

# **Introductory Note for Analysis and Public Consultation on Approach Paper on Tariff Regulations in Maharashtra**

Prayas, Pune  
Subodh Wagle, Sachin Warghade

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## **1. Introduction**

The reforms in the water sector began in a major way after 1990, in line with the broader economic reforms. Changes in the policy and legal frameworks governing the water sector are a major component of these reforms. The elements of economic reforms first reflected in the Maharashtra State Water Policy (SWP) in 2003. The Maharashtra Water Resources Regulatory Authority (MWRRA) Act, passed in 2005, paved way for establishment of the first ever independent regulatory authority (IRA) in water sector in India. The MWRRA is a quasi-judicial body entrusted with the responsibility of regulating the sector as a whole. The MWRRA recently initiated the process of articulating regulations for water tariff, which is one of the most important aspects of economic regulation in water sector.

Tenders were floated by the MWRRA in January 2008 for awarding consultancy assignment for preparing the ‘regulations for bulk water tariff’. Accordingly, terms of reference (TOR) were prepared for the consultancy assignment. A draft TOR was circulated by MWRRA to select organizations including Prayas. Prayas submitted detailed comments and recommendations on the TOR<sup>1</sup>. Although, some of Prayas’ crucial recommendations like setting-up of the ‘Stakeholder Committee’ for review of the consultancy work were not accepted, Prayas’ other recommendations found place in the final TOR. These include: ‘stage-gate system’ for consultancy assignment (i.e., approval process for various parts of assignment outputs), approval of tariff principles before going ahead with tariff regulations, public consultation process at every stages, bringing the outputs in Marathi language and other such process related recommendations. The consultancy assignment was awarded to ABPS Infrastructure Advisory Private Limited.

The first output of the process of preparing regulation in the form of the draft ‘Approach Paper on Developing Regulations for Bulk Water Pricing’<sup>2</sup> was published on the website of MWRRA on 20<sup>th</sup> October 2008. Based on this draft paper produced by the consultant, the MWRRA decided to undertake consultation process to take into consideration comments and suggestions from various stakeholders. Using inputs received through this process, the MWRRA will finalize the tariff regulations and the same will govern the process of tariff determination in all future occasions. The MWRRA is also mandated to issue the first tariff order based on the regulations for the first three-year period starting from 2009.

It is important now that various stakeholders actively undertake detailed analysis of the paper for articulating concerns and recommendations, and thereby influencing the process as well as outcome of the process of preparing the tariff regulations. This present note is prepared in this context, and is aimed at providing a brief introduction to various possible areas for analysis that could be considered for detailed study and recommendations by various stakeholders. The broader critique of the market-oriented reforms and the forthcoming tariff models should also be considered in this analysis and advocacy process.

It should be noted that the MWRRA has initiated the process of preparing regulations for bulk water tariff (tariff charged on the bulk water supplied to urban, industrial and agricultural users directly by

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<sup>1</sup> Submissions on TOR for preparing bulk water tariff regulations are available with Prayas

<sup>2</sup> All documents (State Water Policy, MWRRA Act, Approach Paper on Tariff Regulations) are available for download on website of MWRRA (<http://mwrroa.org>)

the Water Resources Department) and not retail tariff (tariff that is charged to end-users by the service provider that supplies water to end-users). However, the retail tariff depends largely on the bulk tariff, which in turn depends on the bulk water tariff regulations. Thus, it is necessary for all types of water users and concerned public interest groups to take serious cognizance of the process of preparing regulations for bulk water tariff and ensure that their voices are not just heard but taken into consideration while taking crucial decisions on water tariff.

## **2. Summary of Approach Paper**

As per the TOR, the approach paper is supposed to comprise of two parts, viz., (a) tariff philosophy or principles, and (b) methodology for tariff determination including the terms and conditions for tariff regulations. The assignment also includes the task of preparing 'conduct of business regulations' (CBR) for tariff, but this work is not included in the scope of the approach paper. As per the TOR, the proposed draft of CBR (tariff) will be separately submitted by the consultant.

The draft approach paper published on the web comprises of 10 chapters (about 140 pages) and 7 annexure (about 140 pages). The first two chapters are introductory in nature comprising of introduction to the consultancy assignment, outline of approach paper and the bulk water supply sector in the state. International experiences on bulk water pricing are enumerated in third chapter, while a review of recommendations of various water pricing committees in India is taken in the fourth chapter. Chapter 5, 6, 7 provide the legal and policy framework for water tariff along with enumeration of certain principles and issues to be considered for tariff setting. Thus, Chapters 5 to 7 seem to be serving the objective of providing the tariff philosophy or principles as required in the TOR. Chapter 8, 9 and 10 are the key chapters that seem to provide recommendation by the consultant on tariff regulations including the methodology.

It could be seen from the approach paper that the chapters and the content of the paper do not necessarily match with the requirements of the TOR. In many cases, necessary detailing on the crucial topics of the approach as required in the TOR is not available. This limitations need to be highlighted in the consultation process with MWRRA. The same has been highlighted as one of the area of analysis of the paper.

## **3. Scope of 'Analysis and Influence'**

It is important to understand at this point the scope of the opportunities available to various stakeholders for analysis and for influencing various aspects of water tariff in the current process. There are various constraints which need to be considered while defining the limits or boundaries of our analysis and influence strategy. The following are some of the constraints:

### **3.1 Constraints posed by the given policy and legal provisions**

The scope of the content of the regulations being prepared by the MWRRA is limited by the provisions in the State Water Policy, the MWRRA Act, and other related legislations (like the MMISF Act<sup>3</sup>). It is important to understand these constraints so as to evolve relevant and strategically useful advocacy positions and demands.

It should be noted that the mandate of MWRRA (or any regulator for that matter) is to prepare regulations for tariff such that they are in conformity with the given policy and legal framework. These important policy and legal aspects have been discussed in Chapter 5 of the approach paper.

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<sup>3</sup> The Maharashtra Management of Irrigation Systems by Farmers (MMISF) Act - available for download at <http://mwrra.org>. Also refer to the rules for implementation of the Act, that provides added information on aspects related to water tariff for agriculture and also the linkages between MWRRA Act and MMISF Act (source: <http://www.mahagovind.org/default.htm>).

Hence, the MWRRA cannot by itself define a policy measure or contradict a legal provision. For example, the principle of recovery of O&M costs from tariff is accepted in the MWRRA Act and now that principle cannot be challenged in the current process of preparing regulations. The role of a regulator is to define process, terms and conditions (regulations) which would be in adherence to the policy and legal framework. In such cases, it is difficult to expect our analysis and intervention to influence the given policy guidelines and legal provisions.

However, there are many areas where there are possibilities of regulatory discretions which lead to interpreting or detailing the given policy measure by the regulator. Such areas can certainly be included in the scope of analysis and influence by stakeholders. For example, the policy as well as the legislation accepts in principle that those who are not able to pay the tariff should be subsidized and the legislation also defines certain role for MWRRA in this matter. Hence, this could be used as an opportunity to influence the tariff regulations so that the same reflect the concerns of the poor and disadvantaged sections of the society.

### **3.2 Constraints posed by ground reality and natural elements**

It should be noted that the ground reality around the systems for management, measurement and maintenance of water resources infrastructure is far different from the understanding of the system that underlie the principles of water regulation enumerated in the MWRRA Act. For example, in the current state of management and measurement systems, there is serious lack of relevant data and equally serious questions about the quality of the data available. This poses serious constraints on determining tariff in an analytically sound manner as envisaged in MWRRA Act. Such constraints posed by the current state of affairs need to be addressed sensitively and systematically while evolving our recommendations and advocacy strategies. One should also be sensitive to the fact that the water resource projects are not closed-door projects that can be controlled and managed with high level of accuracy. Due to the very nature of infrastructure (like open canals) and the complexity of external influencing factor (like climatic and human factors), the regulation of these systems is not always possible at the desired (very high) level of accuracy.

## **4. Possible Areas of Analysis**

The approach paper, when read from the ‘public-interest’<sup>4</sup> perspective, indicates specific areas that need further analysis and articulation of recommendations. These areas of analysis, outlined in the paragraphs below, are categorized under four heads, viz., lacunas in the approach/ philosophy/ principles, lacunas in proposed tariff regulations (substance and process of tariff regulations), lacunas in process of preparing approach paper and regulations, and lacunas in approach paper vis-à-vis the agreed TOR.

### **4.1 Process of Preparing Approach Paper and Tariff Regulations**

Along with the approach paper comprising tariff principles and regulations, as per the TOR, the consultant is also supposed to prepare the ‘conduct of business regulations’ (CBR) for water tariff. Among other things, the CBR are supposed to articulate the process of stakeholders’ consultation to be undertaken while preparing regulations and before issue of tariff orders. In other words, the process of consultation with stakeholders that will be undertaken by MWRRA to finalize the draft approach paper is going to be part of the CBR. So, the consultant is expected to propose a model of this process in draft CBR, which will be finalized after consultation with stakeholders on CBR.

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<sup>4</sup> Public interest can be defined as the sum total of the interest of the poor and disadvantaged sections as well as the interest of the society as a whole.

Once this model of the process of consultation is finalized, it should be followed for conducting any process related to tariff regulations and tariff determination including the process of consultations on the approach paper. But the current process initiated envisaged by MWRRA leads to development of these CBRs after the preparation of approach paper. The approach paper does not provide details on CBRs probably because this is envisaged as a separate output by the consultant apart from the approach paper. Conducting consultation on approach paper on tariff regulation before finalizing the CBRs will amount to putting the cart before the horse. This is a serious lacuna which all of us should try to correct.

Thus, the actual process of preparing tariff regulations (including preparing approach paper) needs to be analyzed from public interest perspective. There is a need to analyze and provide recommendations to the MWRRA on the process of preparing regulations that is transparent and provides comprehensive spaces for intensive and meaningful participation of all stakeholders including the poor and disadvantaged sections of the society.

#### **4.2 Insufficiency in the Content of Approach Paper vis-à-vis the Agreed TOR**

There are many areas (related to the content) of tariff regulations that were required as per the TOR but are not adequately discussed or incorporated in the approach paper. This makes the approach paper insufficient and incomplete in comparison with the agreed TOR. Such insufficiencies in the substance of the approach paper need to be identified, analyzed and brought to the notice of the MWRRA during the consultation process.

#### **4.3 Lacunas in Approach/ Philosophy/ Principles**

As per the TOR for preparing tariff regulations, the first part of the approach paper should comprise of the tariff philosophy or principles and various options available. So, the overall approach or principles form the key substantive guidelines that shall determine the regulation and as such form the area of first level of analysis for us. Chapter 5 to 7 of the approach paper articulates some of these tariff principles. Here, tariff philosophy or principles could be seen in terms of two categories. The first set includes elements of philosophy or principles that are articulated in the SWP or the laws, which are, in a way, frozen. The second set is elements of philosophy or principles that could be articulated, elaborated during the consultation process on the approach paper. Thus, our analysis of the first part of the approach paper can be based on these two aspects.

The analysis of tariff philosophy can also include the broader critique of the market-oriented reforms and the forthcoming tariff models that potentially may lead to commodification of water resources. But we are constrained by the fact that this analysis will have to remain within the framework circumscribed by relevant provisions in SWP, and the laws. At the same time, many of the lessons and insights that could be drawn from analysis of experience of other countries or states could also be used to define or shape the principles or philosophies. Similarly, insights and recommendations that emerge from reports of various committees should also be used for this exercise. The consultants were expected to carry out these tasks. But, there certainly is scope for us to contribute to these tasks.

#### **4.4 Lacunas in Proposed Tariff Regulations**

As per the TOR for preparing the tariff regulations, the second and third part of the approach paper should comprise of the methodology for tariff determination, and terms and conditions of tariff regulations. The fourth part of the approach paper should recommend draft model tariff proposal, which after acceptance may be issued as tariff order by MWRRA. All these aspects falling under the heading of tariff regulations need to be analyzed from the 'public-interest' perspective. These aspects are articulated mainly in Chapters 9 and 10, whereas Chapter 8 and Annexure 1 provide supportive information. The analysis of tariff regulations could focus on two aspects of the regulations, viz., the

content of regulations, and the process of regulations. The analysis of methodology of regulations or social-policy considerations in regulations could be considered, for example, for analysis under the ‘content of regulations’. Issues related to transparency, public participation, accountability structures, and capacity building of stakeholders in current and future process of tariff determination could be considered for analysis under the aspect of ‘process of regulations’.

## **5. Possible Advocacy Strategies**

Considering the importance of tariff regulations for general public interest as well as the interest of the poor and disadvantaged sections of the society, it is important that various stakeholders are able to participate and influence the process and outcome of the regulations. The first step towards this would be reaching out to maximum number of people and organizations and engaging in a process of collective or coordinated analysis and sharing. We hope that this note will provide some impetus to this process. The second step is to identify different advocacy options to ensure positive influence on the regulations. The options for building advocacy pressure will emerge from the sharing and consultation process. The advocacy efforts could take the shape of filing individual or joint submissions to MWRRA, evolving a broader consensus, or undertaking joint/coordinated efforts for influencing the process. It is expected that the appropriate advocacy options will evolve as we go ahead through the process of analysis and sharing.

It is also suggested that we should start writing to MWRRA about difficulties we face in undertaking efforts for meaningful participation in the deliberations over the approach paper. Three issues come out very sharply in this regard, including, (a) need for Marathi version of the approach paper (which actually was required as per TOR), (b) need for short, ‘operational summary’ of the approach paper both in Marathi and English, (c) need to finalize CBR, especially, the part related to the model of process of consultation on the approach paper before undertaking such a process. Prayas has already written to MWRRA, highlighting the first two issues.

Prayas, TISS, and some colleagues in IIT Bombay are considering the option of holding a consultation with all members of civil society organizations and academic community to deliberate on various issues connected with the approach paper.

Please feel free to contact for any further information or discussions.

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**We invite you to take part in the discussion on this topic. Please send your comments, recommendations and requests to [water.regulation@gmail.com](mailto:water.regulation@gmail.com)**

### **Contact:**

Dr. Subodh Wagle,  
Professor and Dean, IITB-TISS School for Habitat  
Studies, Tata Institute of Social Sciences  
Trustee, PRAYAS  
Group Coordinator, Resources and Livelihoods Group  
Adjunct Professor, CTARA, IIT Bombay  
Email: [subodhwagle@gmail.com](mailto:subodhwagle@gmail.com)  
Phone: 098222 86682

Mr. Sachin Warghade,  
Senior Research Associate,  
Resources and Livelihoods Group  
PRAYAS, Pune  
Email: [sachinwarghade@gmail.com](mailto:sachinwarghade@gmail.com)  
Phone: 098509 16702