

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 40 of 2009

In the matter of
Petition filed by Reliance Infrastructure Ltd. and others under Section 17(3) of the
Electricity Act, 2003 and Regulation 8.3.10 of Maharashtra Electricity Regulatory
Commission (General Conditions of Distribution License) Regulations, 2006

Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member

1. Reliance Infrastructure Limited
2. Reliance Energy Limited
3. Reliance Power Transmission LimitedPetitioners

ORDER

Date: March 15, 2010

Reliance Infrastructure Limited, Reliance Energy Limited and Reliance Power Transmission Limited (“the Petitioners”) have submitted a Petition under affidavit before the Commission on 17.07.2009 under Section 17(3) of the Electricity Act, 2003 (“EA 2003”) and under Regulation 8.3.10 of Maharashtra Electricity Regulatory Commission (General Conditions of Distribution License) Regulations, 2006 (“the Regulations”) seeking approval of the Commission w.r.t. (i) transfer of the Distribution License from the 1st Petitioner to the 2nd Petitioner and / or change of the name of the Licensee in the License from that of the 1st Petitioner to the 2nd Petitioner, and (ii) transfer of the Transmission License from the 1st Petitioner to the 3rd Petitioner and / or change of the name of the Licensee in the License from that of the 1st Petitioner to the 3rd Petitioner.



2. The prayers of the Petitioner are as follows:

“

(a) to note that on the Hon'ble High Court of judicature at Bombay sanctioning the Scheme and on its becoming effective the Distribution License granted to the 1st Petitioner and rights and obligations thereunder would be vested in the 2nd Petitioner and the Transmission License deemed to have been granted to the 1st Petitioner and rights and obligations thereunder would be vested in the 3rd Petitioner and to accordingly approve (i) transfer of Distribution License of the 1st Petitioner to the 2nd Petitioner and (ii) transfer of Transmission License of the 1st Petitioner to the 3rd Petitioner; and

(b) to direct the mutation of the distribution license into the name of the 2nd Petitioner and the mutation of the transmission license into the name of the 3rd Petitioner; and

(c) for such further and other reliefs as the nature and circumstances of the case may require.”

3. The Petitioners have submitted that the petition has been filed with abundant caution and that the demerger of a company into hundred per cent subsidiaries is not a contingency preconditioned upon a prior approval of the Commission. They have however filed this petition, in order not to leave any cause of doubt or grievance in respect of the question, whether the pre-approval of the Commission ought to have been obtained for the demerger. It has been submitted that the 1st Petitioner was incorporated under the provisions of the Indian Companies Act VII of 1913 in Bombay in State of Maharashtra on 1st October, 1929 under the name, “Bombay Suburban Electric Supply Limited”, which was later changed to “BSES Limited” on 23rd December, 1992 under the Indian Companies Act, 1956. The name of the company was further changed to “Reliance Energy Limited” on 24th April, 2004. Later, on 28th April, 2008, the name of the company was further changed to “Reliance Infrastructure Limited”.

4. It is submitted that the 1st Petitioner is a part of the Reliance ADA Group and it proposes to demerge the various limbs of its electricity related activities into various different wholly owned subsidiaries of the 1st Petitioner.

5. It is submitted that the 2nd Petitioner is a wholly owned subsidiary of the 1st Petitioner and was formed an/or constituted on or about 6th January, 2006 under the Indian Companies Act, 1956 under the name, “Reliance Global Limited”, which was later changed to “Reliance Energy Limited” on 24th June, 2008.

6. It is submitted that the 3rd Petitioner is a wholly owned subsidiary of the 1st Petitioner and was formed and/or constituted on or about 17th July, 2003 under the Indian Companies Act, 1956 under the name, “Reliance Energy Transmission Private Limited”, which was later changed to “Reliance Power Transmission Limited” on 25th January, 2008.

7. It has been submitted that the 1st Petitioner is *inter alia* engaged in the business of generation, transmission and distribution of electricity. In addition, it undertakes on a large scale, non-electricity related activities such as infrastructure projects and engineering, procurement and construction works.

8. In order to describe the objects of the 2nd Petitioner and the 3rd Petitioner, the Petitioners have set out in their petition, the relevant extracts from the main objects contained in the Memorandum of Association of the 2nd Petitioner and 3rd Petitioner respectively, which covers distribution of electricity by the 2nd petitioner company and transmission of electricity by the 3rd petitioner company.

9. It is submitted that, by a scheme envisaging the demerger of the various businesses of the 1st Petitioner, the Petitioners have filed proceedings before the Bombay High Court under Section 391 read with Section 394 of the Companies Act, 1956. The Scheme of Demerger envisages that the power distribution business of the 1st Petitioner is sought to be entrusted to the 2nd Petitioner and the power transmission business of the 1st Petitioner is sought to be entrusted to the 3rd Petitioner.

10. The Petitioners have stated the relevant demerger and vesting provisions of the Scheme of Demerger concerning the Power Distribution Division, as follows:

- a) The Power Distribution Division of RInfra shall stand transferred to and vested in or deemed to be transferred to and vested in REL as a going concern and in the following manner:
- b) With effect from the Appointed Date, the whole of the undertaking and properties of the Power Distribution Division, shall pursuant to the provisions contained in Sections 391 to 394 and all other applicable provisions, if any, of the Act and without any further act, deed, matter or thing, stand transferred to and vested in and/or be deemed to be transferred to REL so as to vest in REL all rights, title and interest pertaining to the Power Distribution Division.
- c) With effect from the Appointed Date, all reserves, debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and descriptions of RInfra pertaining to Power Distribution Division shall also, under the provisions of Sections 391 to 394 and all other applicable provisions, if any, of the Act, and without any further act or deed, be transferred or be deemed to be transferred to REL, so as to become from the Appointed Date the reserves, debts, liabilities, contingent liabilities, duties and obligations of REL and it shall not be necessary to

obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such reserves, debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this sub-clause.

- d) With effect from the Appointed Date and upon the Scheme becoming effective, any statutory licenses, permissions or approvals or consents held by RInfracore required to carry on operations of Power Distribution Division shall stand vested in or transferred to REL without any further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of REL and the benefit of all statutory and regulatory permissions, environmental approvals and consents, registration or other licenses, and consents shall vest in or become available to REL as if they were originally obtained by REL. In so far as the various incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by RInfracore relating to the Power Distribution Division are concerned, the same shall vest with and be available to REL on the same terms and conditions as applicable to RInfracore, as if the same had been allotted and/or granted and/or sanctioned and/or allowed to REL.
- e) REL is a wholly owned subsidiary of RInfracore. The Scheme is intended to transfer the business of Power Distribution Division to a separate special purpose vehicle to meet the diverse needs of business and does not involve any movements of assets or liabilities to any company outside the group controlled by RInfracore. Hence, REL shall not be required to issue any shares or pay any consideration to either RInfracore or its shareholders.

11. The Petitioners have also stated the relevant demerger and vesting provisions of the Scheme of Demerger concerning the Power Transmission Division, which are as follows:

- a) The Power Transmission Division of RInfracore shall stand transferred to and vested in or deemed to be transferred to and vested in RPTL as a going concern and in the following manner:
- b) With effect from the Appointed Date, the whole of the undertaking and properties of the Power Transmission Division, shall pursuant to the provisions contained in Sections 391 to 394 and all other applicable provisions, if any, of the Act and without any further act, deed, matter or thing, stand transferred to and vested in and/or be deemed to be transferred to and vested in RPTL so as to vest in RPTL all rights, title and interest pertaining to the Power Transmission Division.
- c) With effect from the Appointed Date, all reserves, debts, liabilities, contingent liabilities, duties and obligations of every kind, nature and descriptions of RInfracore

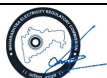
pertaining to Power Transmission Division shall also, under the provisions of Sections 391 to 394 and all other applicable provisions, if any, of the Act, and without any further act or deed, be transferred or be deemed to be transferred to RPTL, so as to become from the Appointed Date the reserves, debts, liabilities, contingent liabilities, duties and obligations of RPTL and it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such reserves, debts, liabilities, contingent liabilities, duties and obligations have arisen in order to give effect to the provisions of this sub-clause.

- d) With effect from the Appointed Date and upon the Scheme becoming effective, any statutory licenses, permissions or approvals or consents held by RInfrac required to carry on operations of Power Transmission Division shall stand vested in or transferred to RPTL without any further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of RPTL and the benefit of all statutory and regulatory permissions, environmental approvals and consents, registration or other licenses, and consents shall vest in or become available to RPTL as if they were originally obtained by RPTL. In so far as the various incentives, subsidies, rehabilitation schemes, special status and other benefits or privileges enjoyed, granted by any Government body, local authority or by any other person, or availed of by RInfrac relating to the Power Transmission Division are concerned, the same shall vest with and be available to RPTL on the same terms and conditions as applicable to RInfrac, as if the same had been allotted and/or granted and/or sanctioned and/or allowed to RPTL.
- e) RPTL is a wholly owned subsidiary of RInfrac. The Scheme is intended to transfer the business of Power Transmission Division to a separate special purpose vehicle to meet the diverse needs of business and does not involve any movements of assets or liabilities to any company outside the group controlled by RInfrac. Hence, RPTL shall not be required to issue any shares or pay any consideration to either RInfrac or its shareholders.

12. It is submitted that the petition envisages the creation of different subsidiaries for different businesses and business divisions of the 1st Petitioner such as infrastructure, electricity generation, etc.

13. The Petitioners have also submitted a list of various orders passed and meetings convened pursuant to the filing of petitions by 1st Petitioner and its wholly owned subsidiaries including 2nd Petitioner and 3rd Petitioner before the Bombay High Court.

14. It is submitted that the scheme had been approved by shareholders constituting 99.50% in number and representing 99.99% in value of members present and voting in person or by proxy or by authorized representatives.



15. The Petitioners have further submitted that, the said demerger is in the interest of efficient and effective conduct and running of the respective divisions such as distribution, transmission and generation. Further, it has been stated that the EA 2003 and the Regulations made thereunder treat the various businesses such as generation, transmission, distribution and trading separately with various degrees of statutory and regulatory controls over each of them with some of the businesses requiring license such as distribution, transmission and trading, while other businesses such as generation not requiring any pre-approval of any authority or approval of investment and being treated separately. This would ensure effective regulatory compliances separately for each and every division where applicable, and therefore facilitate the application of separate parameters and regulations, which have been made separately for each type of business.

16. It has been submitted that this restructuring within the group into various subsidiaries is in consonance with the object of EA 2003 as it envisages a similar unbundling in respect of the existing State Electricity Boards under Section 131 of EA 2003.

17. The Commission vide Notice dated 29th July, 2009 fixed the admissibility hearing in the matter on 4th August, 2009.

18. Shri N. Ponrathnam submitted his Intervention Application on affidavit in the matter on 31st July, 2009. He has stated therein that RInfra is distributing electricity without the required authorization / license as per Section 14 of EA 2003. He has also stated that Bombay Small Scale Industries Association has filed an appeal before the Supreme Court in Civil Appeal No. 4128 of 2007 from the Appellate Tribunal's judgment dated April 4, 2007 in Appeal No. 251 of 2006 where the authorization of distribution of electricity was questioned by Bombay Small Scale Industries Association, and that this petition is *sub-judice* before the Supreme Court and cannot be entertained by the Commission.

19. Shri Sandeep Ohri has submitted his Intervention Application through email dated 2nd August, 2009. He has submitted that, the Petitioners should be first asked to provide sufficient proof that the company name, which was changed from "Bombay Suburban Electric Supply Ltd." to "BSES Ltd." to "Reliance Energy Ltd." and thereafter to "Reliance Infrastructure Ltd." was a mere change of name and the entity has remained the same. He has submitted that the Petitioners should provide details in order to support its contentions that this was merely a change of name and the entity has remained the same, that there has been no change in the ownership structure, the management structure, and the nature of business carried on by each of the subsidiary companies. He has prayed that the Petitioners should be directed to submit separate audited accounts for the electricity business for FY 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. He has also insisted on making public, a full set of Assets and Liabilities that are sought to be transferred to the new company. He has also submitted that the Commission should ensure that the exact procedure as laid down by the EA 2003 should be followed since this petition seeks to transfer assets to a separate legal entity.

20. During the hearing held on 4th August, 2009, Shri. J. J. Bhatt, Senior Advocate, appeared on behalf of the Petitioners. Ms. Ashwini Chitnis appeared on behalf of Prayas Energy Group and Dr. S. L. Patil appeared on behalf of Thane Belapur Industries Association as authorized consumer representatives. Shri. N. Ponrathnam appeared in person. Shri. Sandeep N. Ohri appeared on behalf of Bijlee Yahoo Group. Shri. Rakshpal Abrol appeared on behalf of Bhartiya Udhami Avam Upbhokta Sangh. The Commission, after the hearing all concerned admitted the Interveners as parties to this case and directed that all documents be served on them. The Commission also directed the Petitioners that the change of name / demerger should not affect the investigation proposed to be undertaken by the Commission for Rinfra-D under Section 128 of the Electricity Act, 2003. The Petitioners concurred with the said direction of the Commission.

21. The Petitioners submitted their Rejoinder to the Written Submissions of Shri Sandeep Ohri. The submissions of the Petitioners are as follows:

- a) It is submitted that the objections of the Intervener has been dealt with by the Commission in the MERC (Specific Conditions of Distribution License applicable to Reliance Energy Limited) Regulations, 2008. These issues have been previously dealt with by the Commission in Case No. 65 of 2008 i.e. Petition filed by RInfra for Recovery of Variation in Power Purchase Cost approved by the Commission in REL-D Tariff Order dated 4th June, 2008. In the aforesaid Case No. 65 of 2008, the Commission vide order dated 28.11.2008 in para 28 has held as follows:

“As regards the contention of the Interveners regarding the admissibility of the Petition vis-à-vis the distribution license issued to R Infra, the Commission clarifies that the Commission had recognized the change of name of the company from Reliance Energy Limited to Reliance Infrastructure Limited, while notifying the MERC (Specific Conditions of Distribution License Applicable to Reliance Energy Limited) Regulations, 2008, notified on August 20, 2008.”

- b) It is also submitted that in Case No. 121 of 2008 vide Tariff Order dated 15th June, 2009 at para 2.12 of the order, the Commission held as follows:

“As stated by R Infra-D, the Commission has issued the MERC (Specific Conditions of Distribution License applicable Reliance Energy Limited) Regulations, 2008 on August 20, 2008. The above Regulations also states as under:

“2(b) “REL” or “Distribution Licensee” means Reliance Energy Limited (now known as Reliance Infrastructure Limited pursuant to Fresh Certificate of Incorporation consequent upon change of name dated 28th April, 2008 issued by the Registrar of Companies, Maharashtra, Mumbai);”

The Commission does not sustain the objection that a distribution licensee, which is a company under the Companies Act, 1956 cannot operate across other infrastructure verticals like Metro Rail, Highways, Roads, Bridges, etc.”

22. On similar lines, the Petitioners have filed Rejoinder to the Written Submissions of the other Interveners.

23. The Commission vide Notice dated 4th August, 2009 fixed the next date of hearing on 20th August, 2009.

24. During the hearing held on 20th August, 2009, Shri J.J. Bhatt appeared on behalf of the Petitioners. Ms. Ashwini Chitnis appeared on behalf of Prayas Energy Group and Dr. Ashok Pendse appeared on behalf of Thane Belapur Industries Association as authorized consumer representatives. Shri N. Ponrathnam appeared in person. Shri Sandeep N. Ohri appeared on behalf of Bijlee Yahoo Group. Shri Rakshpal Abrol appeared on behalf of Bhartiya Udhami Avam Upbhokta Sangh. During the hearing the following issues were raised:-

- (1) Whether the Petitioners have a valid subsisting licence to distribute electricity?
- (2) Do the Petitioners have locus-standi to file this Petition?
- (3) Does the proposed demerger have adverse impact on the electricity consumers?
- (4) Is the present Petition violative of Section 17(4) of the Electricity Act, 2003?
- (5) Have the Petitioners made an incorrect statement in Para 3 of the affidavit filed by Shri Surendra Khot on 3rd August, 2009?

25. The Petitioners on 8th September, 2009 submitted their Written Submissions in reply to the issues raised during the hearing held on 20th August, 2009. The submissions of the Petitioners are as follows:

- a) In respect of issues (1) and (2), which they have submitted to be interlinked, the Petitioner submitted that the Commission has held in various hearings in various tariff orders that there has been a mere change in name from BSES Ltd. to REL and from REL to R Infra. The Petitioners herein have submitted a full chronological detail as to the different occasions of change of name by the Petitioners. It is submitted that in various tariff orders including order dated 28th November, 2008 in Case No. 65 of 2008, the Commission had recognized the change of name of the Petitioners from REL to R Infra. It is also submitted that the Commission had, in the exercise of powers under Section 181 (2)(d) read with the proviso to Section 16 and Section 172(b) of EA 2003, have issued the MERC (Specific Conditions of Distribution License applicable Reliance Energy Limited) Regulations, 2008 on August 20, 2008 which defines “REL” or “Distribution Licensee” to mean Reliance Energy Limited

(now known as Reliance Infrastructure Limited pursuant to Fresh Certificate of Incorporation consequent upon change of name dated 28th April, 2008 issued by the Registrar of Companies, Maharashtra, Mumbai. The Petitioner has the locus standi because it is the Petitioner which has to seek approval of the Commission under Section 17(3) of the Act read with Regulation 8.3.10 of Maharashtra Electricity Regulatory Commission (General Conditions of Distribution License) Regulations, 2006.

- b) In respect of issue (3), the Petitioners have submitted that since the accounts of each of the subsidiaries will be separately maintained and will be separately reflected in the accounts of the subsidiary companies, the demerger will afford an opportunity to the consumers to evaluate individually the performance of each company and also to evaluate the assets relating to the distribution and transmission, which have been used separately. Therefore, the demerger will be in the interest of the consumers.
- c) In respect of issue (4), the Petitioners have submitted that the provisions of Section 17(4) of EA 2003 are not at all applicable in the present case because Section 17(4) envisages the consequences of non-compliance of Section 17(3). However, the petition is to comply with Section 17(3). It is submitted that the licensee has not entered into any transaction either to acquire by purchase or takeover or otherwise the utility of any other licensee.
- d) In respect of issue (5), the Petitioners submitted that they have not made any incorrect statement in the affidavit filed by Shri Surendra Khot and that the issue of transfer of transmission and distribution license to the 2nd and 3rd Petitioners is not at all pending in the Supreme Court or any Court or Forum.
- e) The Petitioners have also submitted that the veracity of the affidavit has to be judged on the basis of the issues raised in the petition and not on the basis of the objections raised by the Interveners.

26. The Commission vide Notice dated 14th September, 2009 fixed another hearing in the matter on 30th September, 2009.

27. Intervener, Shri Ponrathnam submitted his additional submissions before the Commission on 15th September, 2009. He has submitted his replies on the basis of the issues raised during the hearing held on 20th August, 2009. Intervener, Shri Sandeep Ohri submitted his replies in the matter on 30th September, 2009. Intervener, Shri Rakshpal Abrol submitted his replies in the matter on 30th September, 2009.

28. During the hearing on 30th September, 2009, the Commission directed the Petitioners to submit the following:

- 1) The genealogical tree of status of license since 1930 with the operative and applicable laws regarding the provisions of the license, and its assignment and/or transfer;
- 2) The inventory of Petitioner's physical assets of electricity, including Generation, Transmission and Distribution; and
- 3) The legal effect of omission and / or commission of the Petitioner's act on the license in question (if any) during every assignment / transfer.

29. The Petitioners submitted their Written Submissions on 3rd November, 2009 pursuant to the directions issued by the Commission on 30th September, 2009. The submissions made by the Petitioners are as follows:

- a) In respect of the genealogical tree of the status of the license since 1930 with the operative and applicable laws regarding the provisions of the license, and its assignment and/or transfer, the Petitioners have submitted that this license was initially granted by the Govt. of Bombay in the name of the Governor in Council under the provisions of Section 3(1) of the Indian Electricity Act, 1910 (IX of 1910) ("1910 Act"). This license was granted to the partnership firm, M/s. Killick Nixon & Co. and Callender's Cable & Construction Company Limited to supply electricity. The Petitioners have also submitted the relevant provisions with regard to the assignment / transfer of license *inter alia* Clause 2(2) (Interpretation), Clause 14 (Assignment of License).
- b) It is submitted that by Memorandum of Consent No. 562-D dated 13th May, 1930, the Governor in Council under Section 9(2) of the 1910 Act consented to the assignment of Bombay Suburban Electric License, 1926 and transfer by M/s. Killick Nixon & Co. and Callender's Cable & Construction Company Limited and the whole of their undertaking by way of sale to the Bombay Suburban Electricity Supply Limited. This Memorandum contained a proviso that the consent given shall not authorize any future assignment of the said license or transfer of the said undertaking or any part thereof without the fresh consent in writing of the Governor in Council.
- c) Thereafter, it is submitted, that the name of Bombay Suburban Electricity Supply Limited was changed to BSES Ltd. on 23rd December, 1992. It was submitted to have been done in accordance with Section 21 of the Companies Act, 1956 under which a company may, by Special Resolution and with the approval of the Central Government signifying in writing, change its name. Thereafter, a fresh Certificate of Incorporation dated 23rd December, 1992 had been issued by the Registrar of Companies, Maharashtra at Bombay approving and certifying the change of name from Bombay Suburban Electricity Supply Limited to BSES Ltd.



- d) It is submitted that Bombay Suburban Electricity License, 1926 is valid till 15th August, 2011 which is also recognized by the MERC (Specific Conditions of Distribution License applicable to Reliance Energy Limited) Regulations, 2008 in para 7(a). Thereafter, the name of the company was changed from BSES Ltd. to Reliance Energy Limited and thereafter to Reliance Infrastructure Limited by fresh Certificates of Incorporation dated 24th February, 2004 and 28th April, 2008 respectively under Sections 21 and 23 of the Companies Act, 1956.
- e) It is submitted that, thereafter the MERC (Specific Conditions of Distribution License applicable to Reliance Energy Limited) Regulations, 2008 was issued by the Commission on 20th August, 2008, where Regulation 2(b) stated, "... "REL" or "Distribution Licensee" means Reliance Energy Limited (now known as Reliance Infrastructure Limited pursuant to Fresh Certificate of Incorporation consequent upon change of name dated 28th April, 2008 issued by the Registrar of Companies, Maharashtra, Mumbai)"
- f) In respect of inventory of Petitioner's physical assets of electricity, including Generation, Transmission and Distribution, it is submitted that the inventory has been prepared and will be submitted shortly.
- g) In respect of the legal effect of omission and / or commission of the Petitioner's act on the license in question (if any) during every assignment / transfer, it has been submitted that there has been no omission and / or commission on the part of the Petitioners insofar as the license in concerned.

30. The Petitioners have submitted on 6th November, 2009 the inventory of Petitioner's physical assets of electricity, including Generation, Transmission and Distribution as directed by the Commission.

31. Intervener, Shri Ponrathnam submitted his additional submissions on 23rd November, 2009. He submitted therein that the sub-station building 1486 numbers amounting to Rs. 113.91 crores stated in the list belongs to the consumers and he prayed the Commission to ask for concrete proof for this.

32. Intervener, Shri Sandeep N. Ohri submitted his replies on 9th December, 2009 wherein he submitted that the Petitioners have not included any other dates on which the said License was amended on account of other issues, viz. when it was granted the right to commence the Dahanu Generation Plant, which was an amendment responsible for 'extending' the validity of the License up to 15th August, 2011. Intervener, Shri Rakshpal Abrol submitted his replies in the matter on 18th January, 2010.

33. The Commission vide Notice dated 15th January, 2010 fixed further hearing in the matter on 18th January, 2010, but upon request of the advocates of the Petitioners vide letter dated 6th January, 2010, the hearing was postponed to 20th January, 2010.

34. The Petitioners, in reply to the additional rejoinder dated 11th November, 2009 filed by Intervener Shri Sandeep Ohri, have submitted their Written Submissions on 18th January, 2010. It is submitted therein that the data w.r.t. Dahanu Generation Plant required by Shri Ohri is not relevant and germane to the issue before the Commission. In respect of the inventory of physical assets, the Petitioners have submitted that the data reflects a true and correct picture of the physical assets in a concise form by regrouping the same under relevant heads which is in conformity with the data sought for by the Commission. The differentiation between the Gross Block Value and Net Value of Assets is submitted to be not relevant. It is submitted that, due to variance in depreciation rates and assets' useful life, the net value of the assets is bound to differ between regulatory accounts and the financial statements.

35. During the hearing held on 18th January, 2010, Counsel for the Petitioners submitted that they have already complied with all the directives given as per the Record of Proceedings of the last hearing held on 30th September, 2009.

36. After hearing the Petitioners and the Consumer Representatives, the Commission directed the Petitioners to file written submissions on the points raised by the Consumer Representatives on or before 31st January, 2010 with a copy served on the Consumer Representatives. The Commission further directed the Consumer Representatives and the Petitioners to file their replies / rejoinders / sur-rejoinder, if any, with a copy served on the other parties. The matter was scheduled to be held on 16th February, 2010.

37. Shri Sandeep Ohri submitted his sur-rejoinder on 27th January, 2010 in the matter. Shri Rakhpal Abrol submitted his sur-rejoinder dated 8th February, 2010.

38. The Petitioners have submitted their Written Submissions on 1st February, 2010 to the reply filed by Shri Sandeep Ohri. The Petitioners herein have given their replies to every objection raised by the Intervener, Shri Sandeep Ohri.

39. Another hearing was held on 16th February, 2010. Shri J. J. Bhatt appeared for the Petitioners. Interveners also appeared.

40. Having heard the parties and after considering the materials placed on record, as regards the issues raised during the hearing held on 20th August 2009 the Commission is of the view that the same stands answered in terms of the written submissions filed by the Petitioners on 8th September 2009 and on 3rd November 2009. The Commission is satisfied with the submissions made therein. The Commission is of the view that in several proceedings before the Commission the need to maintain separate accounts for each licensed activity was emphasized. In fact in the ARR and Tariff Order dated October 3, 2006, the Commission had directed REL to maintain the accounts for expenses incurred on wires business and supply business separately. The Commission has notified the Maharashtra Electricity Regulatory Commission (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009 requiring licensees to maintain segregated financial,

operational and accounting information with supporting vouchers and journal entries including Allocation Statement based on actuals in respect of the business of generation, transmission, distribution and Other Business. However, once the distribution business is vested in a separate company viz the 2nd petitioner company and the transmission business is vested in the 3rd petitioner company, as proposed in the petition, separate Accounting Statements for each licensed activity i.e., distribution and transmission can be maintained comprising of : (i) balance sheet and profit and loss account in accordance with the Companies Act, 1956, (ii) cash flow statement, in accordance with the applicable Accounting Standard of the Institute of Chartered Accountants of India; (iii) report of the statutory auditors' for the Distribution and Transmission companies; (iv) cost records with notes thereto and a statement of sources and application of funds. This has been a major area of concern which would be resolved once the distribution business is vested in a separate company viz the 2nd petitioner company and the transmission business is vested in the 3rd petitioner company.

41. These separate accounting records in separate companies and the information under the aforesaid Regulations of 2009 would enable consumers to transparently assess the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to each such Licensed activities as separately identifiable. Separate accounting is essential to enable proper ascribing of costs where they are incurred to allow for cost control and cost effectiveness.

42. In view of the above, the Commission does not find any reason as to why the present petition should not be allowed provided that the 1st Petitioner ensures that the ownership and operational control over the distribution and transmission assets are transferred in entirety to the 2nd petitioner and 3rd petitioner respectively. The Electricity Act, 2003 stipulates that generation, transmission and distribution activities become separate entities. The wires and content aspects should be separated. This should bring in efficiency and accountability. Section 62 also stipulates the provision of furnishing separate details in respect of generation, transmission and distribution for determination of tariff. The proposal contained in the present petition would culminate into functional desegregation of generation, transmission and distribution. This will help identifying inefficiencies in the present integrated business of the 1st petitioner.

43. Therefore, the Commission approves the assignment of distribution license and transfer of assets in the Distribution System in favour of the 2nd petitioner company provided that the 2nd petitioner company retains the ownership and operational control over the assets in the Distribution System. Similarly, the Commission approves the assignment of transmission license and transfer of assets in the Transmission Lines in favour of the 3rd petitioner company provided that the 3rd petitioner company retains the ownership and operational control over the assets in the Transmission Lines. The 1st petitioner shall ensure that the assets representing its licensed distribution business is transferred to the 2nd petitioner company in entirety and that no portion of it is retained by the 1st petitioner company nor transferred to any company other than the 2nd petitioner company. Similarly, 1st petitioner shall ensure that the assets representing its licensed transmission business is transferred to the

3rd petitioner company in entirety and that no portion of it is retained by the 1st petitioner company nor transferred to any company other than the 3rd petitioner company.

44. Accordingly in Regulation 2(b) of the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to Reliance Energy Limited) Regulations, 2008, the term “REL” or “Distribution Licensee” would mean Reliance Energy Limited and the following words would be required to be deleted “(now known as Reliance Infrastructure Limited pursuant to Fresh Certificate of Incorporation Consequent upon Change of Name dated 28th April, 2008 issued by the Registrar of Companies, Maharashtra, Mumbai)”. The Commission will separately initiate the process of carrying out the above amendment.

45. The approval to assign the distribution license and transfer of distribution system in favour of the 2nd petitioner shall not affect the investigation currently underway under Section 128 of the Electricity Act, 2003.

46. Bombay Small Scale Industries Association has filed an appeal before the Supreme Court in Civil Appeal No. 4128 of 2007 from the Appellate Tribunal’s judgment dated April 4, 2007 in Appeal No. 251 of 2006 where the authorization of distribution of electricity was questioned by Bombay Small Scale Industries Association. As Bombay Small Scale Industries Association has not produced any order restraining the present proceedings, the Commission is of the view that mere pendency of the said appeal would not come in the way of this order.

With the above, the present petition stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC