

2. Mulla & Mulla Craigie Blunt & Caroe
Advocates for Reliance Infrastructure Ltd.
Mulla House,
51, M.G. Road,
Fort, Mumbai-400 001
3. Prayas (Energy Group)
Amrita Clinic, Athvale Corner,
Lakdipool-karve Road Junction,
Deccan Gymkhana, Karve Road,
Pune 411 004
4. The General Secretary,
Thane Belapur Industries Association,
Rabale Village, Post Ghansoli,
Plot P-14, MIDC,
Navi Mumbai 400 701
5. Mumbai Grahak Panchayat,
Grahak Bhavan,
Sant Dynaneshwar Marg,
Behind Cooper Hospital,
Vile Parle (West), Mumbai 400 056
6. Maharashtra Chamber of Commerce,
Industry & Agriculture,
Oricon House, 6th floor,
12 K. Dubash Marg, Fort,
Mumbai - 400 001 (Nashik Branch)
7. Vidarbha Industries Association,
1st Floor, Udyog Bhavan,
Civil Line, Nagpur 440 001

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

WORLD TRADE CENTRE, CENTRE NO.1,

13th FLOOR, CUFFE PARADE, MUMBAI 400005

CASE NO. 182 OF 2014

IN THE MATTER OF:

The Tata Power Company Limited

...Petitioner

Versus

BEST Undertaking & Ors.

...Respondents

INDEX

Sr. No.	Particulars	Page Nos.
1.	Additional Submission on behalf of The Tata Power Company Limited with regard to the meaning of the term 'new connection' / 'new consumer'.	1 - 7
2.	Affidavit in support	8

**The Tata Power Company Limited/
Petitioner**

Through:



**J. Sagar Associates
Advocates for the Petitioner
Vakil House, 18 Sprott Road,
Ballard Estate, Mumbai 400 001, India**

Place : Mumbai

Dated : 24th August, 2015

**BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
WORLD TRADE CENTRE, CENTRE NO.1,
13th FLOOR,
CUFFE PARADE, MUMBAI 400005**

CASE NO. 182 OF 2014

IN THE MATTER OF:

The Tata Power Company Limited ... Petitioner

Versus

BEST Undertaking & Ors. ... Respondents

**Additional Submission on behalf of The Tata Power Company Limited with
regard to the meaning of the term 'new connection' / 'new consumer'**

1. This Hon'ble Commission passed its Order dated 14.08.2014 in Case No. 90 of 2014, to:-
 - (a) Grant a Distribution Licence to The Tata Power Company Limited ("**Tata Power**") (being Distribution Licence No. 1 of 2014, for a period of 25 years from 16.08.2014) for the allocated area of supply.
 - (b) Direct Tata Power to submit its revised Network Rollout Plan, such that the Network Rollout Plan approved by the Commission would form part of the Specific Conditions of Licence as specified by it in terms of Section 16 of the Electricity Act, 2003 ("**Electricity Act**").
2. Tata Power has filed the present Petition seeking approval of its Network Rollout Plan pursuant to this Hon'ble Commission's Order dated 14.08.2014 in Case No. 90 of 2014. Tata Power submitted its Revised Network Rollout Plan on 09.10.2014.
3. During the pendency of this Petition, Hon'ble Appellate Tribunal for Electricity ("**Hon'ble Tribunal**") disposed of Appeal No. 246 of 2012 and batch titled as *Tata Power Co. Ltd. Vs. Maharashtra Electricity Regulatory Commission and Ors.* by its Judgment dated 28.11.2014 ("**Judgment dated 28.11.2014**"), returning certain findings, observations and directions. These were cross-appeals filed by Tata Power and Reliance Infrastructure Limited ("**R-Infra**") challenging this

Hon'ble Commission's Order dated 22.08.2012 in Case No. 151 of 2011. Pursuant to the observations and directions of the Hon'ble Tribunal in its Judgment dated 28.11.2014, Tata Power submitted a revised Network Rollout Plan on 12.02.2015. The same has been updated and tendered on 06.08.2015 pursuant to this Hon'ble Commission's Order dated 30.07.2012.

4. During the hearing on 12.08.2015, this Hon'ble Commission directed the parties to submit the meaning of the term 'new connection', mentioned in Hon'ble Tribunal's Judgment dated 28.11.2014 and its implication on network laying. The present submission is being tendered in this respect.

Re: Meaning of the term 'new connection' and 'new consumer'

5. It is submitted, in terms of its Judgment dated 28.11.2014, the Hon'ble Tribunal has used the term 'new connection' and 'new consumer' in the following places:-

*"58.....Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of R-Infra 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....**"*

*"61. In view of above, Tata Power is directed to submit its Roll Out Plan as indicated above for approval of the State Commission. In the meantime, Tata Power is restrained to lay down its distribution network in the area common to RInfra till further orders of the State Commission on its Rollout Plan as per the directions given in this judgment. However, Tata Power can supply power to the existing consumers of RInfra irrespective of category of consumer on the request of the consumers only through RInfra's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. **However, there shall be no restriction on Tata Power or RInfra to lay network for supply to new connections.** The State Commission shall consider to give approval for laying down of network by Tata Power only in areas where there are distribution constraints and laying down of a parallel network by Tata Power will improve reliability of supply and benefit the consumers, only after hearing RInfra and the consumers. **Similarly, RInfra shall not lay network in any area where only Tata Power's network is existing and use Tata Power network for***

changeover of consumers, if any, till further orders by the State Commission, except for extending supply to new connections.”

“80 (iii) In view of the practical difficulties in laying down parallel network in Mumbai as pointed out by Tata Power we have given some directions under paragraphs 58 to 61 regarding restricting the Roll out Plan of the Tata Power only to the areas where laying down of parallel network will improve the reliability of supply and benefit the consumers and directions for continuation of changeover arrangement irrespective of category or consumption of consumers, commissioning of network where a substantial expenditure has been incurred by Tata Power in laying down new network on the directions of the State Commission, consumers who had already switched over to Tata Power, **laying down network for providing new connection, changeover and switch over protocol, change in licence conditions of the licensees, etc.**”

[Emphasis Supplied]

6. From the perusal of the statutory provisions read with the Hon’ble Tribunal’s Judgment dated 28.11.2014, the following is noteworthy:-
- (a) Protection of consumer interest and enabling them in choosing their supplier is paramount in terms of the statutory framework so long as they comply with the requirements imposed. The consumer has the choice to elect both its source of supply (choose the distribution licensee from whom he wishes to avail to supply) as well as the mode of supply (option of open access under Section 42 or avail supply under Section 43 of the Electricity Act).
 - (b) The Hon’ble Tribunal has laid down certain guidelines for the consideration of this Hon’ble Commission while approving Tata Power’s Network Rollout Plan, i.e., parallel network be laid where the following conditions are met:-
 - (i) There is no reliable distribution network of a licensee existing in a particular area; AND
 - (ii) There are no physical constraints in laying down of any new network; AND
 - (iii) It is in consumer interest; AND
 - (iv) It improves reliability of the supply.
 - (c) The ***is no restriction on laying of parallel network***, if such network is laid down to:-

- (i) *Supply to new consumers/ connection;*
- (ii) Cater to the demand made by an existing consumer; or
- (iii) In consumer interest.

7. The Hon'ble Tribunal has not laid down any guidelines/ restrictions in laying of a parallel network for supplying electricity to 'new connections'/ 'new consumers', catering to the demand of existing consumer, or if laying of parallel network is in consumer benefit. The terms 'new connection' and 'new consumer' have neither been defined nor elaborated upon. As such, while giving meaning to the term 'new connection' and 'new consumer', the observations of the Hon'ble Tribunal have to be read in context of the existing statutory and regulatory regime and the specific circumstances of Mumbai.

8. In order to interpret the term 'new connection' and 'new consumer' it is pertinent to take into account the relevant statutory provisions which are highlighted hereunder:-

- (a) Section 2(15) – “**consumer**” means *any person* who is supplied with electricity *for his own use* by a *licensee or the Government or by any other person engaged in the business of supplying electricity* to the public under this Act or any other law for the time being in force and *includes any person whose premises are for the time being connected for the purpose of receiving electricity* with the works of a licensee, the Government or such other person, as the case may be;
- (b) Section 2(49) – “**person**” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (c) Section 2(51) - “**premises**” includes any land, building or structure;
- (d) Section 2(70) – “**supply**” in relation to electricity, means the sale of electricity to a licensee or consumer.
- (e) Section 42. Duties of distribution licensee and open access.-(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and *to supply electricity in accordance with the provisions contained in this Act.*
- (f) **Section 43 - Duty to supply on request:**
 - (1) Save as otherwise provided in the Electricity Act, every distribution licensee, shall, on an application by the owner or occupier of any premises,

give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall *supply the electricity to such premises* immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line *for giving electric supply to the premises* specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a *supply of electricity for any premises* having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

9. In view of the above provisions, in context of network rollout, it is pertinent to note that it is the duty of the distribution licensee to:-

- (a) Give supply of electricity to the premises on an application being made by the owner or occupier of the said premises.
- (b) Develop and maintain an efficient coordinated and economical distribution system in its area of supply.
- (c) Provide, if required, electric plant or line for giving electric supply to a premises.

10. Supply in this context would mean sale of electricity to a consumer. The definition of consumer, as defined under the Electricity Act, also includes any person whose *premises are for the time being connected with the works of the licensee* for the purpose of receiving electricity. In other words *network rollout has been contemplated to meet the distribution licensee's Universal Service Obligation so as to provide supply to a premises on request*. It is also pertinent to note that the definition of the term consumer also inherently contemplates that *the premises of such a person is for the time being connected* for the purpose of receiving electricity with works of a licensee.

11. In the background of the aforesaid statutory framework and the observations and findings of the Hon'ble Tribunal in its Judgment dated 28.11.2014, Tata Power's interpretation of 'new connection'/ 'new consumer' is as under:-

The term 'New Consumer'/'New Connection' includes:

- (a) Any person who has made an application for supply of power and whose premises is, for the time being, not connected to the works of the distribution licensee for receiving supply of electricity and also includes a person whose premises have been permanently disconnected by a licensee.*
- (b) Any person who has made an application for supply of power and whose premises is, for the time being, connected to the works of the distribution licensee for only receiving temporary supply of electricity.*
- (c) Any other person/ premises as may be decided by the Hon'ble Commission from time to time.*

12. It is pertinent to note that the interpretation of the term 'new connection' and 'new consumer' requires satisfying two basic elements, being:-

- (a) Any person who has made an application for supply of power; and
- (b) Not permanently connected, for the time being, to the works of the licensee for the purpose of receiving supply of electricity.

13. In order to understand/ appreciate the aforesaid interpretation of 'new connection'/'new consumer', amongst others, certain illustrations have been provided for the consideration of this Hon'ble Commission:-

- (a) 'New consumer'/'new connection' would include an owner and/or occupier of a premises, seeking supply for the said premises, which has never been permanently connected to the works of any licensee for receiving supply of electricity.
- (b) In case of redevelopment of a premises/ structure, the existing premises or structure is demolished and a new structure or premises are erected. In effect there is a change in premises. The owners or occupiers of such new premises become 'new consumer'/'new connection' since:
 - (i) They have applied for supply of power; and
 - (ii) The said new premises, for which they have applied for power supply, is not permanently connected, for the time being, to the works of the licensee for the purpose of receiving supply of electricity.

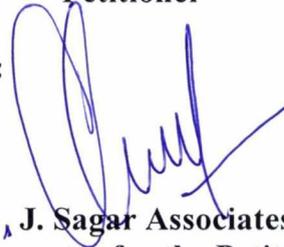
14. The term 'new connection' and 'new consumer' as used in Para 58, 61 and 80(iii) of the Hon'ble Tribunal's Judgment dated 28.11.2014 would have to be interpreted in the manner set out hereinabove. As stated above, in terms of the said

Judgment, there are no restrictions imposed on any distribution licensees for laying network to service such 'new connection'/ 'new consumer' which have been appropriately considered by Tata Power in the Revised Network Rollout Plan submitted to Hon'ble Commission and hence the Network Rollout Plan would have to be approved accordingly.

15. It is submitted that, Tata Power prays that the present submissions be taken on record. Tata Power reserves its right to file additional affidavit(s) to place on record any other information sought by this Hon'ble Commission and/ or required for the consideration of the present matter.

**The Tata Power Company Limited/
Petitioner**

Through:



**J. Sagar Associates
Advocates for the Petitioner
J. Sagar Associates
Vakil House, 18 Sprott Road,
Ballard Estate, Mumbai 400 001, India**

Place : Mumbai

Dated : 24th August, 2015

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

WORLD TRADE CENTRE, CENTRE NO.1, 13th FLOOR,
CUFFE PARADE, MUMBAI 400005

CASE NO. 182 OF 2014

IN THE MATTER OF:

The Tata Power Company Limited ... Petitioner

Versus

BEST Undertaking & Ors. ... Respondents

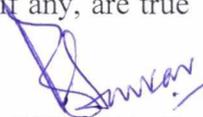
AFFIDAVIT

I, Mr. Bhaskar Sarkar, son of Mr. Arup Kumar Sarkar, aged 49 years, Head Business & Regulations (Mumbai Operation) of The Tata Power Company Limited ("Petitioner/ Tata Power"), having my office at Dharavi Receiving Station, Near Shalimar Industrial Estate, Matunga, Mumbai 400 019, Maharashtra, India, do hereby state on solemn affirmation as under:-

1. I state that I am the authorized signatory of Tata Power, the Petitioner, in the present Petition and as such I am fully conversant with the facts and circumstances of the present case and I am duly authorized and competent on behalf of Tata Power to swear and affirm this Affidavit.

2. I state that I have read and understood the accompanying submissions with regard to the meaning of the term 'new connection' / 'new consumer', in the captioned Petition and the same has been drafted under my instructions and after carefully going through the same, I state that the content of the same are true and correct to my knowledge and belief and it is stated that no part of it is false and nothing material has been concealed there from.

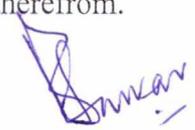
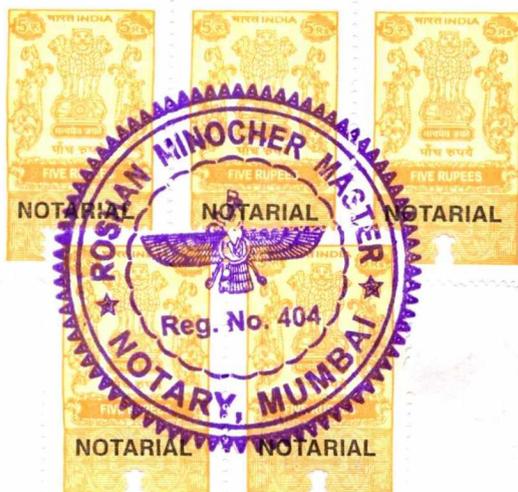
3. I state that the annexures along with the accompanying submissions, if any, are true copies of their respective originals.


DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify that the contents of my above Affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Verified at Mumbai on this 24 day of August, 2015.


DEPONENT


Before me:

 MS. ROSHAN M. MASTER
 NOTARY, GREATER BOMBAY
 2403, ORCHID TOWER A
 BELLASIS ROAD,
 MUMBAI - 400 008.
 Reg. No. 404

Sno. 12355
24-8-2015