

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13<sup>th</sup> floor, Cuffe Parade, Mumbai 400 005.**  
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**Case No. 61 of 2003**

**In the matter of**

**Five applications filed by Maharashtra State Electricity Distribution Company Limited [MSEDCL] (erstwhile Maharashtra State Electricity Board) for grant of Distribution Licenses in respect of (i) `P` South Ward (Aarey Milk Colony), (ii) `P` South Ward (Dindoshi, Yash Dham, Gokul Dham, Nagari, Niwara Parisar), (iii) `S` Ward (Goregaon-Vikhroli link Road, Sainath Nagar, Saigal Wadi, Chetna Nagar, Hiranandani, Powai), (iv) `S` Ward (Lok Gaurav, Suyog Industrial Estate and other), and (v) `L` Ward (Ansa Industrial Estate, Raheja Vihar)**

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

**ORDER**

**Dated: 14<sup>th</sup> December, 2006**

Maharashtra State Electricity Distribution Company Limited [MSEDCL] (Distribution arm of erstwhile Maharashtra State Electricity Board [MSEB]) filed Applications on March 17, 2004, before the Maharashtra Electricity Regulatory Commission (Commission) for grant of five Distribution Licenses for the areas of (i) `P` South Ward of the Bruhan Mumbai Municipal Corporation (Aarey Milk Colony), (ii) `P` South Ward (Dindoshi, Yash Dham, Gokul Dham, Nagari, Niwara Parisar), (iii) `S` Ward (Goregaon-Vikhroli link Road, Sainath Nagar, Saigal Wadi, Chetna Nagar, Hiranandani, Powai), (iv) `S` Ward (Lok Gaurav, Suyog Industrial Estate and other), and (v) `L` Ward (Ansa Industrial Estate, Raheja Vihar), under the provisions of the Electricity Act, 2003, supported by affidavits submitting the Utility profile mentioning background of Generation, Transmission and Distribution, financial performance, Renovation and Modernization programme and strategic initiatives taken by MSEDCL (erstwhile MSEB). Geographical maps of the areas where the Utility sought the parallel distribution license were also enclosed along with the affidavit.

2. MSEDCL 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.* MSEDCL 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, MSEDCL has submitted the Application under Section 14 (sixth proviso) read with Section 15 of the EA 2003 for grant of five Distribution Licenses for the areas:



- 1) `P` South Ward of the Bruhan Mumbai Municipal Corporation (Aarey Milk Colony)
- 2) `P` South Ward (Dindoshi, Yash Dham, Gokul Dham, Nagari, Niwara Parisar)
- 3) `S` Ward (Goregaon-Vikhroli link Road, Sainath Nagar, Saigal Wadi, Chetna Nagar, Hiranandani, Powai)
- 4) `S` Ward (Lok Gaurav, Suyog Industrial Estate and other)
- 5) `L` Ward (Ansa Industrial Estate, Raheja Vihar),

3. The EA, 2003 having been notified recently, the process of formulating Regulations governing the grant of such licenses, including those concerning Section 15(2) 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*”, was yet to be completed. At the same time, it was not desirable or appropriate to postpone the preliminary steps required for consideration of MSEDCL’s Application on this ground alone. The Commission, therefore, vide interim Order dated March 31, 2004, directed MSEDCL to publish separate notices of their Applications with the following particulars on or before April 8, 2004 :

- a) Name of the Petitioner 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, 13<sup>th</sup> 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.

4. The Public Notice in respect 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 in the areas for which the Distribution License 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 newspaper were to be filed before the Commission on an 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.



5. MSEDCL vide letter dated April 5, 2004, referred to Commission's interim Order dated March 31, 2004 in Case No. 61 of 2003, wherein MSEDCL was directed to publish separate Public Notices of each of their Applications on or before April 8, 2004 and submitted that MSEDCL has considered the Subject Application as one application for grant of Distribution License in areas specified and requested the Commission's permission to publish one Public Notice covering all five areas instead of five separate Public Notices. The Commission granted permission for the same vide its letter ref: MERC/Case No. 61 of 2003/064 dated April 6, 2004. MSEDCL, vide affidavit dated April 12, 2004, submitted that a Public Notice was published on April 8, 2004 in two leading English newspapers namely (a) The Asian Age, and (b) The Times of India and three leading Marathi newspapers namely (a) Loksatta, (b) Lokmat, and (c) Samna which has wide circulation within Mumbai. The copies of Notice published in the newspapers were also submitted along with the affidavit.

6. Shri. Satish Kamat, filed objection to MSEDCL's application vide letter dated May 5, 2004, before the Commission in response to the Public Notice published by MSEDCL in daily newspapers. He submitted that MSEDCL is implementing load shedding due to shortfall between demand and supply of electricity for their existing area of supply and enquired from MSEDCL about their planning for electricity distribution in proposed areas of supply. He further submitted that load shedding in rural areas of MSEDCL is more than double the load shedding in urban areas of MSEDCL and feared that existing MSEDCL consumers will have to face more load shedding as it will be difficult for MSEDCL to implement load shedding in proposed new urban areas due to economical and political influence. He submitted that MSEDCL's step of applying for distribution license in new area is intended to increase the consumer base before privatization of erstwhile MSEB.

7. Shri. Surendra Khot, Additional Manager (Legal), REL, filed comments and objections vide affidavit dated May 8, 2004 before the Commission in response to the Public Notice published by MSEDCL. He submitted that REL welcomes the competition, since competition will achieve the twin objectives of improved service at lower costs to consumers as well as improved consumer services. He further submitted that the incumbent utilities in Mumbai where MSEDCL has sought parallel distribution license, are very efficient and provide best quality of service. He submitted that the real consumer benefits lie in ensuring fair competition at wholesale level and hence requested the Commission to expedite open access in transmission network before introducing retail completion within Mumbai.

8. REL also made the following submissions:

- 1) In the absence of any guidelines from the Government with regard to the minimum license area for a distribution licensee, the minimum licensee area should be defined as either the existing licensee's area or a Municipal Corporation/Council area, as recommended in the N K Singh Task Force Report;
- 2) Non-compliance with the universal service obligation should also attract severe penalties;
- 3) As in the case of distribution open access, exit of a subsidizing customer to a parallel licensee leads to a greater burden on the incumbent, due to loss of cross subsidy. A mechanism needs to be introduced to compensate the incumbent for such loss in cross subsidy arising out of migration of a subsidizing consumer;
- 4) Such a mechanism is also likely to take care of any undue advantage arising out of the setting of ceiling tariffs by the Commission. In the event that such a mechanism is not introduced, ceiling tariffs based on cost to serve a class of customers will lead to increased losses to the incumbent.



9. MSEDCL, vide letter dated June 18, 2004, referred to objections raised by Shri. Satish Kamat, and replied that MSEDCL will conduct a load forecast study for the proposed area of distribution for next 10 years and based on expected demand, MSEDCL will source power from power trading Companies/ IPPs on a long-term or short-term basis, as applicable, to supply the electricity to the proposed area of distribution. MSEDCL further submitted that it will plan the network roll-out in such a manner that the operation in new distribution area will be profitable. This profit will be used by MSEDCL for improving supply of power in MSEDCL system. MSEDCL denied the allegation that the application for parallel license has been made to increase the consumer base at the time of privatization, at the cost of present consumers. MSEDCL submitted that the process of restructuring of the Board is in accordance with the provisions of the EA, 2003.

10 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 MSEDCL, REL 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.

11. Preliminary hearing in the matter was held on August 30, 2005. The preliminary hearing was combined for below referred Applications due to the common issues addressed in all of them:

- Case Nos. 22 to 26 of 2003 : M/s Reliance Energy Limited (REL) (erstwhile BSES Limited) application for grant of distribution licenses using own distribution system (Total 5 applications) in MSEDCL license area
- Case Nos. 39 to 45 of 2003 : M/s Tata Power Company (TPC) application for grant of distribution licenses using own distribution system (Total 7 applications) in MSEDCL license area
- Case No. 38 of 2003 : M/s Reliance Energy Limited (REL) (erstwhile BSES Limited) application for grant of distribution license using own distribution system in BEST license area
- Case No. 61 of 2003 : MSEDCL (erstwhile MSEB) application for grant of license for distribution of electricity in the area of supply comprising of Wards P, S and L of Bombay Municipal Area

12. Shri. Amit Kapur, Counsel for REL, submitted that REL's Applications were filed in September and October 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.

13. 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 is 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.

14. Dr. Patil of TBIA submitted that since 1999, data is available as a part of several regulatory proceedings, ARR filings and Commission's Orders, and based on that data, REL and other Utilities could proceed with detailed plans. The Municipal Bodies would have data on population and other basic data, based on which REL and other utilities 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.

15. 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.

16. 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.

17. Dr. Pendse of MGP submitted that the Commission should direct all four Applicant Licensees to re-submit or amend their Applications in the light of notification of National Electricity Policy and MoP notification in March 2005.

18. Shri. J D Kulkarni, Dy. GM, TPC raised some other general issues, such as minimum area of supply, Universal Service Obligation and tariffs and submitted that TPC would prefer a ceiling tariff dispensation in a given License area.

19. 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.

20. 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.

21. 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. A letter dated June 22, 2006 was forwarded to all four licensees with a copy of agreed format for sharing of information by incumbent licensees and directing all licensees to furnish the same to respective Applicant within 3 weeks. The incumbent licensees were directed to publish the same information on website and Applicants were directed to submit the roll out plan within 10 weeks of receipt of the data from incumbent licensees. 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.

22. Subsequently, MSEDCL was expected to submit the roll out plan 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, MSEDCL has not submitted the network rollout plan, in accordance with the MERC (Distribution License Conditions) Regulations, 2004. Hence, the Commission disposes off the Applications filed by MSEDCL through Case No. 61 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. Velayutham)  
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

<b>Year</b>	<b>Maximum Demand</b>	<b>Energy Sold</b>

B. Consumers and Consumption

<b>Consumer category</b>	<b>Number of consumers</b>	<b>Energy Consumption (MU)</b>	<b>Connected load (MW)</b>

C. Collection details

<b>Consumer category</b>	<b>Collection efficiency (%)</b>	<b>Revenue Billed</b>	<b>Revenue collected</b>

D. Area of supply

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

