institutions;

We suggest that the MWRRA should take the initial steps in this direction. Unfortunately, the process of reforms in infrastructure sector in India is devoid of informed public debate. Even the process of enactment of the law that brought the MWRRA into being was highly controversial. On this background, it becomes difficult for the appointed body like the MWRRA to gain confidence and respect of people to perform the important functions entrusted to it. It is of utmost importance for the MWRRA to ensure wider public participation to overcome this lacuna. As indicated in the accompanying note, the experience of the electricity sector suggests that participation of civil society organizations helped increase awareness, acceptance, and respect about regulatory commissions in public mind.

The task of bringing people into the regulatory system is going to be a long, difficult, and continuous process for the MWRRA. One way to begin is to put the draft regulations in public domain and invite comments on the same. Once draft regulations are made public, it will be easier for people or civil society organizations to contribute to this process. Therefore, we request you to publish draft regulations and try to reach to different sections of the society through electronic and print media as well as meetings and consultations.

We are enclosing two annexures with this letter. The first annexure highlights the participatory processes undertaken in the electricity sector in India while bringing reforms. The second annexure briefly takes a review of major lacunas in the MWRRA act and how some of them can be overcome through the regulations.

We are in the process of further analyzing MWRRA Act and identifying possible areas for regulations. We will like to know areas on which the MWRRA is preparing the regulations. It will give us opportunity to share our thoughts on those areas.

We thank you for your cooperation and openness towards us.

With regards,

Subodh Wagle  
Resources and Livelihoods Group  
Prayas, Pune.

**Enclosures**

Annexure I: Electricity Sector Reforms in India and Maharashtra: Processes Undertaken to Ensure Public Participation

Annexure II: Recommendations to the MWRRA: Learning from the Electricity Sector

**Annexure I**  
**Electricity Sector Reforms in India and Maharashtra**  
**Processes undertaken to ensure Public Participation**

This note presents a brief account of electricity sector reform in India and Maharashtra. The objective of the note is to highlight attempts made at both the central and the state levels to ensure participation of civil society actors at different stages of the process of restructuring of the sector.

**Electricity Regulatory Commissions Act 1998**

The central Ministry of Power (MoP) initiated a process of enacting the Electricity Regulatory Commissions Act in 1998. The efforts done by the MoP and the CERC to ensure participation of people in this process included:

- The MoP conducted informal public consultations all over the country, although it was not a very structured process to seek inputs from public. Many organizations, especially from business community, from all over the country gave their inputs on the draft act.
- The Central Electricity Regulatory Commission (CERC) published draft 'Conduct of Business Regulations' for comments and suggestions by people. Several consumer organizations and other associations gave their comments on draft CBRs. After processing these comments, the CERC finalized the CBRs and other regulations.

**The Electricity Act 2003**

The process of formulating the Electricity Act began in 2001. It is marked with a long and wide-ranging process of seeking public participation.

- There was a very extensive process to seek public participation. The MoP assigned the work of preparing draft E-Act to the National Council for Applied Economic Research (NCAER). The NCAER prepared the first draft and put it in the public domain for comments and suggestions.
- The NCAER conducted several meetings to discuss the draft. It tried to reach to different sections of society (industries associations, consumers organizations) and participated in several seminars. Based on the inputs from different groups, it prepared the revised drafts of the act.
- The MoP adopted the revised draft and modified it according to its needs. This modified draft was tabled in the Parliament where it was referred to the Parliamentary Standing Committee for suggestions. The Parliamentary Standing Committee again invited comments from general public and conducted hearings at different locations on the draft act before giving its report.

**The Regulations prepared by the Central Electricity Regulatory Commission**

The CERC ensured public participation while preparing the regulations on some key areas.

- The CERC published a detailed discussion paper in June 2003 on 'Terms and Conditions of Tariff Regulations' and asked for comments by public. The CERC also held public hearings in November 2003.

- The CERC released a detailed (197 pages) order explaining why it incorporated certain comments and left out others. The final regulations were adopted two months after the CERC released this order.
- The CERC published a discussion paper on ‘Development of Common Platform for Electricity Trading’ in June 2006 for comments and suggestions. The CERC also held public hearing on this issue. After considering the comments by people, the CERC finalized the regulations.

### **The Regulations of Maharashtra Electricity Regulatory Commission (MERC) 2003**

The Electricity Act 2003 prescribes that the Regulations should be prepared by all the states within a year of passing the act. According to the act, the regulations were subject to prior publication. The MERC undertook a participatory process to formulate the regulations.

- All licensees (for example, Tata Power, Reliance Energy, MSEB) as well as four consumer representatives including Prayas participated in the work of preparing the draft Regulations of MERC. The group of licensees and consumers organizations was named as the 'Project Consultative Committee'. The process of preparing the Regulations was defined after in-depth discussions among licensees, the Commission, and the consumer organizations.
- After the process of preparing the draft regulations was complete, these regulations were put in the public domain to seek comments and suggestions. After considering comments made by people, the regulations were finalized.

Thus, the process of preparing the regulations became more meaningful because of the participation of consumer organizations in preparing its very first draft.

It is important to note that all recent national policies in the electricity sector, such as National Electricity Policy, Tariff Policy, and Rural Electrification Policy, have been put in the public domain in draft form for comments and suggestions by public.

It is evident from the above-mentioned processes that it has become a well-established practice in the electricity sector to ensure participation of people in the decision-making process. Participation of the civil society groups in formulating the CBRs and other Regulations was sought by the MERC and by the CERC (while preparing the CBRs in 1998) even when it was not mandatory on both these institutions. This shows very high level of commitment on their part to the participatory process. The credibility and acceptance gained by the CERC and the MERC from citizens, media, and civil society in the subsequent period is certainly rooted in this commitment towards openness, participation, and accountability demonstrated by them during the initial period. In Maharashtra, at the time of current power crisis, the target of people’s fury has always been MSEB, while the MERC was seen as the agency which can give justice. In fact, MERC could conduct peaceful and fruitful public hearings at six different places across the state (that too on tariff increase) even in the situation of widespread and strong unrest among people and received good response from people at large. This shows the respect and confidence in the functioning of the MERC among large sections of society. This is essentially because people believe that the MERC is an independent and capable institution where their problems could get resolved. The MERC could achieve this over a period of time by adopting appropriate measures to ensure transparency, accountability and participation in its functioning.

We feel that it is important for the MWRRA to learn from the lessons of the electricity sector. Being in the formative stage, it has an opportunity to include such provisions in the regulations that will help create its image as an open, independent and body capable to handle difficult and delicate tasks. This will also help the MWRRA to handle the political pressure in future. In our opinion, adhering to TAP related provisions and opening up to public process are critical factors for any regulatory mechanism to gain confidence of its stakeholders, especially general public. In absence of such proactive steps by the MWRRA, there is a danger that the MWRRA will be victim of widespread suspicion about reform efforts in general, which was further fuelled by the way in which the MWRRA act was enacted. Considering the fact that water is a highly politicized and controversial issue, the MWRRA will badly need the widespread acceptability and credibility to withstand efforts of vested interests to sabotage its authority and make it scapegoat for unavoidable negative impacts of highly contentious decisions that the MWRRA will have to make in future. Further, the MWRRA has a very crucial role as the key decision-making body in the water sector in protecting wider public interest and this can be done effectively only by considering general public and civil society organizations as allies to fight the vested interests dominating the sector.

On this background, it is important that the MWRRA ensure that it is seen as proactively working for transparency, accountability and participation (TAP). We have two specific suggestions in this regard for immediate action.

- a) MWRRA should publish draft CBRs on the MWRRA website and make proactive efforts to obtain comments from general public and CSOs. These proactive efforts could include: media releases, sending invitations to groups, conducting hearings at different places in the state.
- b) After receiving comments and making decisions about their acceptance or rejection, the MWRRA should publish a report listing all the comments received and giving specific reasons for their acceptance or rejection. This could be seen as a major step by the MWRRA to ensure its own accountability. It needs to be noted that this is a regular practice in the electricity sector and not a difficult task as demonstrated by the electricity commissions in the electricity sector.

We want to emphasize the need to take measures mentioned in second suggestion simply because of the negative feeling created by the so-called process of participation conducted by the state government on the MWRRA and MMISFA acts. Our interaction with several CSOs that participated in this process revealed that there is a widespread feeling of dissatisfaction about the government led process of consultations. They felt that the government conducted a farce of public participation only to window-dress its own intentions and just to fulfill conditionalities imposed by the World Bank. They shared the following observations about the participatory process:

- a) The government did not incorporate many suggestions and recommendations by CSOs in the final version of the acts. Some of these recommendations are extremely important for ensuring equity in the water sector. Non-incorporation of these recommendations by the government created doubts in the minds of CSOs about the intention of government to conduct participatory process.
- b) The government did not communicate anything to the participants once the consultative process was over. There was no explanation on the part of the government

as to why certain recommendations were accepted and others were rejected. Many CSOs perceived this as a lack of accountability on the part of the government. It reduced much of the weight in government's claim of engaging people in the decision-making process.

We faced problems when we tried to gain documentation of the consultations on the draft acts. We were told by many CSOs that the government institutions where these consultations were conducted try to evade sharing any information or the report of the consultations even with the participants let alone the public. This is very surprising since the process is meant to increase public participation and as we understand, there is nothing to hide about the outcome of this process.

From the above observations, we feel that the MWRRRA should take adequate care while conducting the public process. It is essential to reach out to different sections of society by adopting various means and not restricting the process of participation only to selected CSOs. At the end, we urge the MWRRRA to learn from the positive and negative lessons from electricity and water sectors and accept both the suggestions made in this note.

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## Good Practices in the Electricity Sector to ensure Public Participation

### 1. Policies at the Central Government

	Draft policy put in the public domain	Last date for submitting comments	Adoption of Final policy
<b>National Electricity Policy</b>	February 2004 The draft Policy was subsequently revised after receiving comments from various stakeholders	No specific date was mentioned	February 2005
<b>Tariff Policy</b>	August 2003 The draft Policy was subsequently revised after receiving comments from various stakeholders	No specific date was mentioned	January 2006
<b>Rural Electrification Policy</b>	November 2003. The draft Policy was subsequently revised after receiving comments from various stakeholders	No specific date was mentioned	August 2006

### 2. The Regulations prepared by CERC and MERC

	Draft policy put in the public domain	Last date for submitting comments by people	Adoption of the Regulations	Date of Issuing Reasoned Order
<b>CERC Terms and Conditions of Tariff Regulations 2004</b>	CERC Discussion paper was published in June 2003.	CERC held public hearing in November 2003. Last date for submitting comments was 31 January 2004.	March 2004	Detailed 197 page order released in January 2004
<b>CERC Development of common platform for Electricity Trading 2007</b>	CERC Discussion paper was published in 20 July 2006	Public hearing held on 19 December 2006 Last date for submitting comments was 30 Sept 2006	18 January 2007	18 January 2007
<b>MERC CBR 2004</b>	24 May 2006	7 June 2004	June 2004	No reasoned response. Only the final regulations were notified.

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## Annexure II

### **Recommendations to the MWRRA: Learning from the Electricity Sector**

The MWRRA Act is crucial in many respects. It has initiated the process of radical restructuring of the role of the state in the water sector in Maharashtra. Since Maharashtra is the first state in India to establish the Regulatory Authority in the water sector, other states where water sector reforms are underway are likely to follow the MWRRA act as a model.

In view of this, we felt it essential to analyze the new act and comprehend its implications. To begin with, we compared the Electricity Act 2003 with the MWRRA Act 2005. This comparison is from the 'People-centered Governance' perspective and it tries to highlight the spaces that the two acts offer for participation of people in the decision-making process as well as the provisions to ensure transparency and accountability of the regulatory mechanism. Our analysis shows that the MWRRA Act is far weak and regressive as compared to the E-Act with regard to provisions related to transparency, accountability and participation (TAP). This comparison is presented in the form of a table in Part I of this annexure, viz., 'Comparative Analysis of Transparency, Accountability and Participation (TAP) Related Provisions in the Electricity Act 2003 and MWRAA Act 2005'. Lack of adequate TAP related provisions in the act not only goes against the spirit of the process of regulatory reforms but also weakens the position of the regulatory authority. We feel that this weakness will have long-term and serious impact on the water sector in Maharashtra.

Further, we analyzed the Conduct of Business Regulations prepared by the MERC in 2004 and tried to compile key provisions ensuring TAP. We thought that this exercise will help us to learn from the electricity sector reforms in Maharashtra. These key provisions are presented again in the table form in Part II of this annexure, viz., 'Key Provisions of TAP in MERC Conduct of Business Regulations, 2004'.

Based on our analysis of the electricity sector reforms, we prepared a detailed note entitled 'Concrete Suggestions for the Regulations to the MWRRA'. The note, included in part III of this annexure, is focused on four aspects. First, the note articulates the guiding principles for democratic governance in the water sector. We feel that these guiding principles will be useful for the MWRRA while framing the regulations and general guidelines. In the second section, we made an effort to articulate specific provisions that need to be incorporated in the act for bringing the guiding principles into practice. Third, we articulated specific provisions that we feel are crucial for ensuring TAP and should be incorporated in the CBRs and other regulations by the MWRRA. Fourth, we tried to articulate recommendations for the regulations on water tariff. This work of articulating recommendations on specific issues is still under way.

We hope that the MWRRA will take note of suggestions prepared by us. We would like to know the areas on which the MWRRA is preparing the regulations. We would like to share our views on those areas. We will appreciate your considered response on our suggestions.

## Part I: Comparative Analysis of Transparency, Accountability and Participation (TAP) Related Provisions in the Electricity Act 2003 and the MWRAA Act 2005

**Table No. 1: Provisions for Public Participation**

No	Provisions in the Electricity Act (E-Act)			Related Provisions in the MWRAA Act			Comparison of the E-Act and the MWRAA Act
	Section	Subject	Provision	Section	Subject	Provision	
1	3 (4)	National Electricity Plan	Provided that the Authority in preparing the National Electricity Plan shall <b><u>publish the draft</u></b> National Electricity Plan and <b><u>invite suggestions and objections thereon from licensees, generating companies and the public</u></b> within such time as may be prescribed	15. (3)	Draft Integrated State Water Plan	The ( <i>State Water</i> ) Board shall prepare a draft Integrated State Water Plan on the basis of basin and sub-basin wise water plans prepared and submitted by the River Basin Agencies.	Unlike the provision in the E-Act, there is no provision in the MWRAA Act either for publishing the draft plan or for inviting suggestions and objections from public.
2	64 (3)	Tariff Order	The Appropriate Commission shall, within one hundred and twenty days from receipt of an application ( <i>from generating company/licensee for determining tariff</i> ) under sub-section (1) and <b><u>after considering all suggestions and objections received from the public</u></b> ,- (a) issue a tariff order accepting the application with such modifications or such	11. (d)	Tariff system	To establish a water tariff <b><u>system</u></b> , and to fix the <b><u>criteria</u></b> for water charges at sub-basin, river basin and State level <b><u>after ascertaining the views of the beneficiary public</u></b> , based on the principle that the water charges shall reflect the full recovery of the cost of the irrigation management, administration, operation and	<ul style="list-style-type: none"> <li>* The E-Act provides for <b>consideration</b> of suggestions and objections from public. Consideration involves taking into account the suggestions during decision-making.</li> <li>* The MWRAA act provides for <b>ascertaining</b> views of beneficiary public. Ascertaining may be narrowly interpreted as just finding out the views and not necessarily taking them into account during decision-making.</li> <li>* The E-Act specifically provides for consideration of <b>suggestions</b> and <b>objections</b> while the MWRAA Act provides for ascertaining of <b>views</b>. Suggestions and objections are based</li> </ul>

No	Provisions in the Electricity Act (E-Act)			Related Provisions in the MWRRRA Act			Comparison of the E-Act and the MWRRRA Act
	Section	Subject	Provision	Section	Subject	Provision	
			conditions as may be specified in that order.....(contd.)			maintenance of water resources project	<p>on a logical rational but views can be just personal opinion. Thus, the E-Act is more serious, systematic, and specific on the type of comments from public.</p> <p>* The MWRRRA Act gives space for participation for only beneficiary public, but the E-Act provides space for participation for any general public. Thus, the E-Act invites broader participation.</p> <p>* The E-Act invites participation in actual tariff setting while the MWRRRA Act talks about ascertaining public's views only during establishment of tariff system and criteria and not during every instance/process of tariff setting.</p>
3	181 (3)	Powers of State Commissions to Make Regulations	All regulations made by the State Commission under this Act shall be subject to the <b><u>condition of previous publication.</u></b>	Nil	Nil	No such provision in the MWRRRA Act	Unlike the provision in the E-Act, the MWRRRA Act does not provide for prior publication of regulations. The condition of prior publication keeps open the opportunity for public awareness and participation in formulation of regulations before they are finalized. The MWRRRA Act does not provide any such opportunity.
4	94 (3)	Powers of Appropriate Commissions	The Appropriate Commission may authorize any person, as it deems fit, to <b>represent the interest of the consumers in the proceedings</b> before it.	Nil	Nil	No such provision in the MWRRRA Act	Unlike the provision in the E-Act, the MWRRRA Act does not provide the power to appoint consumer representative in proceedings. Such a provision gives legal mandate for 'public-interest', independent agencies to participate in proceedings for protecting public interest.

**Table No. 2: Provisions for Transparency**

No	Provisions in the Electricity Act (E-Act)			Related Provisions in the MWRRA Act			Comparison of the E-Act & the MWRRA Act
	Section	Subject	Provision	Section	Subject	Provision	
1	86. (3)	Functions of State Regulatory Commission	The State Commission shall <b>ensure transparency while exercising its powers</b> and discharging its functions. (The same provision is also applicable to the Central Regulatory Commission via sub-section 3 of section 79.)	Nil	Nil	No such provision in the MWRRA Act	The provision in the E-Act is really a hallmark of the Act. It provides such blanket acceptance and unrestrained scope for transparency that it should be emulated in all sectors. Unfortunately, the MWRRA Act does not provide any concrete measure for transparency. This curtails the possibility of development of mechanisms or regulations of ensuring transparency while exercising powers and discharging functions by the MWRRA.
2	73. (j)	Functions of Central Electricity Authority	The authority shall <b>make public from time to time information</b> secured under this Act, and provide for the publication of reports and investigations	Nil	Nil	No such provision in the MWRRA Act	The E-Act specifically makes the provision for sharing all information secured under this Act with the public. The MWRRA Act does not provide any such measure of transparency.
3	3. (2)	National Electricity Policy and tariff policy	The Central Government shall <b>publish</b> National Electricity Policy and <b>tariff policy</b> from time to time	Nil	Nil	No such provision in the MWRRA Act	The E-Act makes provision for publishing the national as well as the tariff policy. This enhances the transparency about the policy issues in particularly the tariff policy. The MWRRA Act does not provide any measure for transparency in the tariff or other critical policy matters.

**Table No. 3: Provisions for Accountability**

No	Provisions in the Electricity Act (E-Act)			Related Provisions in the MWRRA Act			Comparison of the E-Act and the MWRRA Act
	Section	Subject	Provision	Section	Subject	Provision	
1	95	Proceedings before the Commission	All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code	Nil	Nil	No such provision in the MWRAA Act	Section 193 of the Indian Penal Code (IPC) provides for punishment for intentionally giving false evidence in proceedings. Hence, it enhances the accountability of the parties involved in the proceedings. The E-Act specifically provides for application of section 193 of IPC, while the MWRRA does not provide such provision.
2	6.	Supply electricity to all	Obligation to supply electricity to rural areas: The Appropriate Government shall endeavour to supply electricity to all areas including villages and hamlets.	Nil	Nil	No such provision in the MWRRA Act	The particular provision in the E-Act makes the government accountable for providing electricity services to all areas including the remote & rural areas. The MWRRA Act does not make the authority or the government accountable for providing water services to all areas including the remote areas.
3	3. (4)	National Electricity Plan	The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and <b>notify</b> such plan <b><u>once in five years</u></b>	16. (4) and 16. (5)	Integrated State Water Plan	16. (4) - The ( <i>State Water</i> ) Council shall approve, with such modifications as deemed necessary, the draft of the Integrated State Water Plan .....The water plan so approved by the Committee shall become “Integrated State Water Plan”. (5) The Integrated State Water Plan may be reviewed after every five years from the date of its approval by the Council.	* The E-Act provides for <b>notification</b> of the plan. Notification leads to enhancement in accountability of the concerned authorities to implement the plan. The MWRRA Act does not provide such measure of accountability in the Integrated State Water Plan. * The E-Act makes it mandatory to notify the plan once in five years, whereas the MWRRA Act keeps it discretionary on the concerned authority to review the plan after five years. Thus the accountability mechanism for review the plan in the MWRRA stands weak.

**Table No. 4: Provisions for Protecting Public Interests**

No	Provisions in the Electricity Act (E-Act)			Related Provisions in the MWRRA Act
	Section	Regarding	Provision	
1	61. (d)	Guidelines for tariff determination	Safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner	Nil
2	88. (iv)	Objects of State Advisory Committee	The objects of the State Advisory Committee shall be to advise the State Commission on:- (iv) protection of consumer interest	Nil

**Table No. 5: Comparison of Other Provisions**

No	Provisions in the Electricity Act (E-Act)	Related Provisions in the MWRRA Act
1	The chairperson of SERC will be a person who is, or has been, a Judge of the High Court.	The chairperson of the MWRRA shall be a person who is, or was, of the rank of Chief Secretary or equivalent
2	The chairperson of the selection committee of SERC will be a person who has been a Judge of the High Court.	The president of the selection committee of MWRRA shall be the Chief Secretary of the State.
3	Chairperson/Member holds office for 5 yrs & no eligibility for re-appointment in same capacity. No one will hold office after he attains 65 years age.	Chairperson/Member holds office for 3 years & eligible for re-appointment for not more than 2 consecutive terms. No one will hold office after he attains 75 years age.

Comparison between the provisions in the Electricity Act and the MWRRA Act made in table no. 5 suggests complete bureaucratic control over the newly emerging structures of authority. Over-bureaucratization even after the restructuring of water sector goes against the spirit of reform process. The provision for reappointment opens up the possibility of undue influence exerted by the vested interests in the government over the judgement of the members. The age bar for the members of the authority is too high which may affect the efficiency of the authority.

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## Part II: Key Provisions of TAP in MERC Conduct of Business Regulations, 2004

**Table 1: Key Provisions for Participation**

No	Section	Regarding	Provision
1	18.	Participation of Consumer Associations and Other persons	The Commission may <b>permit <u>any person</u></b> , including any association or other bodies corporate or any group of consumers, <b>to participate in <u>any proceedings</u></b> before the Commission. In this behalf, the Commission may if it considers necessary – (a) notify a procedure for recognition of associations, groups, forums or bodies corporate as registered consumer association for the purposes of representation before the Commission
2	19.	Proceedings of the Commission	In discharge of its functions under the Act, the Commission may, from time to time, <b>hold hearings</b> , proceedings, meetings, discussions, deliberations, inquiries, investigations and consultations, as it considers appropriate.
3	32.	Initiation of Proceedings	The Commission may <b>initiate any proceedings</b> suo motu, or on a Petition filed by <b><u>any</u></b> affected or <b><u>interested</u></b> person.
4	33	Initiation of Proceedings	The Commission may, if it considers appropriate, issue orders for publication of the Petition <b>inviting comments</b> on the issues involved in the proceedings in such form as the Commission may direct.
5	87.	Proceedings to be open to public	The proceedings before the Commission shall be <b>open to the public</b> .

**Table 2: Key Provisions for Transparency and its Operationalization**

No	Section	Regarding	Provision
1	78.	Indexed Database	The Commission shall, as soon as may be practicable, <b>maintain an <u>indexed database</u></b> of its records including, <i>inter alia</i> , Petitions filed, details of hearings conducted, orders/ documents issued from time to time.
2	79. (a)	Inspection of Records	Subject to sub-regulation (c) herein, records of the Commission shall be <b>open to inspection by <u>all</u></b> , subject to the payment of the fee and complying with the terms as the Commission may direct.
3	79 (b)	Supply of certified copies	The Commission shall, on such terms and conditions as the Commission considers appropriate, provide for <b>supply of certified copies of documents and papers available with the Commission to <u>any person</u></b> subject to the payment of fee and complying with the terms as the Commission may direct. The Commission shall <b>designate an Officer</b> for ensuring timely response to requests received for supply of certified copies of documents. Such Officer shall <b>maintain a register of such requests</b> made in Form V herein and shall endeavour to dispatch the certified copies of documents requested for <b>within a period of fourteen (14) working days</b> from the date of receipt of request.
4	80.	Access to information involving public interest	The Commission shall endeavour to make <b>information involving public interest accessible and available to the public</b> , including, <i>inter alia</i> , through its website and endeavour to <b>facilitate meaningful public participation</b> in matters involving public interest.

No	Section	Regarding	Provision
5	90.	Publication of Petition	(a) Where any application, Petition, or other matter is required to be published under the Act or these Regulations as per the directions of the Commission, it shall, unless the Commission otherwise orders or directs or the Act or Regulations otherwise provides, be <b>advertised normally at least three (3) weeks before the date fixed for hearing in not less than two (2) daily newspapers in the English Language and two (2) daily newspapers in the Marathi language having circulation in the area</b> , in such form as directed by the Commission. (b) Except as otherwise provided, such advertisements shall give a heading describing the subject matter in brief.

**Table 3: Key Provisions for Accountability**

No	Section	Regarding	Provision
1	73. and 74	Orders of the Commission	73. The Commission comprising of the Members <b>hearing a proceeding shall pass orders in such proceedings</b> , and such orders shall be signed by the members of the Commission hearing such proceeding. 74. <b>Every order made by the Commission shall be a reasoned order.</b>

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### **Part III: Concrete Suggestions for the Regulations to the MWRRA**

The MWRRA is entrusted with the crucial responsibility of regulating the water resources within the state of Maharashtra and ensure judicious, equitable and sustainable management of water resources. Accordingly, the MWRRA has the responsibility of protecting and utilizing the water resources in the interest of the society as a whole and the interests of the disadvantaged sections in particular.

To fulfill this objective, the MWRRA should accept and apply certain core principles that will guide its own functioning as well as the functioning of other stakeholder in the water sector. In our opinion, the MWRRA should accept some guiding principles while framing the regulations and general guidelines.

#### **I. Guiding Principles**

We tried to articulate guiding principles for ensuring effective and efficient governance in the water sector. These guiding principles would help efforts to provide a greater role of public in the water sector in order to democratize the governance of the sector for the benefit of the society.

- 1) Protecting public interest, which comprises of both the interests of the disadvantaged sections and the long-term broader interests of the society as a whole.
- 2) Ensuring transparency in different processes and operations including the decision-making processes. There should be easy access to information for public. It also requires that information should be in such form that people can easily understand it.
- 3) Developing different types of strong accountability systems, with measures at systems as well as decision level, which would lead to identification and fixing of the responsibility for a particular decision.
- 4) Creating concrete and practical spaces for meaningful participation of public and civil society organizations (CSOs) at all stages of governance including planning and decision-making.

For operationalizing these guiding principles, concrete provisions need to be incorporated in the Act as well as in the different types of rules and the regulations. We tried to articulate specific recommendations for implementing the above-mentioned principles.

#### **II. Recommendations for Amendments in the MWRRA Act**

As we understand, the MWRRA plans to propose some amendments in the MWRRA Act. We feel that this opportunity could be used to facilitate the incorporation of some important provisions required for democratic governance of the water sector. The following are the specific recommendations which could be introduced through amendments in the MWRRA Act. The list should not be seen as the final and many provisions should be added as the analysis and deliberations among the CSOs and experts progress.

No	Relevant section of the Act	Topic	Specific provision that need to be included in the Amendments of the MWRRA Act
1	15. (3)	Integrated State Water Plan	“Each concerned Authority shall publish the draft of the sub-basin, basin and state water plan and invite suggestions and objections from the public within such time and process as may be specified by the regulations. The sub-basin, basin and state water plan will be finalized only after consideration of the suggestions and objections from the public.”
2	11. (d)	Tariff System	“The Authority shall publish the draft of the tariff system and invite suggestions and objections from the public within such time and process as may be specified by the regulations. The Authority shall issue an order for the tariff system after consideration of the suggestions and objections from the public.”
3	31	Powers of Regulatory Authority to Make Regulations	“All regulations made by the Regulatory Authority under this Act shall be subject to the condition of previous publication.”
4	13	Powers of Authority	“The Authority may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”
5	11	Functions of Authority	“The Authority shall ensure transparency while exercising its powers and discharging its functions.”
6	11	Functions of Authority	“The Authority shall make public, from time to time, information secured under this Act, and provide for the publication of reports and investigations.”
7	13	Proceedings before Authority	“All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.”
8	15. (3)	Integrated State Water Plan	“The sub-basin, basin and state water plan finalized after considering the public suggestions and objections should be notified by the concerned Authority once in five years.”
Following provisions need to be included in the Act. At present, there is no specific provision in the act that incorporates following points.			
1		Tariff Structure	<p>“The concerned agency/Authority shall publish the draft of the proposed tariff structure which is in confirmation with the tariff system set by the Authority and the regulations thereof, and invite suggestions and objections from the public within such time and process as may be specified by the regulations. The agency shall issue an order for the tariff structure after consideration of the suggestions and objections from the public.”</p> <p>“The Authority shall provide minimum water service to all at minimum charges. A graded structure of water charges should be evolved in which higher charges will be levied for water use above minimum basic use of water.”</p>
2		Water supply to all villages	“The authority shall ensure supply of water to all areas in Maharashtra including remote villages and hamlets.”

### III. Recommendations for the Conduct of Business Regulations (CBRs) of the MWRRA

The guiding principles for democratic governance in the water sector should also reflect in the CBRs of the MWRRA. Since work of preparing the CBR is under way, it will be useful to consider how provisions can be articulated for this purpose. Following are the specific recommendations based on these guidelines for the provisions in the CBRs:

No	Topic	Specific Provisions that need to be included in the CBRs of the MWRRA
1	Participation of people in proceedings	“The Authority may permit any person, including any association or other bodies corporate or any group of consumers, to participate in any proceedings before the Authority. In this behalf, the Authority may, if it considers necessary, notify a procedure for recognition of associations, groups, forums or bodies corporate as registered people’s association for the purposes of representation before the Authority.”
2	Proceedings of the Authority	“In discharge of its functions under the Act, the Authority may, from time to time, hold hearings, proceedings, meetings, discussions, deliberations, inquiries, investigations and consultations, as it considers appropriate.”
3	Initiation of Proceedings	“The Authority may initiate any proceedings suo motu, or on a Petition filed by any affected or interested person.”
4	Initiation of Proceedings	“The Authority may, if it considers appropriate, issue orders for publication of the petition inviting comments from public on the issues involved in the proceedings in such form as the Authority may direct.”
5	Proceedings to be open to public	“The proceedings before the Authority shall be open to public.”
6	Indexed Database	“The Authority shall, maintain an indexed database of its records including, <i>inter alia</i> , petitions filed, details of hearings conducted, orders/documents issued from time to time.”
7	Inspection of Records	“Records of the Authority shall be open to inspection by all, subject to the payment of the fee and complying with the terms as the Authority may direct.”
8	Supply of certified copies	“The Authority shall, on such terms and conditions as the Authority considers appropriate, provide for supply of certified copies of documents and papers available with the Authority to any person subject to the payment of fee and complying with the terms as the Authority may direct. The Authority shall designate an Officer for ensuring timely response to requests received for supply of certified copies of documents. Such Officer shall maintain a register of such requests made in Form V herein and shall endeavour to dispatch the certified copies of documents requested for within a period of fourteen (14) working days from the date of receipt of request.”
9	Access to information involving public interest	“The Authority shall endeavour to make information involving public interest accessible and available to the public, including, <i>inter alia</i> , through its website and endeavour to facilitate meaningful public participation in matters involving public interest.”
10	Publication of Petition	“Where any application, petition, or other matter is required to be published under the Act or these Regulations as per the directions of the Authority, it shall, unless the Authority otherwise orders or directs, or the Act or Regulations otherwise

No	Topic	Specific Provisions that need to be included in the CBRs of the MWRRA
		provides, be advertised normally at least four (4) weeks before the date fixed for hearing in not less than two (2) daily newspapers in the English Language and two (2) daily newspapers in the Marathi language having circulation in the area, in such form as directed by the Authority. Except as otherwise provided, such advertisements shall give a heading describing the subject matter in brief.”
11	Orders of the Authority	“Every order made by the Authority shall be a reasoned order.”
12	The Regulations by the Authority	“Every regulation made by the Authority shall take into consideration the suggestions and objections from public. For this purpose, the draft regulations shall be published and made available for the public.”
13	The Regulations by the Authority	The Authority shall make the regulations on all the issues that affect public interest. The regulations should be made on the following issues : a) Establishing water tariff system, b) Setting water tariff, c) Allocation of water entitlements, d) Transfer of water entitlements, e) Waste-water treatment and re-use, f) Diversion of water use from one category of use to other and within the category of use g) Grievance redressal system
14	Tariff Setting	“Safeguarding public interest and in particularly the interest of the poor should be one of the main principle guiding the tariff. In this respect some minimum basic water services should be provided for the poor and vulnerable sections of the society at minimum charges.”

#### IV. Recommendations for Provisions of the Regulations Related to Water Tariff

The MWRRA is entrusted with the responsibility of establishing the water tariff system and fix criteria for water charges. There is need to prepare the regulation at the user-level tariff setting. Hence, the MWRRA should ensure that they include provisions for tariff setting in the interest of common people. These provisions should be included in the regulations for water tariff system. Following are the specific recommendations for the regulations of water tariff.

No	Topic	Specific provisions that need to be included in the CBRs of the MWRRA
1	Tariff Determination and Public Participation	a) The agency proposing the tariff shall, publish a notice, in at least two (2) English and two (2) Marathi language daily newspapers widely circulated in the area to which the application pertains, outlining the proposed tariff, and such other matters as may be stipulated by the appropriate authority, and inviting objections from the public. b) Provided that the concerned agency shall make available a hard copy of the complete application, to any interested party, at such locations and at such rates as may be stipulated by the appropriate authority c) Provided further that the concerned agency shall also put up on his internet website, in downloadable spreadsheet format showing detailed computations, the application made to the appropriate Authority along with all regulatory filings, information, particulars and documents submitted to the appropriate Authority along with the application d) Provided further that web-link to the information mentioned above shall be

No	Topic	Specific provisions that need to be included in the CBRs of the MWRRA
		<p>easily accessible, archived for downloading and shall be prominently displayed on this internet website.</p> <p>e) Provided, however, that the concerned agency may not provide or put up any such information, particulars or documents which are confidential in nature, with the previous approval of the appropriate Authority. Explanation – for the purpose of this Regulation, the term “downloadable spreadsheet format” shall mean one (or multiple, linked) spreadsheet soft ware files containing all assumptions, formulae, calculations, soft ware macros and out puts forming the basis of the application.</p>
2	Publication of Tariff	The concerned agency shall publish the tariff or tariffs approved by the appropriate authority in at least two (2) English and two (2) Marathi language daily newspapers having circulation in the area of operation and shall put up the approved tariff/tariff schedule on its internet website and make available for sale, a booklet containing such tariff or tariffs, as the case may be, to any person upon payment of reasonable reproduction charges
3	Minimum Water Services	Safeguarding public interest and in particularly the interest of the poor should be one of the main principle guiding the tariff. In this respect, some minimum basic water services should be provided for the poor and vulnerable sections of the society at minimum charges.
4	Grievance Redressal Mechanism	The tariff-collecting agency shall set-up a grievance redressal mechanism as specified by the appropriate Authority.

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