

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.
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Case Nos. 22 to 26 of 2003

In the matter of
**M/s. Reliance Energy Limited [REL] (erstwhile BSES Limited) application for grant of
distribution licenses using own distribution system (Total 5 applications)
[(1) Nashik 1&2 divisions (2) Aurangabad (U) Circle (3) Nagpur (U) Zone,
(4) Pune (U) Zone (5) Vashi & Bhandup Circle]**

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

ORDER

Dated: 14th December, 2006

M/s Reliance Energy Limited [REL] (erstwhile BSES Limited) filed Applications on 8th September 2003 before the Maharashtra Electricity Regulatory Commission (Commission) for grant of five Distribution Licenses for the areas comprising (i) Nashik 1 and 2 Divisions, (ii) Aurangabad (Urban) Circle, (iii) Nagpur (Urban) Zone, (iv) Pune (Urban) Zone, and (v) Vashi and Bhandup Circles, under the provisions of the Electricity Act, 2003, supported by affidavits submitting the Company profile mentioning background of Generation Division, Dahanu Power station, Transmission Division, Supply Division and Consumer services. Geographical maps of the areas where the Company sought the parallel distribution license were also enclosed along with the affidavit.

2. REL submitted that Section 14 of the Electricity Act, 2003 (EA, 2003) *allows the grant of license to two or more persons for distribution of electricity through their own distribution system within the same area subject to the applicant complying with certain eligibility requirements as prescribed by the Central Government*. REL further submitted that Section 86(d) of the EA 2003 empowers the State Commission to “*Issue licenses to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State*”. Accordingly, REL has submitted the following applications under Section 14 (sixth proviso) read with Section 15 of the EA, 2003 for grant of distribution license using own distribution system:



- 1) Nashik 1 and 2 Division Case 22 of 2003
- 2) Aurangabad (Urban) Circle Case 23 of 2003
- 3) Nagpur (Urban) Zone Case 24 of 2003
- 4) Pune (Urban) Zone Case 25 of 2003
- 5) Vashi and Bhandup Circles. Case 26 of 2003

3. A notice dated September 19, 2003 was forwarded to REL, erstwhile Maharashtra State Electricity Board (MSEB) and all Consumer Representatives, intimating about REL's applications for parallel distribution license and date and venue of admissibility hearing in the same matter.

4. The admissibility hearing of all five Applications was conducted on October 16, 2003. In the meantime, under their letter dated September 18, 2003, REL drew the Commission's attention to the provisions of Section 15 (2) of the EA, 2003 which requires, inter alia, that the Applicant "*shall, within seven days after making such application, publish a notice of its application with such particulars and in such manner as may be specified*", and sought the Commission's advice since these matters were to be specified by the Commission through Regulations.

5. The EA, 2003 having been notified recently, the process of formulating Regulations governing the grant of such licenses, including those concerning Section 15(2), was yet to be completed. At the same time, it was not desirable or appropriate to postpone the preliminary steps required for consideration of REL's Applications on this ground alone. The Commission, therefore, directed REL to publish separate notices of each of their Applications with the following particulars on or before October 3, 2003:

- a) Name of the Petitioner Company and brief subject matter of the Application (in bold as title), with their registered office address.
- b) The fact that an Application has been filed for grant of a Distribution License under Section 15 of the Electricity Act, 2003, along with brief details and salient features of the Application, including the area for which it is sought.
- c) The legal status of the Applicant, its share-holding pattern, management profile, summary of activities and past experience in similar activities.
- d) A statement that the Application and other documents filed before the Commission would be made available to any person applying for inspecting or obtaining them.
- e) The name, address and other necessary details of the person(s) under the control of the Applicant at the respective district headquarters with whom the Application and other documents can be inspected or from whom they can be purchased in person or by post at reasonable charges (not exceeding Rs.100/- per set), and stating that these can also be downloaded free of cost from the Applicant's website. As far as practicable, a copy of the Application may also be made available in Marathi, failing which a summary in Marathi should be made available.
- f) The objections to the Application, if any, be filed (in six copies) before the Secretary, Maharashtra Electricity Regulatory Commission, 13th floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai 400 005, with a copy to the Applicant, within thirty days of the issue of Public Notice, in English or Marathi.



6. The Public Notice in respect of each of the Applications was to be inserted by the Applicant in at least two leading English daily newspapers and three Marathi daily newspapers (in Marathi) with wide circulation particularly in the areas for which Distribution Licenses were sought. Individual notices were to be given to all the establishments/organizations referred to in Section 15(2)(ii) of the EA, 2003. Copies of the Public Notice published in each such newspaper were to be filed before the Commission on affidavit within seven days of their publication. Details of the persons who had inspected the documents and to whom they had otherwise been made available, as also objections, if any, filed with the Applicant, were also to be furnished to the Commission within a week after the expiry of the period of thirty days allowed for filing objections.

7. The Tata Power Company Limited (TPC) vide their letter dated October 16, 2003, referred to the public notices put up by REL seeking parallel distribution license in certain MSEB distribution zones and submitted that TPC also reserves the right to file its own application with the Commission as some of the areas where REL has expressed its interest, were formerly areas being supplied by the TPC and TPC continued to have large infrastructure in the area.

8. The admissibility hearing in the matter was held on October 16, 2003. During the hearing, Shri. J. J. Bhatt, REL Counsel, referred to the Commission's interim Order dated September 25, 2003 wherein REL was directed to publish in newspapers a public notice in respect of the Applications for distribution licenses, and admitted that some of the above requirements were still to be complied with for want of space in some newspapers. For instance, REL advertised in one English and one Marathi newspaper each, in Aurangabad and Nagpur. At Nashik, REL advertised in one Marathi newspaper. In Vashi and Bhandup, Notice was published in one English newspaper each, and at Pune in one English newspaper. The remaining public notice process was to be carried out by the Applicant. The Commission observed that the requirements must be met strictly and that widest publicity should be given in respect of the licenses so as to elicit suggestions and objections. The Commission observed that the Application was to be admitted subject to full compliance of the notice requirements.

9. Thereafter, REL Counsel drew the attention of the Commission to sub-section 2 (ii) of Section 15 of the EA, 2003 as under:

“15 (2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted -

...

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.”

10. REL Counsel clarified that in Delhi, for BSES Yamuna Power Limited, the Applicant had approached and received a clearance from the Ministry of Power granting a 'No Objection' in terms of the Delhi Electricity Reforms Act, 2000 for the grant of license to BSES Yamuna Power Ltd. To undertake distribution and supply of electricity in the specified areas subject to the following conditions:



- § Supply of electricity to defense establishments shall be maintained as per contracted demand
- § Priority preferences to be accorded to defense requirement in case of shortage of power irrespective of commercial equation
- § Maintenance of distribution system to be held on their charge
- § Feeding of defense establishment shall be ensured and calls are attended on priority basis
- § Status quo shall be maintained regarding existing electricity arrangement with the then Delhi Vidyut Board
- § That the no objection shall extend to the specified areas.

11. REL Counsel stated that in the above case, the Applicant had directly applied to the Central Government. The Commission highlighted the other requirements in the interim Order dated September 25, 2003, relating to individual notices to be given by the Applicant to all establishments and organizations referred to in Section 15(2)(ii) of the EA, 2003. REL Counsel submitted that the difficulty was that they do not know which defence and other establishments exist in the areas applied for and sought a clarification from the Commission on how to meet this compliance requirement. The Commission clarified that REL may give individual notices to the various concerned Ministries of the Government of India and obtain their consent, which would meet the requirements of the EA, 2003.

12. Accordingly, REL applied for grant of 'No Objection' from (1) The Secretary (Defence), (2) The Secretary (Civil Aviation), (3) Ministry of Ports Development and Shipping vide their letter dated October 23, 2003 and October 31, 2003.

13. Shri. A.M. Khatlawala, Counsel for MSEB, submitted that the Applications were premature in view of the fact that under Section 14 of the EA 2003, the additional requirements (including the capital adequacy, credit-worthiness, or code of conduct) are required to be prescribed by the Central Government, and no such requirements were prescribed so far. He also referred to Section 15 of the EA, 2003 and submitted that every Application under Section 14 shall have to be made in such form and in such manner as may be specified by the Appropriate Commission and shall have to be accompanied by such fee as may be prescribed. He submitted that no such Regulations have come into place, nor has the Commission specified any requirements in this regard. The Commission drew attention to an Order of the Central Electricity Regulatory Commission (CERC) in the case of a license Application, and observed that, since EA 2003 had come into force, Applications made under it required to be considered.

14. Counsel for MSEB further submitted that unless the various issues between TPC and REL are resolved, the Applications should be withdrawn.

15. The hearing concluded with the observation that admission of the Applications would be considered upon compliance with the interim Order dated September 25, 2003, and the matter heard further thereafter.

16. In the light of the National Electricity Policy and Central Government Rules referred to in the 6th proviso to Section 14 of EA 2003, a Notice dated August 12, 2005 was forwarded to REL, Maharashtra State Electricity Distribution Company Limited – MSEDCL (successor Company of erstwhile MSEB engaged in distribution of electricity) and all Consumer Representatives informing the date and venue of preliminary hearing in the matter. The Commission referred to



the two developments that had taken place since the Applications were filed, viz., (i) Notification of the Ministry of Power, Government of India, in March 2005 for additional requirements under Section 14 of EA 2003, and (ii) Notification of National Electricity Policy in February 2005.

17. Preliminary hearings in the matter were held on August 30, 2005. Shri Amit Kapur, Counsel for REL submitted that the Petition was filed in September 2003. He submitted that in the light of above referred developments, REL needed to revise their Applications complying with the above requirements, even though the Commission had already directed preliminary publication as required under EA, 2003 shortly after the Applications were filed. He requested the Commission to allow REL to revise their filings in conformity with these developments. Shri. Kapur submitted that REL needed some basic data from the incumbent Licensees with regard to the area profile to enable an informed submission regarding the rollout plan and investment required so as to take the process forward in a time bound manner. REL needed the data with details of (i) the consumer category wise, area wise load profile and historical load for the areas; (ii) the distribution network and the plan for expansion and iii) the consumer category wise, area wise billing and collection details. The details were required in respect of the Municipal areas applied for.

18. Counsel for BEST submitted that areas of South and Central Mumbai are congested and do not have space for laying of cables. He added that enough place not available for BEST themselves to augment their own network in some areas, which should not be used as an excuse by somebody to say that BEST cannot supply to all the small consumers. REL Counsel pointed out that REL's Applications were not only for the BEST area. Besides, the issue of right of way and physical problems would be evaluated and dealt with at an appropriate stage.

19. Dr. Patil of TBIA submitted since 1999, data is available as a part of several regulatory proceedings, ARR filings and Commission's Orders, and based on that data, REL could proceed with detailed plans. The Municipal Bodies would have data on population and other basic data, based on which REL could make projections. Regarding data, REL Counsel submitted that the data available in the Tariff Orders and submissions was for the entire area of supply of MSEB/MSEDCL and not disaggregated for each Municipal area or even Circle-wise.

20. Counsel for BEST submitted that if the Applications were to be revised, such revision should obviously be made prior to the application for information from incumbent distribution licensee.

21. The Commission observed that REL could collect the required data of incumbent Licensee from their own sources, rather than seeking it through the Commission. However, subject to the statutory provisions, the Commission could consider it along with objections, if any. The Commission opined that REL could first come out with the information for their area, and also let other Applicants know the type of information required. The other Licensees should also put up similar information and exchange it with each other.

22. After considering the various submissions, the Commission directed that (a) all the Applicants should submit revised Applications indicating the revised area sought, (b) details of the data/information and format in which it is sought for the revised area applied for, from the incumbent licensee, within two weeks from the hearing. The Commission would decide on the genuine requirements and harmonize them. Thereafter, the information can be exchanged



between the concerned incumbent licensees and Applicants, and detailed plans submitted for further consideration.

23. REL replied vide letter dated September 22, 2005 submitting the data required from existing licensee to prepare roll out plan and indicative investment plan. However, none of the other licensees submitted any data requirement, nor did they offer any comment on the data being sought by REL, which was quite extensive.

24. To resolve the issue, the Commission sent a letter to all licenses, to clearly state what minimum information they desired from the incumbent license, and they would also have to part with the same information to the parallel licensee. In response, REL forwarded a data format for sharing of data by incumbent utilities for each municipal corporation and/or revenue district in the license area, comprising a much shorter list as compared to REL's previous data requirements (Annexure A). The same was forwarded to all licenses for their comments.

25. A meeting was held on February 10, 2006 with representatives of all licensees, where all licensees agreed to share the basic minimum data which was in line with REL's data requirement. Accordingly, REL submitted the relevant data vide letter dated July 14, 2006, BEST submitted the relevant data vide letter dated July 13, 2006, and TPC submitted the relevant data vide letter dated July 14, 2006. No data was received from MSEDCL.

26. Subsequently, REL was expected to submit the roll out plan along with revised Applications in accordance with the MERC (Distribution License Conditions) Regulations, 2004, which clearly require the submission of indicative investment plan and network rollout plan for the next five years, detailing year-wise and area-wise rollout of the distribution system. However, REL has not submitted the revised applications and the network rollout plan, in accordance with the MERC (Distribution License Conditions) Regulations, 2004.

27. On November 23, 2006, the Commission received a letter from REL where REL has stated that "*Honorable Commission vide its letter dated 22.6.2006 had directed all the utilities to submit the data, in the format forwarded with the letter, and to publish the same on its website to enable other incumbent utilities to prepare and submit the roll out plan to the Commission for its approval. REL submitted the requisite data to the Commission vide its letter dated July 14, 2006. However, MSEDCL have so far not published their data on its website, thus delaying the submission of REL's roll out plan to the Commission*". REL has requested the Commission to direct MSEDCL to comply with the Commission's directives and publish the requisite data in the agreed format, to enable REL to prepare and submit the roll out plan for the Commission's approval.

28. The Commission is displeased with MSEDCL for not complying with previous directions to put up the desired data on its website. The Commission directs MSEDCL to put up the desired data within two weeks of issue of this Order, failing which, Commission may be constrained to take action against concerned officials of MSEDCL, as provided under EA 2003 and Commission's Regulations. On receipt of data from MSEDCL, REL may prepare roll out plan and compile the necessary details.



29. However, the Commission disposes off all the Applications filed by REL through Case Nos. 22 to 26 of 2003 with this Order, since these Applications have to be entirely revised with the relevant data and as per agreed guidelines.

Sd/-
(S.B.Kulkarni)
Member

Sd/-
(A. Velatutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Ms Malini Shankar)
Secretary, MERC

ANNEXURE A

Format for sharing of data by incumbent licensees for each municipal corporation and/or revenue district in the license area

A. General Information

- Maximum demand in the areas (for last 5 years)
- Total annual energy consumption (for last five years)
- Demand growth (for last 5 years)
- Total number of consumers and category wise segregation

Year	Maximum Demand	Energy Sold

B. Consumers and Consumption

Consumer category	Number of consumers	Energy Consumption (MU)	Connected load (MW)

C. Collection details

Consumer category	Collection efficiency (%)	Revenue Billed	Revenue collected

D. Area of supply

- Brief description of the boundaries including geographic landmarks
- Sq Km

