



Resources and Livelihoods Group
PRAYAS

Initiatives in Health, Energy, and Learning and Parenthood

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Date: 29th December 2007

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

Sub.: Submission on the TOR on consultancy assignment for developing regulations for Bulk Water Tariff

Respected Sir,

We received your letter dated 22nd November, 2007 (Letter No. MWRRA/Tariff/ Dir(T)/ 968), requesting for comments on the TOR for consultancy assignment for developing regulations for Bulk Water Tariff. We thank you for giving us opportunity to comment on this vital subject matter. We are hereby sending our comments on the TOR attached with this letter (total 8 pages). We hope that the MWRRA will give serious consideration to the suggestions provided by us. We will appreciate further response from the MWRRA about the ways and means through which the suggestions get reflected in the final TOR.

We congratulate the MWRRA for taking such a step to invite comments on the TOR from various civil society groups. We hope that this process of public participation will continue through the process of preparing regulations and the scope of the participation will enhance to accommodate views and concerns of all stakeholders. We also take this opportunity to request the MWRRA to share the comments received in this matter from various other stakeholders and prepare a synthesis report on the way in which the comments were considered by the MWRRA, which can be made public.

We request you to acknowledge the receipt of this submission.

Thank you for your kind cooperation.

With
regards,

Dr. Subodh Wagle,
Prayas, Pune

Comments and Suggestions on the Consultancy Assignment for Developing Regulations for Bulk Water Tariff

Submission by:	The Resources and Livelihoods Group, Prayas, 'Mangeshpushp', Survey No.133, Swami Vivekanand Society, Behind BAIF, Warje, Pune - 411 052, INDIA. Tel.:+91(20)523 2836/25231059; Fax: (20)25232836 e-mail: reli@prayaspune.org web: www.prayas-pune.org
For Consideration by:	The Maharashtra Water Resources Regulatory Authority (MWRRA)
Date:	27th December, 2007
Reference Used:	Draft terms of reference for consultancy assignment for developing regulations for bulk water tariff

Introduction

The Maharashtra Water Resources Regulatory Authority (MWRRA) has requested Prayas to provide comments and suggestions on the draft terms of reference (TOR) for the consultancy assignment for developing regulations for bulk water tariff. In response to this request, we are providing our comments and suggestions in this note. As per the draft TOR provided by the MWRRA, the consultant will also prepare a draft tariff order [section 2(14) of the TOR]. Hence, the comments and suggestions provided in this note are applicable to the process of preparing draft regulations as well as a draft tariff order. We request the MWRRA to give due consideration to these comments and suggestions while preparing the final TOR and also while finalizing the contract with the selected consultant. We request MWRRA that a report listing all the comments and suggestions it received in this regard,—along with reasons for accepting or not accepting each suggestion—be published on its website. We also request the MWRRA to provide us with a detailed note on how and why each of our suggestions was included or excluded in the TOR and the final contract.

A summarized version (single page) of our detailed submission is attached in the annexure at the end of this submission for your ready reference.

1. Public Participation in the Process of Preparation of Tariff Regulations

The MWRRA should ensure that there should be continuous and meaningful public participation in the process of preparing the regulations and tariff order for bulk water tariff. The participation should not be limited to the stages of preparing the TOR or at the stage of finalizing the regulations. Instead the participation should be seen as a continued process in all the stages of the consultants work. The participation should also not be limited to seeking inputs from certain groups of experts. Rather, the participation should be broad-based involving all possible stakeholders and all the citizens who are willing to participate in the process. In this respect, we are proposing the following steps for public participation in the process of preparing the tariff regulations:

1.1 All information related to the TOR and the contract should be made public and comments and suggestions should be sought from all the stakeholders. This can be done by publishing the notice of inviting the comments on the web and other media like newspapers. Participation by all public should be sought in this manner in the following stages of the work:

- a. Draft TOR
- b. Draft Contract with the Consultant

- c. Draft Reports of the 'Review and Assessment' of various aspects as mentioned in the sub-section 1 to 9 of section 2 of the draft TOR
- d. Draft Approach Paper on Methodology for determining tariff as per section 2 (11) of the draft TOR
- e. Draft Regulations
- f. Draft tariff order

1.2 Public participation on some of the crucial aspects of the work by the consultant should be sought through face-to-face public hearings. To this end, public hearings should be organized in at least five different regional areas of the state. Such public hearings should be undertaken for the following stages:

- a. Draft Approach Paper on Methodology for determining tariff as per section 2 (11) of the draft TOR
- b. Draft Regulations
- c. Draft tariff order

1.3 A 'Stakeholders' Committee' comprising civil society representatives should be formed. This committee can work as a reference group for the MWRRA as well as the selected consultant. The MWRRA and the consultant should share the progress of the work and seek feedback and suggestions from this stakeholder committee on a continuous basis. The Stakeholders' Committee may also play a key role in assisting the MWRRA and/or the consultant in achieving wide-scale public participation in the process of preparing the regulations. The Stakeholder Committee should be involved in the process right from:

- a. finalizing of the TOR and preparing the contract document,
- b. review of the plan of action by the consultant,
- c. periodic (quarterly) review of the progress of work by consultant,
- d. review of the draft outputs produced by the consultant and
- e. facilitating wide-scale public participation in the process.

1.4 All related reading material (like draft TOR, draft contract, other draft reports) issued by the MWRRA or the consultant for comments and suggestions from the public or any other group should be simultaneously made available in the local Marathi language. This is necessary to ensure the participation of all stakeholders especially the farmers and other groups.

1.5 The consultancy assignment should include the work of simultaneously producing the draft reports in local Marathi language. The large-size reports (more than 50 pages) should also be made available in the form of the abridged version (10% of the total size of the report) in the Marathi language (the full-report should also be available in Marathi).

1.6 The period for response by the public should not be limited to 30 days. Considering the complex nature of the regulations for water tariff there is a need to provide adequate period for the civil society to comprehend the draft reports or regulations and organize their thoughts and articulate the same. Hence, the period for response by public in any type of consultation should not be less than 60 days.

1.7 A 'synthesis report' should be prepared after every process of seeking comments and suggestions from public or any other groups. The synthesis report should include summary of

all comments and suggestions received. The synthesis report should also include the reasons for inclusion or exclusion of each comment /suggestions by the MWRRA and/or consultant.

1.8 The consultant should be assigned the work of review and assessment of the norms and procedures for public participation adopted / followed in the processes related to tariff and in making other crucial decisions in different sectors in India and in other countries across various sectors. This task should be included in the list of various issues assigned to the consultant for review and assessment as given in sub-section 1 to 9 of section 2 of the TOR.

1.9 The MWRRA Act includes a concrete provision for public participation in the process of establishing water tariff system [refer section 11(d)]. Hence, all above suggestions related to public participation in preparation of regulations on bulk water tariff should be included as part the TOR and the Contract Agreement with the consultant. This will ensure the compliance of the particular provision in the act.

2. Transparency in the Process of Preparation of Tariff Regulations

The State Water Policy emphasizes on evolving a transparent system of water tariffs (section 4.4, State Water Policy). The MWRRA is required to work according to the framework of the State Water Policy. Based on this policy guideline, it is necessary to establish transparency in water tariff right from the process of selection of consultant to the final Tariff order. The following are the suggestions on ensuring transparency in the process of preparing tariff regulations:

2.1 The process planned for different stages of preparing the tariff regulations should be made public prior to its implementation by publishing the same on the web. In particular, the process for following stages should be made public by the MWRRA and/or the consultant:

- a) Work plan including the schedule of various activities to be conducted by the MWRRA
- b) Selection of consultant for the assignment and the final agreement or contract with the consultant including the criteria and schedule of payments
- c) Work plan including the schedule of various activities to be carried out by the consultant
- d) 'Review and Assessment' of various aspects by the consultant as mentioned in the sub-section 1 to 9 of section 2 of the draft TOR
- e) Preparation of Draft Approach Paper on Methodology for determining tariff as per section 2 (11) of the draft TOR
- f) Preparation of Draft Regulations
- g) Preparation of Draft tariff order

2.2 The documents related to the actual process executed in various stages of preparation of the regulations and tariff order should be made public by publishing the same on the web. In particular, the details of the following should be made public by the MWRRA and/or the consultant:

- a) Report on the selection of the consultant (including the details of the assessment of the bidders)
- b) Report of the periodic progress of the work by the consultant

- c) Report of the periodic performance review of the work done by consultant and reviewed by the MWRRA
- d) Execution status reports and review report of the process of public participation conducted by the consultant and/or the MWRRA
- e) Report on the process of finalizing the drafts delivered by the consultant

2.3 The consultant should make public all the elements of the knowledge base used (like documents, literature, notes, interviews relied upon) while executing the assignment including the comments and feedback from any group or individuals. This resource base should be properly indexed and organized into a registry in such a way that the same can be easily accessible to all.

2.4 The consultant should be assigned the work of review and assessment of the norms and procedures related to establishing transparency in tariff systems followed in India and in other countries across various sectors. This task should be included in the list of various issues assigned to the consultant for review and assessment as given in sub-section 1 to 9 of section 2 of the TOR.

2.5 Every task assigned to the consultant should have clear-cut deliverable(/s) along with adequately articulated specifications of the deliverables. This will enhance the transparency in the expectations from the consultants. The deliverables for the task of review and assessment of various aspects of the water tariff [refer section 2 (1 to 9) of TOR] assigned to the consultant through the TOR does not mention the specific deliverables. Each of this review and assessment should conclude with well organized review and assessment report.

2.6 The consultant should be asked to explain (in adequate details) how the policy and other guidelines/principles (refer section 3.1 of this submission for list of some of the principles) have been addressed in each of the deliverables of the consultant. There should be a separate section for such an explanation. This will enhance the transparency of the deliverables of the consultant towards the important guideline and principles.

2.7 In pursuance of the policy guidelines on evolving transparent water tariff system (section 4.4, State Water Policy), all above suggestions related to transparency in preparation of regulations on bulk water tariff should be included as part the TOR and the Contract Agreement with the consultant.

3. Approach Paper on Methodology for Determining Tariff

It is envisaged in the draft TOR that the consultant will prepare an approach paper proposing a methodology for determining the tariff. This is one of the important stages of the process of preparing tariff regulations. The approach paper will be a crucial document that will form the basis for preparing the draft regulations. The following are suggestions for the TOR related to this approach paper:

3.1 The approach paper should be seen not just as the paper elaborating the method for tariff determination, but it should also be seen as a paper elaborating the tariff philosophy or principles. The tariff philosophy or principles are the accepted substantive guidelines that shall govern the tariff systems as a whole. Hence, there should be two clear-cut parts of the approach paper, the first part presenting the tariff philosophy or principles and the second part presenting the methodology for tariff determination. The methodology presented should also be justified on the basis of how the particular method reflects the substantive guideline

articulated in the tariff philosophy and principles. Among other things, the TOR should specify the following guiding principles for elaboration by the consultant in the first part of the proposed approach paper:

a) The principle: 'Judicious, equitable and sustainable management, allocation and utilization of water resources (this guideline comes from the very preamble of the MWRRRA Act). This particular guideline have direct and indirect impact on the water tariff and hence needs due consideration by the consultant in pursuance of the MWRRRA Act.

b) The principle: 'to create enabling environment for better and more equitable and productive water resources management in an environmentally sustainable manner to promote growth with reduction in poverty and minimizing regional imbalance' (mentioned in the section 1.3 of State Water Policy as the first prong of the five prong strategy of the state water policy).

c) The principle: 'full recovery of cost of irrigation management, administration, operation and maintenance of water resource project [as mentioned in section 11(d) of MWRRRA Act]

d) The principle: 'the person who pollutes shall pay' [as mentioned in the section 12(5) of MWRRRA Act]

e) The principle: 'a person having more that two children shall be required to pay one and half times of the normal rates of water charges fixed'. Though this comes from the MWRRRA Act itself, it is really a regressive—as it penalizes the victims of certain socio-cultural and economic processes—provision that has potential to create political turmoil. So special effort should be made to evince guidance from the stakeholders (especially public) on implementation of this provision.

f) The principle: 'recovery of all or a portion of capital costs of the infrastructure (as mentioned in the section 4.4 of State Water Policy) or the principle of recovery of capital cost with interest (as mentioned in the section 10.1 of State Water Policy) as part of the financial and physical sustainability.

g) The principle: 'prudent capital cost or capital investment'. This particular principle becomes especially important in the light of the principle of full cost recovery of capital costs as mentioned in the state water policy. Also, the capital costs have direct implications for management, administration of irrigation as well as operations and maintenance costs of water resource project (which has been accepted as the principle in the MWRRRA Act). Hence, due consideration should be given by the consultant to the principle of 'prudent capital cost/investment' as part of pursuance of the state water policy and the MWRRRA Act.

h) The policy guideline: 'In order to alleviate the impact of tariff charges on those (who are) unable to pay, the state may allow cross-subsidies and allocate government funds' (as mentioned in the section 4.4 of State Water Policy) and also the policy guideline that the 'subsidy on water rates to the disadvantaged and poorer sections of the society shall be well targeted and transparent (as mentioned in the section 10.1 of State Water Policy)

i) The principle: ‘cost effectiveness of the state water services (as mentioned in the section 10 of State Water Policy) including the principle of ‘optimizing the cost of service and maintaining transparent accounts of the amount and sources of revenues and costs and their allocation to various functions and services’. This particular principle will have the direct impact on the water tariff. Hence, in pursuance of the state policy, this principle needs to be given due consideration in the tariff regulations.

j) The principle: 'transparent system of water tariffs' (as mentioned in the section 4.4. of State Water Policy)

k) The principle: ‘public participation in the water tariff system [as mentioned in section 2.2.1 of the State Water Policy and section 11(d) of the MWRRA Act]

l) The principle of 'linking water rates directly to the quality of service provided' (as mentioned in the section 10.1 of State Water Policy). In the light of this principle, the consultant should also be assigned to review and assess the norms and procedures linking the quality of water services (including the quality of water supplied through the service) with water tariff that are adopted in India as well as in other countries.

m) Tariff principles—that are adequate and appropriate—should also be elaborated for giving due consideration to situations of water scarcity or economic distress suffered by any community.

3.2 Apart from the tariff principles mentioned above (in section 3.1 of this submission), the consultant should also be assigned to review and assess ‘progressive’ tariff principles that are followed in India as well as other countries. Here, the term ‘progressive’ implies that the principles striving to protect and promote the public interest, which would primarily include the interests of the poor and disadvantaged sections of society as well as the broader and long term interests of society such as environmental protection and ensuring equity.

3.3 The approach paper comprising the above mentioned two distinct parts should be reviewed and approved by the MWRRA. The consultant should work on the second part of the paper comprising the tariff determination methodology only after the MWRRA approves the first part comprising the tariff philosophy or principles.

3.4 The consultant or the MWRRA should follow the process of public participation and transparency as mentioned in the section 1 and 2 of this submission during review and approval of the approach paper.

3.5 The approach paper prepared by the consultant proposing the methodology for determining tariff [refer section 2(11) of the draft TOR] should also include illustrative calculations for determining tariff based on different methods proposed. The approach paper would not be able to adequately explain the outcome of the various methods proposed in the absence of such illustrative calculations. These illustrative calculations should be done for a sample of at least two to three working projects in the state. This will clearly spell-out the financial implications of the proposed methods for determining tariff and enhance transparency about the implications of using these methods. The illustrative calculations shall be done not just for bulk tariff but it should also be done for the tariff at the water user end, clearly spelling out the assumptions made in the process. The end-use tariff will actually enable people to understand the impact of the particular method or regulations on their individual finances. Such illustrations of the various options (in methods and draft

regulations) depicting the implications of the options on bulk as well as end-users' tariff will facilitate quality inputs from stakeholders on the approach paper based on better comprehension of the methods proposed in the paper. Hence, the TOR for consultant [in section 2 (11) of the TOR] should include such illustrative calculations as one of the content of the approach paper on tariff determination methods. It should not be assumed that such illustrative calculations will be included in the draft tariff order to be prepared by the consultant. The draft tariff order is the last deliverable in the process and it leaves hardly any room for discussions and revisions in the methodologies presented in the approach paper. Hence, the step of providing illustrative calculation of determining tariff should be very much a part of the draft approach paper on tariff methodologies (the second part).

3.6 The approach paper should also discuss the pros and cons of the different options for determining tariff along with the implications of the options on furthering the objectives and principles as reflected in the state water policy and related legal instruments (including the guidelines mentioned in section 3.1 of this submission).

4. 'Stage Gate System' for Consultancy Assignment

The current TOR for the consultancy assignment seem to provide an integrated consultancy assignment requiring the consultant to conduct review and assessment of various aspects of tariff, prepare approach paper on methodology, prepare draft regulations and finally prepare the draft tariff order. In this process, if such an integrated assignment is awarded to one single consultant then there are many vulnerabilities that may be detrimental to the process of completion of work in given time and quality. At the same time, it is easy to hold one single consultant accountable for maintaining the quality of the output. The following are the suggestions to reduce the vulnerabilities and at the same time maintain the accountability of the consultant:

4.1 The assignment should be broken into stages and there should be a system of review and assessment of the performance of the consultant after each stage of the assignment. The consultants should satisfy the MWRAA and other stakeholders (and the Stakeholders' Committee mentioned in section 1.3 of this submission). The consultant should be allowed to proceed with the next stage of the assignment only after complete satisfaction of the work in earlier stage. In this 'Stage-Gate System' there should be adequate provisions for discontinuing services of the consultant in the case of dissatisfactory work at any stage of the assignment. This 'Stage-Gate System' can be applied to following four well demarcated stages:

Stage 1: Review and assessment of the various aspects of the water tariff

Stage 2: Approach Paper comprising the substantive guidelines and methodologies

Stage 3: Draft Regulation

Stage 4: Draft Tariff Order

4.2 Among the above mentioned stages, there should be clear differentiation between the stage of draft regulation and draft tariff order. Tariff order is an order that is a clear mandate of the MWRAA while the tariff regulations will be jointly approved by the MWRAA and the state government. Hence, the stage of tariff order should not be undertaken before final approval and official notification of the regulations.

4.3 Considering the vast challenges in the assignment, the MWRAA should ensure that the work should be completed in timely manner and without major controversies. To this end, the MWRAA may explore the option of appointing multiple consultants headed by a lead

consultant. The consultants then can form a steering committee headed by the lead consultant. For this purpose, the assignment will have to be broken into specific modules that can be worked on independently with proper integration by the lead consultant. Further, for smooth operationalization, the responsibility and accountability—of both the substantive as well as coordination tasks—should be clearly defined in the beginning itself.

4.4 The selection of the consultant should be a two step process which involves selection of prospective consultants based on first the technical bid and then the final selection of the consultant based on the financial bid. While both the bids should be submitted together in the beginning of the process, only those qualifying the technical bid shall be allowed for the financial part of the tender. The selection process should be fully transparent. The results of the technical (and financial) bid along with the technical (and financial) assessment of each bidder should be made public as soon as the bid has been assessed.

Conclusion

Such a detailed and elaborate process—involving proper care for making processes and procedures systematic, transparent, participatory, and accountable—could be found cumbersome and impractical by some. However, it needs to be noted that, first, Maharashtra Electricity Regulatory Commission (MERC) has demonstrated that such an elaborate and detailed process can be successfully implemented in India and in Maharashtra in timely manner. Second, whether it is practical or not, such a process is a precondition for establishing credibility of the MWRRA as it would clearly demonstrate the clean and honest intentions of the MWRRA and would help dispel all the apprehensions and suspicions in the minds of different stakeholders. This is, in turn, necessary for ensuring the ownership of the MWRRA and its functioning by different stakeholders (especially media and public). It needs to be noted that, without such a widely-shared feeling of ownership, the MWRRA would not be able to effectively discharge its mandate in such a contentious sector as water. In this vein, the following observation becomes important:

It is not adequate to seek participation, it is equally, if not more, important that all stakeholders (mainly those which are on the fringes of sector and society) clearly see and are convinced that participation is actively sought.

In this context, it should be noted that even after the MWRRA adopts such an elaborate process for tariff regulation, its effort will be looked at with high level of circumspection, if not suspicion. This is because such a process could be interpreted as a stratagem to ensure least resistance to MWRRA's 'design' of bringing in water trading and privatization. In fact, MWRRA's decision to bring in tariff regulation before bringing in 'Conduct of Business Regulations' (or CBRs) has already strengthened this feeling. MWRRA should now understand and acknowledge critical importance of CBRs in giving clear indication to all stakeholders that the MWRRA is open and inviting to proactive public participation, while being fully transparent and accountable in conducting its own business. Hence, we earnestly request the MWRRA to initiate, with same enthusiasm and urgency, the process of drafting CBRs. Drafting of CBRs in the very initial stages of its functioning by MERC has been one of the ways in which MERC could secure the credibility and respect among its peers as well as ownership of its stakeholders. We hope that the MWRRA will give serious considerations to the recommendations given in this submission.

Annexure 1. Summary of Comments and Suggestions on the TOR for Consultancy Assignment for Developing Regulations for Bulk Water Tariff

1. Public participation should be taken by seeking comments and recommendations from the public at every critical stage of work related to the preparation of regulations for water tariff. Other than the method of seeking participation through publishing on the web, the method of public hearing should be used for participation in the most critical stages like draft approach paper and draft regulations.
2. A 'Stakeholders Committee' should be formed for continuous sharing and feedback during the process of preparation of the regulations. The consultant and the MWRRA should seek feedback and suggestions from the committee at periodic interval.
3. The various drafts and other material issued by the consultant should be simultaneously made available in marathi language. Large size reports should be accompanied with abridged versions in marathi language.
4. Every process of public consultation should be followed by a synthesis report comprising of the summary of all comments received and the reasons for the acceptance or rejection of each of these comments.
5. The consultant should review and assess the various methods and systems used nationally and internationally for public participation and transparency.
6. All documents and resource material related to the process of preparation of regulations and also the resource material referred and used by the consultant should be made public by properly indexing the same into a registry and making it accessible to all.
7. The approach paper on methodology for determining tariff should comprise of a separate section on elaboration of the substantive guiding principles (refer section 3.1 of the main submission from Prayas for the various principles to be included) governing the water tariff. This section, which will form the tariff philosophy, should be the first part of the approach paper. The first part should be approved by the MWRRA before the consultant begins the work on the rest of the approach paper. The second part can be based on the specific methodology of tariff determination. In this second part, the consultant should explain how each of the substantive principles has been considered in the method proposed for tariff determination.
8. The method proposed for tariff determination in the approach paper should also comprise of illustrative calculations showing clearly the financial impact of the proposed method on bulk as well as the end-user tariff. The approach paper should also discuss the pros and cons of each method and its implications on the objectives and substantive guidelines mentioned in the various water related legislations and policies.
9. Among other aspects, the tariff methodologies shall also consider 'prudent capital cost' as one of the main guiding principle while determining the tariff. In this respect, the consultant should be assigned the task of reviewing of the impact of various levels of capital costs on the water tariff and assessment of the prudent capital investments.
10. The consultant should be selected using two stage selection process, which involves first the technical assessment and later the financial assessment. Only those who qualify the technical assessment should be eligible for financial assessment. The consultancy assignment should be divided and organized in such stages and manner that the MWRRA has adequate powers to discontinue the services of the selected consultant in case of dissatisfactory work at any particular stages of review.

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