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Inward No:		Date			
Chairman	Member	Member			
Secretary	Dir (EE)	Dir (T)			

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**BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION, MUMBAI**

Filing No. _____

I.A. No. _____ OF 2015

IN

CASE NO. 182 OF 2014

IN THE MATTER OF:

Petition of the Tata Power Company Ltd. for Approval of Revised Network Rollout Plan in compliance of the direction of the Hon'ble Commission in Case No. 90 of 2014

AND IN THE MATTER OF:

TATA Power Company Ltd.

....PETITIONER

Versus

Reliance Infrastructure Ltd. &Anr

....RESPONDENTS

AND IN THE MATTER OF:

Application in terms of the order dated 16.10.2015, passed by the Hon'ble Appellate Tribunal in DFR No. 2068 of 2015

AND IN THE MATTER OF:

HarishchandraYaswantGovalkar,
NagrikSevaSangh, Nehru Nagar,
Galli No. 11, R.NO. 54, Borivali East,
Mumbai

.....APPLICANT

I N D E X

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R.No: 4898, dt: 19.10.15.
Rs. 500/-
cash.

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Copies of the Public Notice, published by
this Hon'ble Commission, dated
18.06.2014

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4. **Annexure - 3**

A copy of the order dated 16.10.2015
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APPLICANT

Through

(Signature)

**MATRUGUPTA MISHRA/ HEMANT SINGH
/SHIKHA OHRI/ TABREZ MALAWAT**

ADVOCATES FOR THE APPLICANT/APPELLANT

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MUMBAI

DATE: 19.10.2015

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HarishchandraYaswantGovalkar,
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Mumbai

.....APPLICANT

**APPLICATION IN TERMS OF THE ORDER DATED 16.10.2015
PASSED BY THE HON'BLE APPELLATE TRIBUNAL FOR
ELECTRICITY, NEW DELHI IN DFR No. 2068 OF 2015**

MOST RESPECTFULLY SHOWETH:

1. The Applicant herein is a consumer of electricity in the city of Mumbai who intends to highlight issues which are crucial for connectivity of electricity to the general public and for serving

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interest of consumer. The Applicant is not having any pecuniary or commercial benefits out of the present Application. The Applicant is only contributing to the interest of the consumers.

2. For the purposes of the present application, the Applicant places reliance upon the MERC (General Conditions of Distribution Licence) Regulations, 2006. The said regulations states as follows:

"5 PROCEDURE FOR GRANT OF LICENCE

5.1 APPLICATION FOR GRANT OF LICENCE

5.1.1 An application for grant of licence shall be made in the form and shall be accompanied by documents and information as may be stipulated by the Commission from time to time and which shall be available from the office of the Commission and/ or on its internet website.

5.1.2 While making an application under Regulation 5.1.1, the applicant shall pay such fee alongwith the application as may be prescribed under sub-section (1) of Section 15 of the Act.

5.1.3 The application under Regulation 5.1.1 shall be signed by the applicant and addressed to the Secretary and shall be submitted in the same manner for filing of petitions and as set out in the Conduct of Business Regulations of the Commission as in force from time to time.

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8.2. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

8.2.1 The Distribution Licensee shall comply with the provisions of the Act, Rules, Regulations, Orders and Directions issued by the Commission from time to time and the provisions of all other applicable laws.

8.2.2 The Distribution Licensee shall duly comply with the regulations, orders and directions of the Central and State Transmission Utilities, National Load Despatch Centre, Regional Load Despatch Centre and the State Load Despatch Centre, Central Electricity Authority and other statutory authorities under the Act.

8.2.3 The Distribution Licensee shall adhere to the network rollout plan as approved by the Commission."

(underline supplied)

The above regulations in Regulation 5.1 specify that an application for grant of a distribution license has to be made as per the form prescribed under the said regulations. Further, Regulation 8.2.3 stipulates that the network rollout plan, as approved by the Hon'ble Commission, has to be adhered to by the distribution licensee.

3. The Applicant now refers to the Application Form for grant of distribution licensee. The said Form has been specified as per the above MERC (General Conditions of Distribution Licence) Regulations, 2006. The said Application Form states as follows:

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"10. Data relating to the Applicant's Proposed Business:

a. Business Plan (with 5 years projection) for the proposed business for which licence is sought (which should contain year wise load growth, year wise distribution loss reduction proposal along with specific action plan, metering plan, investment plan (including investment in Generating Stations or a Trading Company), treatment of previous losses, debt restructuring plan, program for rural electrification, cost reduction plan, projected profit and loss account, projected balance sheets, projected cash flow statements and projected important financial parameters).

b. Five year annual forecasts of costs, sales, revenues, project financing and funding arrangements (clearly specifying assumptions involved).

c. Indicative investment plan and Network rollout plan for the next five years, detailing year-wise and area-wise rollout of the distribution system.

(underline supplied)

From the aforementioned Regulations and the Application Form, it is apparent that network roll out plan is a condition precedent, and an integral part of the distribution license grant proceedings.

4. As per the above Regulations, the Petitioner/ TPC filed a petition, numbered as Case No. 90 of 2014. In the said petition, the Petitioner/ TPC also provided the details as prescribed in the aforementioned Application Form. As the said proceedings were

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for the grant of a Distribution License, the same were required to be published by giving a Public Notice as specified in Sections 15(2) and 15 (5) of the Electricity Act, 2003. Relevant extract of Section 15 of the Act is setout herein below for ready reference:

"Section 15. (Procedure for grant of licence): --

(i)

(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-**

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of the notice as aforesaid;

..... ..

(5) **Before granting a licence under section 14, the Appropriate Commission shall -**

(a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence;

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(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be."

(underline and emphasis supplied)

As per the above mandatory stipulations to issue a public notice, the Petition filed by the Petitioner/ TPC, Case No. 90 of 2014, was published twice, as per the details provided herein below:

- (i) As per the provisions of Section 15(2) of the Electricity Act, 2003, the Petitioner/ TPC published a notice of the license application on 9th May 2014 in local editions of DNA, Indian Express, Financial Express, Loksatta and Prahar;
- (ii) As per the provisions of Section 15(5)(a) of the Electricity Act, 2003, this Hon'ble Commission issued a Public Notice dated 18.06.2014 which was published in the local editions of newspapers.

Copies of the Public Notice, published by the Petitioner/ TPC, dated 09.05.2014 are annexed herewith and marked as **Annexure – 1.**

Copies of the Public Notice, published by this Hon'ble Commission, dated 18.06.2014 are annexed herewith and marked as **Annexure – 2.**

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5. Post the above Public Notices, a lot of consumers and other interested parties participated in the hearings and also filed their submissions/ objections, as the case may be. The Applicant also participated in the said proceedings and also filed its submissions.

Accordingly, after hearing all the parties, and consumers, the Hon'ble Commission granted a Distribution License to the Petitioner vide order the dated 14.08.2014. The name of the Applicant is mentioned at Sl. No. 82 on page 99 of the said order. In the said license grant order, the following were the findings of this Hon'ble Commission:

"7.1.7. The Commission, therefore, in exercise of the power vested in the Commission under Section 14 of the 2003 Act, grants Distribution Licence to TPC to supply electricity in the proposed area of supply for a period of 25 years from August 16, 2014. The Commission further issues the following directions:

(a) The Commission observes that the rollout plan submitted by TPC is inadequate and for detailed reasons mentioned above TPC is directed to approach the Commission within 6 weeks with a fresh rollout plan in accordance with the concerns expressed by the Commission in the present Order.

(b) TPC shall be bound by the network rollout approved by this Commission, which would form part

of the Specific Conditions specified by this Commission under Section 16 of the EA 2003.

(c) TPC is directed to approach the Commission in a separate Petition to seek a mandate pertaining to the six identified consumers outside the geographical area of TPC's License within six months. Till such time a decision in the Petition is arrived TPC shall continue to supply such consumers under the existing terms and conditions.

(d) Any direction issued by the Commission restricting TPC's network expansion and supply to identified categories, consumers or areas in the earlier license are hereby revoked;

(e) All other directions/ Orders pertaining to TPC's existing distribution business within its area of license, including but not limited to the Tariff Orders passed by this Commission, shall continue to be in force in the same manner as prior to the expiry of TPC's existing license and grant of new license by the Commission."

(underline supplied)

6. It is stated that in the above license grant order, it was held by this Hon'ble Commission that the rollout plan submitted by the Petitioner/ TPC is inadequate, and the Petitioner was directed to file a separate petition within a period of 6 weeks seeking approval of network roll out plan. Clearly, the approval of the network roll out plan was the only condition remaining pending, which was related to the grant of Distribution License to the Petitioner/ TPC.

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7. As per the directions contained in the above order dated 14.08.2014 in Case No. 90 of 2014, the Petitioner/ TPC filed a petition before this Hon'ble Commission, being Case No. 182 of 2014, seeking approval for the network roll out plan. It is stated that the Applicant came to know of these proceedings only around 12.10.2015, when the Applicant learnt that this Hon'ble Commission vide an order dated 22.09.2015 has proceeded to reserve final orders.

8. It is submitted that no Public Notice was issued either by the Petitioner/ TPC or by this Hon'ble Commission, as mandated under Section 15(2) and Section 15(5)(a) of the Electricity Act, 2003. At this stage it is also relevant to mention herein the judgment dated 28.11.2014 of the Hon'ble Appellate Tribunal for Electricity passed in Appeal Nos. 229 and 246 of 2012. The said judgment was passed with respect to the network roll out of the Petitioner/ TPC. In the following paragraph, the Hon'ble APTEL has held as under:

"58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and

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narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment in the licence condition of Tata Power, after following due process as per law.**The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers.** In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfra."

(underline and emphasis)

Hence, as per the above judgment of the Hon'ble Appellate Tribunal, specific directions have been issued upon this Hon'ble Commission to hear all the Consumers. The said direction was issued on account of the fact that proceedings for approving network roll out plan are an extension of the Distribution License grant proceedings.

9. It is submitted that the proceedings in Case No. 182 of 2014, wherein the order dated 22.09.2015 in which the final orders have been reserved by this Hon'ble Commission, no Public Notice was issued, either by the Petitioner/ TPC or either by this Hon'ble Commission, thereby denying the Consumers a chance to participate in the said proceedings. It is further submitted that the proceedings related to approval of network rollout are in continuation of the license grant proceedings. Hence, the provisions of Sections 15(2) and 15(5)(a) of the Electricity Act, 2003 are specifically attracted to the proceedings for approval of network rollout plan. It is on account of the said fact that the Hon'ble Appellate Tribunal in the aforementioned judgment specifically directed this Hon'ble Commission to hear all the Consumers, which could only have been done by issuance of a Public Notice.

10. After the Applicant became aware of the order dated 22.09.2015 passed in Case No. 182 of 2014 wherein final orders were reserved by this Hon'ble Commission behind the back of the Consumers, the said Applicant, being aggrieved, filed an appeal before the Hon'ble Appellate Tribunal, bearing DFR No. 2068 of 2015. The said appeal was filed specifically on the ground that despite the statutory provisions, and the specific directions contained in Appeal Nos. 229 and 246 of 2012, no Public Notice was issued pertaining to Case No. 182 of 2014.

The above appeal was listed for hearing before the Hon'ble Appellate Tribunal on 16.10.2015, wherein the order has been passed granting liberty to the Applicant to file an application before Hon'ble Commission.

A copy of the order dated 16.10.2015 passed by the Hon'ble Appellate Tribunal is annexed herewith and marked as **Annexure - 3.**

11. As per the above order, the Hon'ble Appellate Tribunal granted liberty to the Applicant to file the present application before this Hon'ble Commission in Case No. 182 of 2014. Further, this Hon'ble Commission has been specifically directed to deal with the said application in accordance with law.
12. It is stated that the statutory provisions and the judgment dated 28.11.2014 passed in Appeal Nos. 229 and 246 of 2014, clearly mandate issuance of a Public Notice in Case No. 182 of 2014 and thereafter, conducting a Public Hearing after the Consumers file their submissions/ objections, if any, pursuant to the said Notice, before passing any final orders in Case No. 182 of 2015 by the Hon'ble Commission.
13. Further, the Applicant does not possess any copies of any petition/ application or affidavits and other documents filed by the various parties in the present proceedings. The Petitioner/ TPC ought to be directed to provide the Applicant herein with the copies of all the relevant documents, which are on record, so as to enable the said Applicant to analyse the same.

The Applicant also needs to be provided a suitable time frame for making any submissions/ objections, and thereafter, a separate hearing needs to be conducted by this Hon'ble Commission for enabling the Applicant to make its submissions. It is stated that this Hon'ble Commission instead of publishing notice in newspapers for general public and Consumers, sent notice to certain selected consumer representatives, which do not have any mandate for representing the interests of all the Consumers.

The above is also the intent of the order dated 16.10.2015 of the Hon'ble APTEL as the present application has to be dealt in accordance with law. The Law as it stands today, requires issuance of a Public Notice and the conducting of requisite number of Public Hearings, before disposing Case No. 182 of 2014.

14. It is submitted that the submissions/ objections of Consumers on the issue of network roll out plan are a mandatory requirement. Further, the Consumers ought to be given a chance to analyse if the network rollout plan submitted is in consumer interest or not. Further, the Consumers have to be heard on the issue if the network is being planned to cater to all the consumers for fulfilling the mandate of Section 43 (Universal Supply Obligation) of the 2003 Act, including the right mix of consumers, or the network is selective and meant for cherry picking of consumers.

15. Keeping in view the above, the Hon'ble Commission was wrong to have dispensed with the issuance of a Public Notice and conducting a Public Hearing, before reserving the order in Case No. 182 of 2014. It is a settled position of law that when statute provides for doing a certain thing in a particular manner, then that thing has to be done in the manner so prescribed. It is further well settled that an affected party must have its say before an adverse order is passed against it. It is submitted that every order or decision affecting the interests of a party should be taken only after providing him with an opportunity of hearing.
16. It is submitted that no prejudice to the Petitioner/ TPC would be caused if the instant application is allowed, as the Applicant is only asking which is provided in the Statute and orders of the Hon'ble APTEL. However, if the same is rejected then it would cause severe prejudice to the Applicant, and to the other Consumers, and their substantive right would be hampered.
17. The instant application has been filed bona fide and in the interest of justice.

P R A Y E R

In the facts and circumstances of the present application, it is, therefore, most respectfully prayed that this Hon'ble Commission may be pleased to:

- (i) allow the present application;

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- (ii) direct issuance of a Public Notice in newspapers thereby inviting comments/ submissions of the Consumers at large with respect to Case No. 182 of 2014;
- (iii) direct the Petitioner to give clear copies to the Applicant of all the documents which are on record in Case No. 182 of 2014;
- (iv) hold the requisite Public Hearings for providing an opportunity of hearing to the Applicant, and to the other Consumers, to present their submissions;
- (v) Pass such other Order(s) and directions as this Hon'ble Commission deems fit and appropriate in the facts and circumstances of the present case.

By AM. Singh
APPLICANT

Through *(A) L. S. H. / M. L. S.*

**MATRUGUPTA MISHRA/ HEMANT SINGH
/SHIKHA OHRI/ TABREZ MALAWAT**

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Mumbai
DATE: 19.10.2015



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Mumbai

.....APPLICANT

Affidavit verifying the Application

I, Harishchandra Yaswant Govalkar, S/o Shri Yaswant Govalkar, aged about 57 years, Nagrik Seva Sangh, Nehru Nagar, Galli No. 11, R. NO. 54, Borivali East, Mumbai do solemnly affirm and say as follows:

1. I am the Applicant in the above matter and am duly authorised and competent to make this affidavit.

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2. The statements made in paragraphs 1 to 10 of the application are true to my knowledge and belief and statements made in paragraphs 11 to 17 are based on information and I believe them to be true.

3. I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Applicant is a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

Solemnly affirm at Mumbai on this the 19th day of October, 2015 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

(Handwritten Signature)
(Signature)

Identified before me

BEFORE ME

Mumbai
Dated: 19 OCT 2015



(Handwritten Signature)
K. S. LAMBAT
M.Com LL.B
NOTARY
Secretary

Notarial Register	
Sr. No.-	129/1015
Date -	19 OCT 2015

