

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 24 of 2005**

**In the matter of  
General Conditions and Specific Conditions applicable to Distribution Licensees.**

**Dr Pramod Deo, Chairman,  
Shri A. Velayutham, Member  
Shri S. B. Kulkarni, Member**

**INTERIM ORDER**

**Dated: 21<sup>st</sup> September, 2005**

After the coming into force of the Electricity Act (EA), 2003 the Commission notified the Maharashtra Electricity Regulatory Commission (Distribution Licence Conditions) Regulations, 2004 dealing with some aspects of Distribution Licences. The Commission has also from time to time framed other Regulations applicable to the Distribution Licensees. These include the MERC (Terms and Conditions of Tariff) Regulations, the MERC (Standards of Performance of Distribution Licensees) Regulations and the MERC (Supply Code and other Conditions of Supply) Regulations.

2. The first proviso to Section 14 of EA, 2003 reads as follows:

*"PROVIDED that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business."*

Further, Section 16 provides that:

*"Conditions of licence- The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:*



*Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.”*

3. In terms of the above provisions, the Commission is required to stipulate the General Conditions and the specific Conditions applicable to the Licensees. This would include Licence Conditions applicable to all Distribution Licensees in the State, namely those who were existing Licensees on the date when the EA, 2003 came into force, those who will be Licensees as a result of reorganization of the Maharashtra State Electricity Board (MSEB), and new Licensees, i.e. those who are granted Licences after the coming into force of the EA, 2003.

4. Accordingly the Commission prepared draft General Conditions and model draft Specific Conditions. The General Conditions would be applicable to all the Distribution Licensees in the State. The Specific Conditions will deal with specific and peculiar aspects applicable to a particular Licensee. If any deviation or variation or modification of a General Condition is required for any particular Licensee, this would also be done by a suitable stipulation in the Specific Conditions.

5. The draft General Conditions and Specific Conditions prepared based on the above were circulated to the existing Licensees for their comments. The Commission has received comments from some of the existing Licensees, namely Reliance Energy Ltd (REL), Tata Power Company Ltd. (TPC), the Brihanmumbai Electric Supply and Transport Undertaking (BEST) and the Mula Pravara Electric Cooperative Society Ltd (MPECS), Shirampur.

6. The Commission has since examined the comments and views expressed by the above Licensees.

7. By this Order the Commission deals with the principal comments received from these Licensees. These are:

(a) The Licensees have referred to the MERC (Distribution Licence Conditions) Regulations, 2004 and have pointed out some inconsistencies and deviations in the definition of the terms contained in the draft General Conditions as compared with those contained in the above Regulations. While preparing the draft General Conditions (which are much more detailed), the Commission has considered the need for amending and extending some of the definitions contained in the Regulations. Once the draft General Conditions and Specific Conditions are finalized, the above Regulations would also be suitably amended. Thereupon, there will be no such inconsistencies as pointed out by the Licensees.

(b) Similarly, Licensees have referred to other Regulations such as the Terms and Conditions of Tariff, Conditions of Supply, Standards of Performance, etc, and the possibility of conflict between them and the General Conditions. The General Conditions also deal with some of the aspects mentioned in the above Regulations, but the contents of these General Conditions keep in view the provisions of these Regulations. The draft General Conditions make reference to the above Regulations at the appropriate places.



(c) Some of the Licensees have referred to the provisions of the Companies Act, 1956 and the need to adopt the definitions contained therein in the Licence Conditions. These relate to terms such as Accounting Statement. It has also been suggested that the dispensation with regard to investment, loans, etc. should be left to the provisions of the Companies Act and that there is no need to regulate them through Licence Conditions

However, it has been recognized that the provisions of the Companies Act may not be sufficient to cover all aspects of regulation of an electricity industry. The Commission, therefore, has to retain the power to prescribe matters relating to the Accounting Statement, etc. Similarly, the investments, loans, etc. need to be regulated from the perspective of the electricity industry. The requirements under the Licence Conditions are in addition to the provisions of the Companies Act. The procurement of equipment, material and service relating to major investment is a significant cost which has a bearing on revenue requirement, tariff, efficiency, quality of service, etc. with all of which the Commission has to be concerned. It requires to be done through a transparent process, in which the Commission as a regulator should have a say .

(d) Some Licensees have stated that clauses 4.2 (g) and 4.10 (b) of the draft General Conditions are inconsistent. However, the Commission finds no such inconsistency. Clause 4.2 (g) deals with the sale of electricity in which case the person is not acting as a transmitter, distributor or supplier of electricity i.e. carrying on any licensed activity. Clause 4.10 (b) deals with the licensed activity.

(e) Some Licensees have contended that clause 7.4 of the General Conditions is in conflict with the powers of the Central Government and Central Electricity Authority (CEA) under Section 161 of the EA, 2003.

Clause 7.4 deals with the reporting and information to be furnished by the Licensee on major incidents. There is no conflict between this clause and what the Central Government or the CEA, etc., may provide. Section 161 of the EA, 2003 deals with certain specific aspects of accidents, etc. The Licence Conditions need to deal with major incidents of the nature defined therein, which is wide. In any event, there is no conflict between the two.

Similarly Section 161 does not authorize the Electrical Inspector to determine compensation, etc. The regulation of the Licensee's activities is a part of the power and functions of the State Commission.

(f) It has been suggested that, under the EA, 2003, the Distribution Licensee should be allowed to undertake trading without any restriction on the area of such trading.

However, it is incorrect to read that the Distribution Licensee can undertake trading activity without any restriction as the Distribution Licensee is engaged in the supply of electricity in the area after purchasing. Although the Act does not require a separate trading Licence, this is, however, restricted essentially to the area of supply under the Licence. The Distribution Licensee cannot undertake trading in other areas as a matter of right. He can do it only as incidental when distributing electricity in the area of supply by selling surplus power.



(g) Some Comments have been received on the need for clauses 4.4, 4.11, 5.1, 6.1, 9.4 (c), 9.5 (a) and 9.5 (b). of the General Conditions. The Commission's views on these are :

Clause 4.4 – The approval by the State Commission does not mean that the Licensee has no obligation to ensure an economical and transparent power purchase.

Clause 4.11 – Open access is to be provided to every person as per the Regulations of the Commission. This includes intervening distribution facilities also.

Clause 5.1 – The financial year for the purpose of EA, 2003 and the licensing activity can be different from the financial year under the Companies Act if the Commission, for reasons, considers appropriate. Otherwise, the Commission can always by order term the same financial year.

Clause 6.1 - The EA, 2003 specifically prohibits undue preference being shown. This would not, however, mean that classes of consumers cannot be differentiated. It is necessary to retain the concept of universal service obligation and non-discrimination.

Clause 9.4 (c) -The term “other business” as defined is business other than the licensed business. There is no need to make a distinction between the specified other business and any other business. There seems to be some confusion in understanding the difference between licensed business and other business, wherein other business excludes only the licensed business.

Clause 9.5 (a) -The object of this clause is to enable the Commission to ask the Distribution Licensee not to enter into an arrangement if the Commission considers it to be not conducive. The Commission must, therefore, have prior intimation to effectively exercise the above. There is no purpose if it is done after the arrangement is finalized. The Commission has the power to regulate the above under the Licence Conditions to ensure proper working of the Licensee.

Clause 9.5(b) - The period of 7 years is considered appropriate. The Commission can retain the power to extend it in appropriate cases. However, it will not be appropriate to leave the period open ended, at the outset.

8. The Commission also revised the Specific Conditions in the case of REL, TPC and BEST, considering the comments received from them.

9. REL has suggested certain detailed clauses to be inserted in the Specific Conditions in substitution of the terms contained in the existing Licence. These mainly relate to power purchases from different sources. However, the existing arrangements for power procurement shall continue until otherwise directed by the Commission. The Specific Conditions should, therefore, contain a general provision regarding power purchases, and not specific details. The existing Licence Conditions will be superseded once the General Conditions and Specific Conditions are finalised.



10. In the comments received from TPC on its Specific Conditions, 15 years time has been sought to establish the Distribution Licence so as to fulfill universal service obligation. The time sought is very long. The Commission cannot agree to such a lengthy period. TPC should come up with a more credible scheme to cater to all the consumers in their area of supply. In case TPC is not able to come up with a scheme for catering to all the consumers within a reasonably short time, the effect of the same needs to be considered. TPC cannot continue to claim the right to supply electricity to selected consumers for a long period without fulfilling the universal service obligations. This issue will be deliberated during the public process, and the Commission will take an appropriate view after considering the various suggestions and objections, and after giving an opportunity to all the concerned parties.

11. Apart from other issues which have been dealt with above, BEST has stated that it is not a company under the Companies Act, 1956, that it functions under the MMC Act, 1888, and that it is also a local authority within the meaning of Section 42 (3) and Section 51 of the EA, 2003. BEST is directed to place before the Commission the requisite documents in support of its contention that it is a local authority. The Commission will finalise the Specific Conditions of BEST after being satisfied on the claim of BEST to be a local authority. The Specific Conditions will then deal with the exclusions from General Conditions claimed by BEST on grounds of non-application of Section 42 (3), Section 51 and also non-application of the provisions of the Companies Act, 1956.

12. Revised drafts of the General Conditions and Specific Conditions have been prepared considering the comments received and are annexed to this Order. The revised drafts would be circulated to the existing Licensees and also be made available to the general public to elicit their views. The Commission would also hold a public hearing in which the Licensees and other interested persons would have the opportunity to participate. The Commission will thereafter finalize the General Conditions and Specific Conditions. The revised drafts may be varied considering the comments that may be received during the public process. The Commission may also vary, amend or modify the Licence Conditions Regulations if it considers appropriate.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr Pramod Deo)  
Chairman, MERC



(A.M. Khan)  
Secretary, MERC

Encl. Draft General and Special Conditions (Annexures 1 to 3).

## ANNEXURE-1

(ORDER DATED 21.09.2005 IN CASENO. 24 OF 2005)

### GENERAL CONDITIONS OF DISTRIBUTION LICENCE

#### 1 DEFINITIONS

1.1 Words, terms and expressions to which meanings are assigned by the Electricity Act 2003 (36 of 2003) (hereinafter called the 'Electricity Act'), shall have the same meaning in these General Conditions

1.2 Unless the context otherwise requires, in these General conditions :

**“Accounting Statement”** means for each financial year, accounting statements for the Licensed Business comprising a profit and loss account, a balance sheet and a statement of sources and application of funds, together with notes thereto as detailed in or under the Companies Act, 1956 (1 of 1956) or any rules or regulations issued there under, as applicable from time to time and such other particulars and details in the manner as the State Commission may direct from time to time. If the Distribution Licensee engages in any business or activity in addition to the Licensed Business , the accounting statements shall, as directed by the State Commission, show separately the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either:

charged from the Licensed Business to any Other Business or from any Other Business to the Licensed Business, as the case may be, together with a description of the basis of that charge; or

determined by apportionment or allocation between the Licensed Business and any Other Business of the Distribution Licensee together with a description of the basis of the apportionment or allocation.

**“Electricity Act”** means the Electricity Act, 2003 (36 of 2003)

**“Annual Accounts”** means the accounts of the Distribution Licensee prepared in accordance with the provisions of the Companies Act, 1956 and/or in such other manner as may be directed by the State Commission from time to time in terms of the provisions of the Electricity Act;



**“Area of Distribution” or “Area of Supply”** means the area stated in the Distribution Licence within which the Distribution Licensee is authorised to establish, operate and maintain the Distribution System and supply of electricity;

**“Auditors”** means the Distribution Licensee’s auditors holding office in accordance with the requirements of Sections 224 to 234A or Section 619 as appropriate, of the Companies Act 1956 (1 of 1956) or if the Distribution Licensee is not a limited company the auditor as may be directed by the State Commission;

**“Authorised”** in relation to any Person, business or activity, means authorised by licence granted under Section 14 of the Electricity Act or deemed to be granted under the first, second, third and fifth proviso to Section 14 of the Electricity Act or exemption granted under Section 13 of the Electricity Act and the regulations of the State Commission;

**“Deemed Licensee”** means the a persons authorised under the first, second, third, and fifth provisos to section 14 of the Electricity Act;

**“Distribution”** means the conveyance or wheeling of electricity by means of a Distribution System;

**“Distribution Business”** means Authorised business of a Distribution Licensee to operate and maintain a Distribution System for supplying electricity to the consumers in the Area of Supply;

**“Distribution Licensee”** means the person authorised by the Distribution Licence and shall include the deemed licensee who is so authorised under section 14 of the Electricity Act.

**“Franchisee”** means a person authorised by a Distribution Licensee to distribute or supply electricity on behalf of the Distribution Licensee in an area within his Area of Supply;

**“Force Majeure”** means events beyond the reasonable control of the Distribution Licensee, including, but not limited to earthquakes, cyclones, floods, storms, adverse weather conditions, war, terrorist attacks, civil commotion or other similar occurrences that leads to any act that would involve a breach of relevant laws or regulations concerned with electrical safety;



**“General Conditions”** mean these General Conditions;

**“Generating Set”** means any plant or apparatus for the production of electricity and shall, where appropriate, include a generating station comprising of one or more than one generating unit;

**“Generator Interconnection Facilities”** means electrical lines, transformers, busbars, switch-gear, plant or apparatus utilised to enable access to a Transmission System or Distribution System by the Generating Set(s);

**“Holding Company”** shall have the same meaning as in section 4 of the Companies Act 1956 (1 of 1956),

**“Interim Grid Code”** means the existing practices and procedures followed by the State Transmission Utility pending the State Grid Code to be specified by the State Commission;

**“Licensed Business”** means the business of Distribution and Supply of electricity as authorised under the Distribution Licence;

**“Major Incident”** means an incident associated with the Distribution of electricity, which results in a significant interruption of service, substantial damage to equipment, or loss of life or significant injury to human beings, or as otherwise specified by the State Commission and shall also include any other incident which the State Commission expressly declares to be a major incident;

**“Operational Control”** means possessing the authority to make operational decisions such as commissioning and utilisation of service lines and equipment;

**“Other Business”** means business of the Distribution Licensee other than the Licensed Business;

**“Performance Standards”** means the standards as may be stipulated by the State Commission as per the Electricity Act;

**“Regulations”** means the regulations made by the State Commission, under the provisions of the Electricity Act;



**“Specific Conditions”** means the conditions in addition or in variation to these General Conditions which the State Commission may lay down specifically for a Distribution Licensee

**“State”** means the State of Maharashtra.

**“State Commission”** means the Maharashtra Electricity Regulatory Commission;

**“State Government”** means the Government of the State of Maharashtra;

**“State Grid Code”** means the grid code specified by the State Commission, covering all material technical aspects relating to connections to and the operation of the Grid, and use of a Distribution System, or (in so far as relevant to the operation and use of a Distribution System) the operation of electric lines and electrical plant connected to the Distribution System, the Distribution Systems, or the system of any Supplier, and shall include the Interim Grid Code;

**“Subsidiary”** shall have the same meaning as in section 4 of the Companies Act 1956 (1 of 1956);

**“Trading Business”** means the Authorised business of an Electricity Trader in the Area of Operation allowed under the Trading Licence granted ;

**“Trading Licence”** means the Licence granted under Section 14 of the Electricity Act to undertake Trading in Electricity;

**“Trading Licensee”** means the person who is authorised to undertake trading and shall include deemed licensee who is so authorised under section 14 of the Electricity Act;

**“Transfer”** shall include the sale, exchange, gift, lease, licence, loan, securitisation, mortgage, charge, pledge or grant of any other encumbrance or otherwise permitting of any encumbrance to subsist or parting with physical possession or any other disposition or dealing;

**“Use of System”** means use of the Distribution System for the transportation or wheeling of electricity;

**“Users”** means any person who uses the Distribution System.

## **2 TERM**

- 2.1 The Distribution Licence shall come into force on the date to be mentioned by the State Commission in the order granting the licence or in the Specific Conditions, as the case may be, and subject to the terms and conditions of the grant of licence including these General conditions, shall remain in force for the period mentioned in such Order or in the Specific Conditions, as the case may be.

## **3 COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

- 3.1 The Distribution Licensee shall comply with the provisions of the Electricity Act, Rules, Regulations, Orders and Directions issued by the State Commission from time to time and the provisions of all other applicable laws.
- 3.2 The Distribution Licensee shall act in accordance with these General Conditions except where the Distribution Licensee is exempted from any provisions of these General Conditions under the Specific Conditions or otherwise where the Distribution Licensee specifically obtains an approval of the State Commission for any deviation from these General Conditions
- 3.3 The Distribution Licensee shall duly comply with the regulations, orders and directions of the Central and State Transmission Utilities, National Load Despatch Centre, Regional Load Despatch Centre and the State Load Despatch Centre, Central Electricity Authority and other statutory authorities issued by them in the discharge of their functions under the Electricity Act.

## **FUNCTIONS / ACTIVITIES OF THE DISTRIBUTION LICENSEE**

- 4.1 The Distribution Licensee shall develop and maintain an efficient, co-ordinated and economical distribution system in the Area of Distribution and effect supply of electricity to consumers in such area in accordance with the provisions of the Electricity Act, Rules, Regulations, Orders and directions of the State Commission.
- 4.2 The Distribution Licensee shall be entitled to:
- (a) purchase, import or otherwise acquire electricity from generating companies, electricity trader and from such other sources and persons with whom the Distribution Licensee has agreements or



- arrangements for power purchase or procurement of energy in accordance with the terms and conditions of such agreement and arrangement as consented to or approved by the State Commission;
- (b) purchase or acquire electricity from any Person whose generating unit existing as on date of the grant of the Licence, is directly connected to and interfaced with the Distribution System of the Distribution Licensee, provided that the Distribution Licensee shall intimate the State Commission of the existing arrangements for such purchase or acquisition of electrical energy and obtains the general or special approval of the State Commission;
  - (c) purchase or otherwise acquire electricity from any person or licensee at the tariffs and terms and conditions as approved by the State Commission;
  - (d) appoint Franchisees to distribute and/or supply of electricity in a specified area within his area of distribution as per the provisions of the Electricity Act and without the need to obtain a separate licence for the franchisee from the State Commission, provided that the Distribution Licensee shall be responsible for all obligations relating to distribution of electricity in his area;
  - (e) undertake Trading in electricity within the Area of Supply without the need for a separate Trading Licence;
  - (f) provide “Non discriminatory Open Access” to the Distribution System to any person for wheeling of electricity in accordance with regulations made by the State Commission for the purpose; and
  - (g) sell to others outside the Area of Supply electricity or energy capacity contracted for such period and to the extent that such electricity or capacity is not required by the Distribution Licensee for the discharge of his obligations to supply electricity in the area of supply.

4.3 The Distribution Licensee shall not sell, supply or otherwise dispose of electricity to any person, except in accordance with his Licence and at the tariffs and terms and conditions as approved by the State Commission;

4.4 The Distribution Licensee shall purchase the energy required by him for meeting the obligation under the Distribution Licence in an economical manner and under a transparent power purchase or procurement process and in accordance with the regulations, guidelines, directions made by the State Commission from time to time.



4.5 The Distribution Licensee shall engage in any Other Business only consistent with the Regulations of the State Commission issued under section 51 of the Electricity Act

4.6 The Distribution Licensee shall seek approval of the State Commission before making any loans to, or issuing any guarantee for any obligation of any Person, except when made or issued for the purposes of the Licensed Business. The loans to employees pursuant to their terms of service and trade advances in the ordinary course of business are excluded from the requirement to seek such approval.

4.7 The Distribution Licensee may engage any of the Subsidiaries or Holding Company or a Subsidiary of such Holding Company of the Distribution Licensee to provide any goods or services to the Licensee in connection with the Licensed Business, subject to the following conditions:

- (a) that the transaction shall be on an arms-length basis and at a value that is fair and reasonable in the circumstances;
- (b) that the transaction shall be consistent with the Regulations of the State Commission relating to the provision of goods and services with respect to Licensed Business; and
- (c) that the Licensee shall give 15 days' notice with details of such arrangement, to the State Commission prior to commencement of such arrangement.

4.8 Except as provided in clause 4.2 above the Distribution Licensee shall not Transfer or assign this Licence or any of the functions under the Licence to any other Person without the prior approval of the State Commission.

4.9 The Distribution Licensee shall provide open access to the Distribution System for use of other Licensees, and Generating Companies including the Captive Generating Plants and the Consumer consistent with the Regulations framed by the State Commission for the purpose.

4.10 Save as provided in Clause 4.2 (f) the Distribution Licensee shall not, without the prior approval of the State Commission:

- (a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other Licensee; and



- (b) transmit and distribute electricity to any Person outside the area of distribution;

4.11 The Distribution Licensee shall provide to other Licensees the intervening distribution facilities to the extent of surplus capacity available, in his Distribution System and in the event of any dispute as to the availability of the surplus capacity the same shall be determined by the State Commission. The charges, terms and conditions for the use of the intervening facilities may be mutually agreed between the Licensees subject to any order made by the State Commission for the purpose. In the event of any disagreement with such other licensees, the same shall be decided by the State Commission.

## **5. ACCOUNTS**

5.1 Unless otherwise permitted by the State Commission the financial year of the Distribution Licensee for the purposes of these General Conditions and matters relating to the Licensed Business shall run from the first of April in a year to thirty-first of March in the succeeding year.

5.2 The Distribution Licensee shall, in respect of the Licensed Business and also of any Other Business engaged in by the Distribution Licensee:

- (a) keep such accounting records as would be required to be kept in respect of each such business so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to the Licensed Business are separately identifiable in the books of the Distribution Licensee, from those of Other Business in which the Distribution Licensee may be engaged;
- (b) prepare on a consistent basis from such accounting records and deliver to the State Commission periodic Accounting Statements supported by Auditor's certificates, as the State Commission may direct from time to time;

5.3 The Distribution Licensee shall not change the basis of charge or apportionment or allocation of revenues or expenses in relation to the preparation of the Accounting Statements in respect of a financial year from those applied in respect of the previous financial year, without prior intimation to the State Commission. Any change, if proposed, in the basis of charge or apportionment of revenues or expenses shall be consistent with the provisions of the Companies Act, 1956, rules and regulations there under the Accounting Standards or Rules and further any guidelines issued by the State Commission in this regard.



5.4 Where, in relation to the Accounting Statements in respect of a financial year, the Distribution Licensee has changed the basis of charge or apportionment or allocation from those adopted for the immediately preceding financial year, the Distribution Licensee shall, if directed by the State Commission, (in addition to preparing Accounting Statements on those bases which it has adopted), prepare and deliver to the State Commission such additional Accounting Statements as the State Commission may direct for correlating the same to the accounts of the immediately preceding financial year.

5.5 The Accounting Statements under clause 5.2. above shall, unless or otherwise approved or directed by the State Commission:

- (b) be prepared and published with the Annual Accounts of the Distribution Licensee, in the manner provided in these General Conditions or in the Specific Conditions;
- (c) state the accounting policies adopted;
- (d) be prepared in accordance with the generally accepted Indian accounting standards; and
- (e) be prepared in the forms as the State Commission may stipulate from time to time;

5.6 The References to costs or liabilities of, or reasonably attributable to Licensed Business or Other Business shall be construed as excluding taxation, and capital liabilities which do not relate principally to such Business and interest thereon.

5.7 The Distribution Licensee shall ensure that the Accounting Statements in respect of each financial year prepared under clause 5.2. and the Auditor's report in respect of each financial year are publicised in such manner as the State Commission may direct and are made available to any Person requesting them at a price not exceeding the reasonable cost of duplicating them.

## **6. PROHIBITION OF UNDUE PREFERENCE**

6.1 The Distribution Licensee shall not show undue preference to any Person in the Distribution or Supply of Electricity or rendering of services in the area of supply.



6.2 The Distribution Licensee shall not be held to have shown any such undue preference if any differentiation of the consumer occurs as a result of the implementation of any order of the State Commission or of the order of the State Government in regard to subsidy payment under Section 65 of the Electricity Act.

## **7. PROVISION OF INFORMATION TO THE STATE COMMISSION**

7.1 The Distribution Licensee shall furnish to the State Commission without undue delay such information, documents and details related to the Licensed Business or any Other Business of the Distribution Licensee, as the State Commission may require from time to time for its own purposes or for the purposes of the Government of India, State Government, the Central Electricity Regulatory Commission, the Central Electricity Authority, the Central and the State Transmission Utilities and National, Regional and State Load Dispatch Centres.

7.2 The Distribution Licensee shall duly maintain the information as the State Commission may specify under Section 128 of the Electricity Act.

7.3 The Distribution Licensee shall, periodically provide to the State Commission information as to the performance in accordance with the applicable Regulations or otherwise as the State Commission may direct from time to time.

7.4 The Distribution Licensee shall notify the State Commission the occurrence of any Major Incident affecting any part of its Distribution System as soon as possible and

- (f) Report the incident to the police and intimate the State Commission of the occurrence of the incident to the State Commission at the earliest and in any event not later than 48 hours;
- (g) by not later than one month from the date of such occurrence submit a report to the State Commission giving full details of the facts within the knowledge of the Distribution Licensee regarding the incident and its cause;
- (h) in the event the report under sub-clause (b) is likely to take more than one month from the date of such incident, the Distribution Licensee shall within one month from such date of the incident submit a preliminary report with such details which the Distribution Licensee can reasonably furnish and state reasons as to why the



Distribution Licensee requires more than one month for giving full report of such incident; and

- (i) give copies of the report to the State Government, Central and State Transmission Utilities, Central Electricity Authority and to such other Persons as the State Commission may direct.

7.5 The decision of the State Commission as to what constitute a Major Incident shall be final. 7.6 The State Commission at its own discretion may require the submission of a report on the major incident to be prepared by an independent person at the expense of the Distribution Licensee.

7.7 The Distribution Licensee shall also undertake such studies as the State Commission may direct from time to time for the improvement of its Distribution System and any other matter concerning the Distribution Business that the State Commission considers necessary in the public interest to avoid the occurrence of any major incident.

7.8 The Distribution Licensee shall duly inform the State Commission about any incident restricting it from meeting its obligations under the Distribution Licence granted including any act of omission or commission by others and steps taken by the Distribution Licensee to mitigate the effect of such incident.

7.9 The State Commission may at any time require the Distribution Licensee to comply with the provisions of clauses 7.4 to 7.8 as to incidents which the State Commission may specifically direct and the Distribution Licensee shall be obliged to comply with the same notwithstanding that such incidents are not otherwise Major Incidents as mentioned above.

Provided that the time limits specified in clause 7.4 shall commence from the date that the State Commission notifies Distribution Licensee of such requirement.



7.10 Subject to any regulations notified by the Commission, the Distribution Licensee shall submit a Business Plan within three months of Distribution Licence coming in force for such period as the State Commission may direct and shall update such plan annually. The Business Plan shall amongst others contain year wise load growth, year wise Distribution loss reduction proposal along with specific action plan, metering plan for metering interface points, investment plan as detailed in Clause 8 herein, treatment of previous losses, debt restructuring plan, cost reduction plan, projected profit and loss account, projected balance sheets, projected cash flow statements and projected important financial parameters.

7.11 The State Commission may require the Distribution Licensee to intimate by the end of first quarter of each financial year the progress made in implementing the Business Plan of the previous financial year with the comparison of actual implementation vis-à-vis the Plan as approved by the State Commission.

## **8. INVESTMENTS**

8.1 The Distribution Licensee shall duly comply with the Regulations, guidelines, directions and orders the State Commission may issue from time to time in regard to the investments to be made in the Distribution Business.

8.2 The Distribution Licensee shall make the investments in a prudent manner being guided by the duty to build, maintain and operate an efficient, co-ordinated and economical Distribution System and that the Distribution Licensee has a universal service obligation to service every consumer in the area of supply.

8.3 Subject to any regulations notified by the Commission, the Distribution Licensee shall submit to the State Commission Investment Plans as a part of the business plan under clause 7.10 above giving details of investment schemes to be undertaken during the concerned period for the approval of the State Commission. The Distribution Licensee shall demonstrate to the satisfaction of the State Commission that :

- (j) there is a need for such Investments in the Distribution System contained in the Investment Plan; and
- (k) the Distribution Licensee has examined in an integrated manner the economic, technical, system and environmental aspects of all viable alternatives to the proposal for investment and that the investment proposed is optimum.



8.4 The Distribution Licensee shall submit to the State Commission, by the end of the first quarter of each financial year or within such period as the State Commission may otherwise direct:

- (l) the details of investment schemes to be carried out during the financial year, and
- (m) the progress made in implementing the annual investment plan of the previous financial year with the comparison of actual implementation vis-à-vis the plan as approved by the State Commission for the concerned period.

8.5 The Distribution Licensee shall not undertake schemes involving Major Investments, not covered under the Investment Plan approved by the State Commission under clause 8.3 above without the prior approval of the State Commission, and for such approval the Distribution Licensee shall demonstrate to the satisfaction of the State Commission the factors mentioned in clause 8.3 above.

8.6 The Distribution Licensee shall undertake procurement of equipment, material and/or services relating to major investment, in accordance with a transparent process as may be specified by the State Commission.

8.7 For the purposes of this clause 8, the term “Major Investment” means any planned investment in or acquisition of Distribution facilities, the cost of which, when aggregated with all other investments or acquisitions (if any) forming part of the same overall transaction, equals or exceeds an amount which the State Commission may provide in the Specific conditions applicable to the Distribution Licensee or otherwise decided by the State Commission from time to time by a general or special order.

8.8 The Distribution Licensee shall be entitled to make Investment in the Distribution Business otherwise than those covered under clauses 8.3 and 8.5 above but for the purposes of considering such Investment while determining the tariff, the Distribution Licensee shall satisfy the State Commission that the Investment was required for the Distribution Business and such investment was made in an efficient, co-ordinated and economical manner.



8.9 Subject to the provisions of any Tariff Regulations and Regulations dealing with investment approvals, the Distribution Licensee shall submit to the State Commission along with the “Expected Revenue Calculations” filed under sections 62 and 63 of the Electricity Act, the salient aspects of the annual investment plan consisting of those schemes approved by the State Commission, schemes submitted before the State Commission for approval and all schemes not requiring prior approval of the State Commission planned for the ensuing financial year and shall make investment in the said financial year in accordance with the said investment plan.

Provided that if any unforeseen contingencies require reallocation of funds within the schemes listed in the annual investment plan, the Distribution Licensee may do so to the extent such reallocation in respect of individual projects does not exceed an amount decided by State Commission in the Specific Conditions applicable to the Distribution Licensee or otherwise by a general or special order.

## **9. TRANSFER OF ASSETS**

9.1 Save as provided in this Clause 9, the Distribution Licensee shall not, in a single transaction or a set of related transactions, transfer or relinquish Operational Control over any asset whose book value at the time of the proposed Transfer exceeds the amount decided by State Commission in the Specific conditions applicable to the Distribution Licensee or otherwise by a general or special order.

9.2 The Distribution Licensee shall give to the State Commission prior written notice of its intention to transfer or relinquish Operational Control over any asset whose value exceeds the amount decided by the State Commission as per clause 9.1 above and the Distribution Licensee shall disclose to the State Commission details of the assets, the reasons for disposal and all other relevant facts in the communication to the State Commission. The State Commission may, within 30 days of the receipt of the notice, seek further information in support of the transaction and shall, generally within 30 days of such further information being submitted by the Distribution Licensee, and where no such further information is sought by the State Commission as above, within 60 days of the filing of the application, approve the Transfer arrangement subject to such terms and conditions or modifications as is considered appropriate or reject the same, for reasons recorded in writing to be continued in the order to be issued by the State Commission.

9.3 The Distribution Licensee may Transfer or relinquish Operational Control over any asset as is detailed in any notice given under clause 9.2 where:



- (n) the State Commission confirms in writing that it consents to such Transfer or relinquishment of Operational Control subject to such conditions as the State Commission may impose; or
- (o) the State Commission does not inform the Distribution Licensee in writing of any objection to such Transfer or relinquishment of Operational Control within the period referred to in clause 9.2 and the transfer is affected by transparent process.

9.4 The Distribution Licensee may also Transfer or relinquish Operational Control over any asset where:

- (p) the State Commission has issued directions for the purposes of this clause containing a general consent to:
  - (i) the transactions of a specified description, and/or
  - (ii) the Transfer or relinquishment of Operational Control over assets of a specified description, and/or
  - (iii) the Transfer or relinquishment of Operational Control is in accordance with any conditions to which the consent is subject, or
- (q) the Transfer or relinquishment of Operational Control in question is required by or under the mandate of any other Act mandated under any other law; or
- (r) the asset in question was acquired and used by the Distribution Licensee exclusively in connection with any Other Business and does not constitute a legal or beneficial interest in land, or otherwise form part of the Distribution System or is not otherwise an asset related to or required for the Licensed Business.

9.5 The Distribution Licensee shall be entitled to utilise the assets for facilitating financing its investment requirement subject to the conditions:

- (s) that the Distribution Licensee will inform the State Commission about such arrangements at least 15 days prior to the effective date of the relevant agreements;



- (t) that the financing arrangement is for a period not exceeding seven years or such other period as the Commission may specifically direct;
- (u) the Distribution Licensee acts in a prudent and reasonable manner in such utilisation of assets; and
- (v) the Distribution Licensee retains the Operational Control over assets in the Distribution System.

9.6 Notwithstanding anything contained in this clause 9 in case of emergency, the Distribution Licensee may transfer the assets subject to the condition that the Distribution Licensee shall immediately after such transfer seek post-facto approval of the State Commission giving the detail about the situation emergency and the details of the transaction entered into. It shall be the obligation of the Distribution Licensee to establish to the satisfaction of the State Commission of the presence of emergency necessitating the transfer of the assets without prior approval of the State Commission.

## **10. PAYMENT OF LICENCE FEES**

10.1 Within such period as the State Commission may direct, the Distribution Licensee shall pay to the State Commission the Licence Fees, initial and also periodic, in such manner as the State Commission may direct in the Specific Conditions or in any order passed by the State Commission.

10.2 Where the Distribution Licensee fails to pay to the State Commission any of the fees due under clause 10.1 by the due dates:

- (w) without prejudice to other obligations, the Distribution Licensee shall be liable to pay interest on the outstanding amount for the overdue period at such rate as the State Commission may direct from time to time and unless so directed at a simple interest rate of 1.5 per cent per month; and
- (x) in the event of continued default by the Distribution Licensee, the State Commission may revoke the Distribution Licence.

10.3 The Distribution Licensee shall be entitled to take into account any fee paid by it under this clause 10 excluding however the interest for delayed payment as an expense in the determination of aggregate revenues to be charged to the Tariffs.



## 11. TERMS OF REVOCATION

11.1 Subject to the provisions of section 19 of the Electricity Act and the Regulations framed hereunder, the State Commission may, at any time initiate proceedings against the Distribution Licensee for revocation of the Distribution Licence and the State Commission may revoke the Distribution Licence:

- (a) where the Distribution Licensee in the opinion of the State Commission, makes wilful and prolonged default in doing anything required of him by or under the Electricity Act or the rules or regulations made thereafter;
- (b) where the Distribution Licensee violates any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;
- (y) where the Distribution Licensee fails, within the period fixed in this behalf by his licence, or any longer period which the State Commission may have granted therefore-
  - (i) to show, to the satisfaction of the State Commission, that he is in a position to fully and efficiently discharge the duties and obligations imposed on him by his licence; or
  - (ii) to make deposits or furnish the security, or pay the fees or other charges required by his licence;
- (z) where in the opinion of the State Commission the financial position of the Distribution Licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him; and
- (aa) where the Distribution Licensee has failed to comply with any of the Regulations, codes, and standards and also orders and directions of the State Commission or otherwise has committed an act which renders Distribution Licence revocable on any other grounds specified in the Electricity Act or the Rules or Regulations framed there under.

11.2 Where in its opinion the public interest so requires, the State Commission may, for reasons to be recorded in writing, revoke the Licence of a Distribution Licensee as to the whole or any part of his area of Distribution upon such terms and conditions as it thinks fit.



11.3 Before revoking a Distribution Licence the State Commission shall, in its opinion considers necessary, refer the matter to the State Government and to decide on the arrangement to be made for discharging the duties of the Distribution Licensee.

## **12. AMENDMENT OF LICENSE CONDITIONS**

These General Conditions of License may be altered or amended by the State Commission at any time it deems fit if it is in public interest in exercise of powers and for the reasons stated under Section 18 of the Electricity Act..

## **13. DISPUTE RESOLUTION**

13.1 The State Commission shall be entitled to adjudicate the disputes or in its discretion nominate person(s) as arbitrator(s) to adjudicate and settle disputes between the Distribution Licensee and any other Licensee or between the Distribution Licensee and a Generating Company in pursuance of clause (f) of sub-section (1) of section 86 read with Section 158 of the Electricity Act and the Regulation of the State Commission.

## **14. COMPLIANCE WITH THE STATE GRID CODE**

14.1 The Distribution Licensee shall comply with the provisions of the State Grid Code in so far as it is applicable to the operation of the Distribution System or otherwise to any of the activities of the Distribution Licensee.

14.2 The State Commission may in consultation with any affected Generating Companies, the Transmission Licensees, the Distribution Licensees in the State, the State Transmission Utility, the State Load Despatch Centre and Electricity Traders, issue directions relieving the Distribution Licensee of its obligation under clause 14.1 in respect of such parts of the State Grid Code and to such extent as may be specified by the State Commission.

14.3 Till such time the State Grid Code is approved by the State Commission, the Distribution Licensee shall comply with the Interim Grid Code.

## **15. ELECTRICITY SUPPLY CODE AND OTHER CODES**

15.1 The Distribution Licensee shall abide by the Regulations of the State Commission and the Electricity Supply Code as specified by the State Commission from time to time.



- 15.2. The State Commission may, at the instance of the Licensee, issue directions relieving the Licensee of its obligations under the Electricity Supply Code in respect of such parts of the Licensee's Distribution System and to such extent as may be directed by the State Commission.
- 15.3 In addition to the Electricity Supply Code the State Commission may from time to time approve at the request of the Distribution Licensee other conditions applicable for supply of electricity by the Distribution Licensee in the area of Distribution.
- 15.4. The Distribution Licensee shall make available to any Person requesting for it, copies of the Electricity Supply Code in force at the relevant time, at a price not exceeding the reasonable cost of duplicating it.

#### **16. CONSUMER RELATED MATTERS:**

- 16.1. The Distribution Licensee shall duly comply with the Regulations specified by the State Commission from time to time in regard to consumer services including the terms and conditions relating to consumer services contained in the Electricity Supply Code and other conditions of supply.
- 16.2. The Distribution Licensee shall establish a forum for redressal of grievances of the consumers in accordance with the guidelines specified by the State Commission under section 42 of the Electricity Act.
- 16.3. The Distribution Licensee shall, within the time as directed by the State Commission prepare and submit to the State Commission for approval, a consumer rights statement, explaining to Consumers their rights as Consumers serviced by the Distribution Licensee.
- 16.4. The Distribution Licensee shall:
  - (a) draw to the attention of Consumers, in such manner as the State Commission may direct, the existence of its consumer rights statement and each substantive revision of it and how they may inspect or obtain a copy of such consumer rights statement in its latest form.
  - (b) make a copy of its consumer rights statement, revised from time to time, available for inspection by members of the public at its offices during normal working hours; and



(c) provide a copy of the consumer rights statement, revised from time to time, to all new Consumers to be served by it, and to any other Person who requests for it at a price not exceeding the reasonable cost of duplicating it.

## **17. OBLIGATION TO CONNECT CONSUMERS AND PUBLIC LAMPS**

- 17.1. Subject to the other provisions of these conditions, the Distribution Licensee shall on the application of the owner or occupier of any premises within the Area of Supply, give connection to the Distribution Licensee's Distribution System for the purposes of providing Supply of electricity to such premises, in accordance with the applicable regulations, directions and orders of the State Commission.
- 17.2. The Distribution Licensee shall abide by the rules made by the State Government in terms of laying down or placing electric supply lines as per sections 67, 68 and 69 of the Electricity Act.
- 17.3. Where, after Distribution mains have been laid down and the supply of energy through those mains or any of them has commenced, a requisition is made by the State Government or by a local authority requiring the Distribution Licensee to supply energy for any public lamps within the Area of Supply, the Distribution Licensee shall supply, and save in so far as it is prevented from doing so by events of Force Majeure continue to supply energy for such lamps in such quantities as the State Government or the local authority, as the case may be, may require subject however to the payment of the tariff for such supply to the extent and in the manner as the State Commission decide.

## **18. OBLIGATION TO SUPPLY AND POWER SUPPLY PLANNING STANDARDS**

- 18.1. The Distribution Licensee shall take all reasonable steps to ensure that all Consumers connected to the Distribution Licensee's Distribution System receive a safe, economical and reliable Supply of electricity as provided in the Performance Standards, and other guidelines issued by the State Commission in accordance with the provisions of the Electricity Act, Rules and Regulations issued there under.
- 18.2. The Distribution Licensee shall duly comply with the Standards as the State Commission may specify from time to time, for the performance of the duties of the Distribution Licensees under the Electricity Act.



18.3. The Distribution Licensee shall:

(a) forecast annually the demand for power within the Area of Supply in each of the next succeeding 10 years;

(b) prepare and submit such forecasts to the State Commission in accordance with the guidelines issued by the State Commission from time to time; and

(c) co-operate with the Generating Companies, Central Electricity Authority, the Regional State Load Despatch Centres and other Licensees in the preparation of power demand forecasts for the state of Maharashtra.

18.4. Subject to the foregoing clauses, the Distribution Licensee shall purchase electricity from the Generating Companies, Electricity Traders and others as consented to by the State Commission in quantities which the Distribution Licensee considers sufficient to meet the expected demand of the Licensee's Consumers in the Area of Supply.

18.5. The Distribution Licensee shall, within three months from the effective date of the Licence granted to him or such other time as the State Commission may allow, prepare and submit to the State Commission for approval, a disaster management plan, to address emergencies that may arise in connection with the operation of the Distribution Licence. For purposes of this clause, an emergency shall mean any condition and/or situation that materially and adversely affects the ability of the Licensee to maintain safe, adequate and continuous operation of all or any part of the Licensed Business or endangers the security of any person, plant, or other life, equipment or property.

**19. POWERS TO RECOVER EXPENDITURE, RECOVER SECURITY**

The Distribution Licensee shall be entitled to recover tariffs, charges, and fees and require security deposit to be made for supply of electricity or for provision of services, in accordance with the provision of the Electricity Act, the Rules and Regulations for the purpose framed under the Electricity Act and orders passed by the State Commission from time to time



**20. USE OF METERS**

The Distribution Licensee shall comply with the requirements of the Electricity Act and the Regulations, Directions and Orders of the State Commission in regard to supply of electricity through meter.

**21. CONNECTION AND USE OF SYSTEM**

The Distribution Licensee shall make such arrangements for open access to the use of his Distribution System by Users in accordance with open access regulations notified by the State Commission for the purpose under the Electricity Act.

**22. EXPECTED REVENUE CALCULATION AND TARIFFS**

The Distribution Licensee shall calculate the expected revenue from charges which it is permitted to recover, in accordance with the provisions of the Electricity Act, the, Regulations of the State Commission, the tariff terms and conditions and other guidelines, orders and directions issued by the State Commission from time to time.

**23. MISCELLANEOUS**

23.1 All issues arising in relation to interpretation of these General Conditions and as to the terms and conditions thereof shall be a matter for the determination of the State Commission and the decision of the State Commission on such issues shall be final, subject only to the right of appeal under section 111 of the Electricity Act.

23.2 The State Commission may at the time of grant of Distribution Licence waive or modify the application of any of the provisions of these General Conditions either in the order granting the licence or by Specific Conditions made applicable to a specific Distribution Licensee

**24. APPLICATION OF THE GENERAL CONDITIONS**

The General conditions contained herein shall apply to all applicants for grant of Distribution Licence after the coming into force of the Electricity Act and also to all deemed Distribution Licensees under section 14 proviso first, second, third and fifth of the Electricity Act.



## ANNEXURE-2

(ORDER DATED 21.09.2005 IN CASENO. 24 OF 2005)

### **CONDITIONS OF DISTRIBUTION LICENCE APPLICABLE TO RELIANCE ENERGY LIMITED**

1. In exercise of powers under section 16 of the Electricity Act, 2003 and in supersession of the previous Licences issued or operating, the Commission hereby directs that the General Conditions as notified by the State Commission vide . . . and as modified by the following Specific Conditions shall govern the operation of Messrs. Reliance Energy Limited (formerly known as BSES Limited) (the existing Licensee) (hereinafter referred to as the Distribution Licensee) for the distribution and retail supply of electricity in the area specified in the existing Licence (the area of supply). The general conditions shall form a part of the Licence terms and conditions of the Distribution Licensee.
2. The Licence shall remain in force till 15<sup>th</sup> August 2011, the remaining period for which the Licence has been granted.
3. During the term of the Licence, the Distribution Licensee shall, by the 10<sup>th</sup> of April of every year, or such further period as the Commission may allow, pay to the Commission an annual Licence fee as mentioned in the Fees and Charges Regulations 2004. The Commission shall be entitled to review and revise the annual Licence fee, after every block of three years and the Distribution Licensee shall be liable to pay such revised annual Licence fee.
4. The authorization of the Distribution Licensee to distribute and supply electricity in the area of supply shall be subject to the following conditions:
  - a) The Distribution Licensee shall purchase the electricity in accordance with the provisions of the Electricity Act 2003 and on the terms and conditions and to the extent as may be approved by the Commission.
  - c) The Distribution Licensee is hereby authorized to purchase supply from generating companies, other Licensees and/or from any other source as may be approved by the Commission and for this purpose receive alternating current energy at any pressure between phases at a frequency not exceeding 50 complete periods per second.
  - d) The Distribution Licensee shall continue to purchase electricity from such suppliers as the Distribution Licensee has been purchasing as on the date of issue as these specific conditions.



### **ANNEXURE-3**

**(ORDER DATED 21.09.2005 IN CASENO. 24 OF 2005)**

#### **CONDITIONS OF DISTRIBUTION LICENCE APPLICABLE TO MESSRS. TATA POWER COMPANY LIMITED**

1. In exercise of powers under section 16 of the Electricity Act, 2003 and in supersession of the previous Licences issued or operating, the Commission hereby directs that the General Conditions as notified by the State Commission vide ..... and as modified by the following Specific Conditions shall govern the operation of Messrs. Tata Power Company Limited (the existing Licensee) (hereinafter referred to as the Distribution Licensee) for the distribution and retail supply of electricity in the area specified in the existing Licence (the area of supply). The General Conditions shall form a part of the Licence terms and conditions of the Distribution Licensee.
2. The Licence shall remain in force till 15<sup>th</sup> August 2014 which is the remaining period of the existing licence (licence period under the Licence earlier granted)
3. During the term of the Licence, the Distribution Licensee shall, by the 10<sup>th</sup> of April of every year, or such further period as the Commission may allow, pay to the Commission an annual Licence fee as specified in the Fees and Charges Regulations, 2004. The Commission shall be entitled to review and revise the annual Licence fee, after every block of three years and the Distribution Licensee shall be liable to pay such revised annual Licence fee.
4. The authorization of the Distribution Licensee to distribute and supply of electricity in the area of supply shall be subject to the following conditions:
  - a. The Distribution Licensee shall within .... (time) establish distribution system so as to be able to make available the electricity to all the Consumers in the area of distribution. This is necessary to ensure that the Licensee duly fulfills its universal service obligations.

