

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> floor, Cuffe Parade, Mumbai 400 005.  
Tel. No. 022 22163964/65/69 – Fax 022 22163976  
E-mail [mercindia@mercindia.org.in](mailto:mercindia@mercindia.org.in)  
Website: [www.mercindia.org.in](http://www.mercindia.org.in)

**Case No. 38 of 2003**

**In the matter of**  
**M/s Reliance Energy Limited [REL] (erstwhile BSES Limited) application for grant of**  
**distribution license using own distribution system in the area of supply covered by the**  
**Brihan Mumbai Electric Supply & Transport Undertaking (BEST)**

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

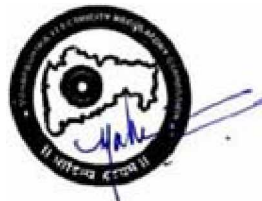
**ORDER**

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

M/s Reliance Energy Limited [REL] (erstwhile BSES Limited) filed Application on 20<sup>th</sup> October, 2003 before the Maharashtra Electricity Regulatory Commission (Commission) for grant of Distribution License in the area of supply covered by the Brihan Mumbai Electric Supply & Transport Undertaking [BEST], i.e., broadly from Colaba to Mahim including Sion, 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 map of the area where the Company sought the parallel distribution license was 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 Application under Section 14 (sixth proviso) read with Section 15 of the EA, 2003 for grant of distribution license using own distribution system in the area of supply covered by BEST, i.e., broadly from Colaba to Mahim including Sion.

3. REL had already applied for grant of Distribution Licenses using own distribution system in 5 areas of Maharashtra State Electricity Distribution Company Limited (erstwhile Maharashtra State Electricity Board) on 8<sup>th</sup> September, 2003 [Case Nos. 22 to 26 of 2003]. The EA, 2003 having been notified recently, the process of formulating Regulations governing the grant of such

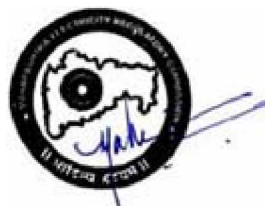


licenses, including those concerning Section 15(2) which requires, inter alia, that the Applicant “shall, within seven days after making such application, publish a notice of its application with such particulars and in such manner as may be specified”, was yet to be completed. At the same time, it was not desirable or appropriate to postpone the preliminary steps required for consideration of REL’s Application on this ground alone. The Commission, therefore, vide interim Order dated September 25, 2003, directed REL to publish separate notices of their Application with the following particulars:

- 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, 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 Application 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 area for which the Distribution License was sought. Individual notices were to be given to all the establishments/organizations referred to in Section 15(2)(ii) of the EA, 2003 and/or the concerned Ministries in Government of India and their consent was to be submitted before the Commission. 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. REL, vide letter dated November 3, 2003, referred to the Commission’s interim Order dated September 25, 2003 in Case Nos. 22 to 26 of 2003, wherein REL was directed to publish in newspapers a Public Notice in respect of the Applications for distribution licenses and submitted that a Public Notice was published on October 25, 2003 in two leading English newspapers namely (a) The Indian Express, and (b) The Free Press Journal and three leading Marathi newspapers namely (a) Navshakti, (b) Loksatta, and (c) Sakal which has wide circulation from



Colaba to Mahim including Sion. The copies of Notice published in the newspapers were also submitted along with the affidavit.

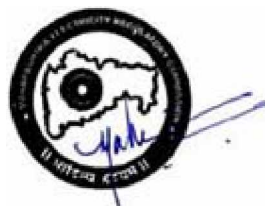
6. Mr. Ashish Chemburkar, Chairman, BEST Committee, filed objection to REL's application vide letter dated November 11, 2003 before the Commission in response to the Public Notice published by REL in daily newspapers. He submitted that BEST is the Local Authority of Brihan Mumbai Municipal Corporation and BEST Undertaking also operates the transport service in Brihan Mumbai Municipal limits. He further submitted that the loss incurred by Transport Division is subsidized through the surplus earned by Electricity Supply Division. He submitted that the members of BEST committee strongly objected to grant of distribution license to REL in the BEST Committee meeting held on November 13, 2003. The members pointed out that if the parallel distribution license is granted to REL, BEST Undertaking cannot operate the Transport Division. The members further pointed out that BEST as a Local Authority is already exempted under Section 42 (3) of EA 2003 in which the other distribution licensee is not permitted to distribute the electricity to consumers by way of Open Access. Similarly, under Section 53 of EA 2003, the BEST Undertaking being a local body is permitted to transfer the surplus earned from Electric Supply Division to subsidize the losses incurred by the Transport Division.

7. Mr. S. S. Kshatriya, General Manager, BEST Undertaking, filed objections vide affidavit dated November 20, 2003 before the Commission submitting that as per EA 2003, no second license is intended to be given where there is already an existing licensee, which is a Local Authority. He further submitted that the National Electricity Policy and Electricity Supply Code were yet to be finalized and hence, it would not be advisable or in public interest to grant a parallel distribution license to REL. BEST also pointed out that the cables laid by BEST are amongst the most congested locations in the world and no space is available for REL's parallel distribution network.

8. Mr. K.C. Srivastava, Municipal Commissioner, Municipal Corporation of Greater Mumbai, also filed an affidavit dated November 21, 2003 before the Commission in support of objections raised by BEST Undertaking and opposed the grant of parallel distribution license to REL, submitting that the BEST has been providing service for more than 100 years and has an excellent track record of reliability of service.

9. REL, vide affidavit dated December 2, 2003, submitted the details of persons who inspected and purchased the applications, as well as details of objections received by REL. REL also submitted the copies of letters forwarded to concerned Ministries of Govt. of India for issue of 'No Objection' for grant of Distribution License.

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 BEST, 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.



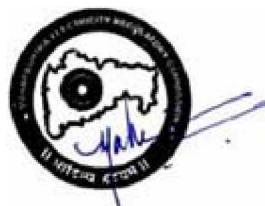
11. Preliminary hearing in the matter was held on August 30, 2005. The preliminary hearing was combined for below referred Applications due to the common issues addressed in all of them:

- 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.

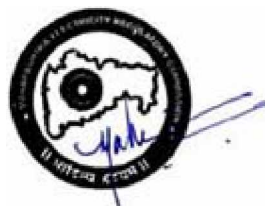
17. Dr. Pendse of MGP submitted that the Commission should direct all four Applicant Licensees to re-submit or amend their Applications in the light of notification of National Electricity Policy and MoP notification in March 2005.

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, REL 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, REL has not submitted the network rollout plan, in accordance with the MERC (Distribution License Conditions) Regulations, 2004. REL has also not responded to the objections filed by BEST vis-à-vis the legal tenability of REL's Application for a parallel license in BEST license area, given the provisions of the EA 2003 in the context of Open Access and Parallel license in the license area of a Local Authority. Hence, the Commission disposes off the Application filed by REL through Case No. 38 of 2003 with this Order, since the Application has to be entirely revised with 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

