

# The Brihan Mumbai Electric Supply & Transport Undertaking

(OF THE BRIHAN MUMBAI MAHANAGARPALIKA)

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TELEGRAM : BEST, MUMBAI-400 001.

BEST BHAVAN,  
BEST MARG,  
POST BOX NO. 192.  
MUMBAI - 400 001.

ADDRESS ALL COMMUNICATION BY TITLE  
NOT BY NAME

OUR REF. : CER/ 101 /2015

DATE : 29 JUL 2015

To,  
**The Secretary,**  
**Maharashtra Electricity Regulatory Commission,**  
13<sup>th</sup> Floor, World Trade Centre,  
Cuffe Parade, Colaba  
Mumbai - 400 005

Sub.: Petition of Tata Power Company for submission of Revised Network Rollout Plan in compliance to the direction of the Hon'ble Commission in Case No. 90 of 2014 and the direction of the Hon'ble ATE in Appeal Nos. 229 and 246 of 2012  
(Case No. 182 of 2014)

Ref.: Notice MERC/Case No. 182 of 2014/344 dtd. 16/7/2015

Sir,

In the matter referred above, please find enclosed herewith BEST's submissions in the petition filed by TPC in Case No. 182 of 2014, for Hon'ble Commission's kind consideration.

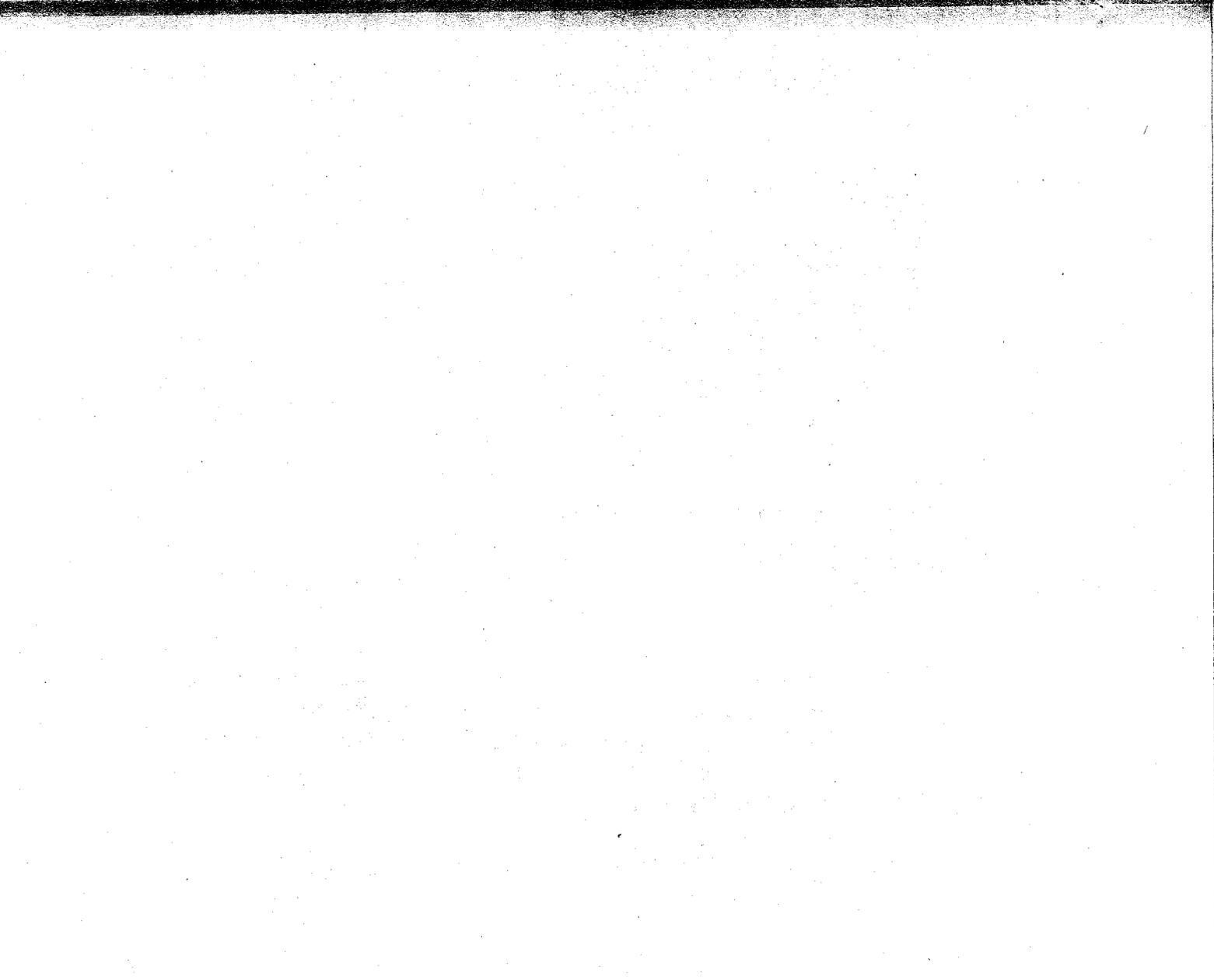
Thanking you,

Encl.: As above

Yours faithfully,

  
(R. D. Patsute)  
Chief Engineer  
Regulatory

**"BEST Travel Saves Fuel"**



CASE NO. : 182 OF 2014

IN THE MATTER OF:

Petition for submission of Revised Network Rollout Plan in compliance to the direction of the Hon'ble Commission in Case No. 90 of 2014 and the direction of the Hon'ble ATE in Appeal Nos. 229 and 246 of 2012

AND IN THE MATTER OF:

Tata Power Company Limited,

Bombay House, 24, Homi Mody Street,

Mumbai – 400 001

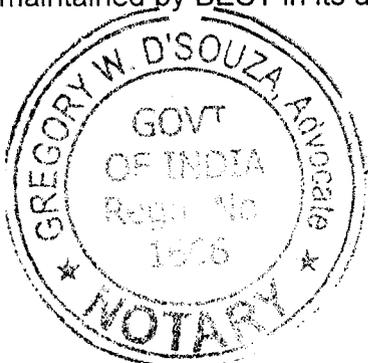
--- Petitioner

**AFFIDAVIT VERIFYING THE REPLY ON BEHALF OF BEST**

I, Rajendra Dadaram Patsute, son of Dadaram Patsute, aged 48 years, having my office at BEST Bhavan, BEST Marg, Colaba, Mumbai – 400 001 do solemnly affirm and state as follows:

1. I am Chief Engineer (Regulatory) of the Brihanmumbai Electric Supply and Transport Undertaking of Municipal Corporation of Greater Mumbai (i.e. BEST). I am duly authorized and competent to make this Affidavit.

2. The statements made in the Reply, are based on information and / or record maintained by BEST in its usual course of business, which I believe to be true.



3. I say that there are proceedings pending before (i) Hon'ble APTEL under the Appeal No. 243 of 2014, and (ii) Hon'ble Supreme Court of India under the Civil Appeal No. 4074 of 2015 and the Civil Appeal (Diary) No. 11771 of 2015, wherein inter alia TPC and BEST are parties and wherein issues arising and / or relief sought are relevant to the issues arising in the present matter pending before the Hon'ble Commission.

Solemnly affirmed at Mumbai on this 29 JUL 2015, 2015 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

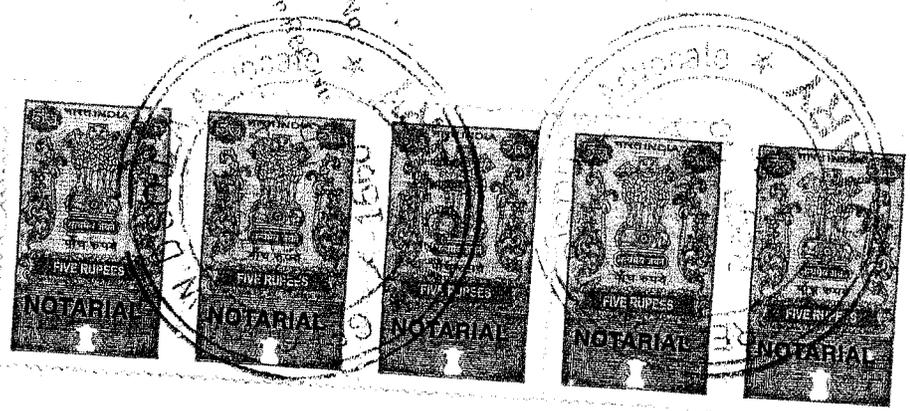
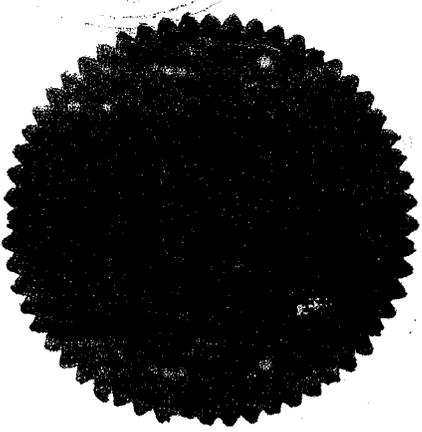
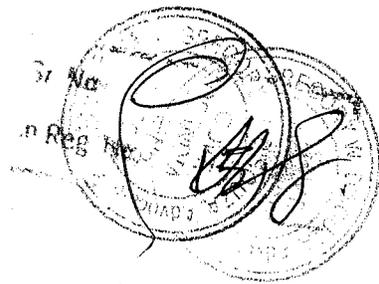
Identified before me

Place: Mumbai  
Date: 29 JUL 2015

BEFORE ME  
  
GREGORY M. DE SOUZA  
ADVOCATE & NOTARY  
Kalpak Estate Bldg. No. B-11,  
Shop No. 40, Antop Hill  
MUMBAI-400 037

  
Deponent

29 JUL 2015



CASE NO. : 182 OF 2014

IN THE MATTER OF:

Petition for submission of Revised Network Rollout Plan in compliance to the direction of the Hon'ble Commission in Case No. 90 of 2014 and the direction of the Hon'ble ATE in Appeal Nos. 229 and 246 of 2012

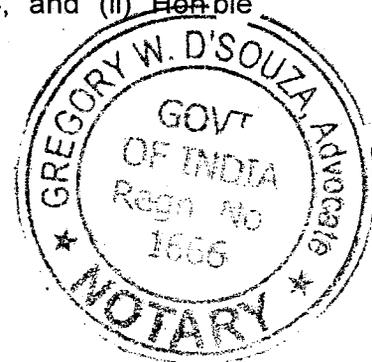
AND IN THE MATTER OF:

Tata Power Company Limited,  
Bombay House, 24, Homi Mody Street,  
Mumbai – 400 001

--- Petitioner

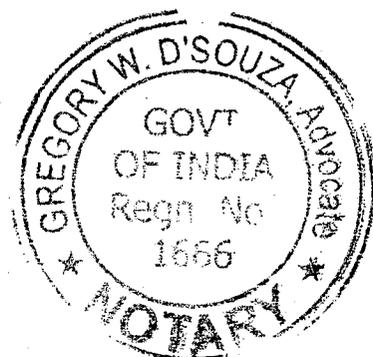
**REPLY ON BEHALF OF BEST**

1. At the outset, BEST denies each and every averment made in the Petition, which is contrary to or inconsistent with that which is stated herein, and humbly submits that nothing in the Petition be deemed to be admitted by or on behalf of BEST, for want of specific traverse. BEST clarifies that the averments and submissions made herein are in alternative and without prejudice to one another. BEST also craves leave to file a detailed additional Affidavit, if necessary.
2. At the further outset, BEST clarifies that there are proceedings pending before (i) Hon'ble APTEL under the Appeal No. 243 of 2014, and (ii) Hon'ble



Supreme Court of India under the Civil Appeal No. 4074 of 2015 and the Civil Appeal (Diary) No. 11771 of 2015, wherein inter alia TPC and BEST are parties and wherein issues arising and / or relief sought are relevant to the issues arising in the present matter, as stated hereinafter.

3. The Municipal Corporation of Greater Mumbai is a Municipal Corporation, duly constituted under the Mumbai Municipal Corporation Act, 1888. The Municipal Corporation of Greater Mumbai is also a Local Authority under Part IX A of the Constitution of India. The Municipal Corporation of Greater Mumbai, under the provisions of the Bombay Municipal Corporation Act, 1888, has an Undertaking known as the Brihanmumbai Electric Supply and Transport Undertaking (of the Municipal Corporation of Greater Mumbai) [hereinafter referred to, for sake of brevity, as "BEST"]. BEST is duly constituted under the Bombay Municipal Corporation Act, 1888. BEST, as such, is a statutory Undertaking of a Local Authority. BEST, being a statutory Undertaking of Municipal Corporation of Greater Mumbai is also encompassed by the definition of a "local authority" under Section 2(41) of the Electricity Act, 2003.
4. BEST is a municipal utility, which has been and is providing two essential services in the City of Mumbai, namely, (i) mass public transportation in the City of Mumbai as well as its extended suburbs, and (ii) distribution of electricity in the Island City of Mumbai (i.e., the area from Colaba upto Mahim and Sion).



5. BEST was earlier a "licensee" under the erstwhile Indian Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910. BEST, under the erstwhile Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910, was licensed to supply electricity under The Bombay Electric License, 1905. BEST is currently a "licensee" under the present Electricity Act, 2003. BEST, under the Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution License applicable to Brihanmumbai Electric Supply & Transport Undertaking of the Municipal Corporation of Greater Mumbai) Regulations, 2007, is authorized and required to distribute or supply electricity in the area of supply specified therein, in accordance with the provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder.
6. BEST does not have any generating station, as the generation of electricity was stopped by BEST since the year of 1925. BEST has since the last several decades being sourcing almost its entire power requirement for distribution of electricity in its area of supply from TPC.
7. BEST has duly and independently set up a comprehensive, dedicated and robust distribution network to distribute electricity in its area of supply. The distribution network of BEST currently includes 61 numbers of Receiving Substations, 2,261 numbers of Distribution Sub-stations, 9,130 numbers of Auxiliary Distribution Pillars, 73,980 numbers of Service Positions and over 10,929 kilometers of underground HV / LV cable network. The annual capital expenditure by BEST to augment its distribution network is over Rs. 100 crores. BEST has a consumer base of over 10.18 lakh electricity consumers,



including subsidised electricity consumers of over 7 lakh. BEST also has been and is duly distributing electricity to all categories of its electricity consumers across the social spectrum, in due discharge of its Universal Service Obligation under Section 43 of Electricity Act, 2003.

8. The Tata Power Company Limited (**hereinafter referred to, for sake of brevity, as “TPC”**) was earlier a “licensee / bulk licensee” under the erstwhile Indian Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910. TPC, under the erstwhile Indian Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910, was licensed to supply electricity under (i) The Bombay (Hydro-Electric) License, 1907; (ii) The Andhra Valley (Hydro-Electric) License, 1919; (iii) The Nila Mula Valley (Hydro-Electric) License, 1921; and (iv) The Trombay Thermal Power Electric License, 1953. The area of supply of TPC under its said four licenses overlapped with area of supply of BEST. TPC has subsequently been granted a distribution license (in supersession of the said four licenses) by MERC under the Order dated 14<sup>th</sup> August, 2014 passed by MERC in the Case No. 90 of 2014 filed by TPC, which was the subject matter of challenge of the Appeal No. 216 of 2014 filed by BEST, before Hon’ble APTEL.
9. The Maharashtra Electricity Regulatory Commission (**hereinafter referred to, for sake of brevity, as “MERC”**) is the State Electricity Regulatory Commission for the State of Maharashtra, constituted under Section 82 of the Electricity Act, 2003. MERC is empowered under inter alia Sections 14 and 15



of the Electricity Act, 2003 to grant and issue licence to any person to distribute electricity as a distribution licensee.

10. In the past, TPC was basically a "bulk licensee" under the erstwhile Indian Electricity Act, 1903 and Indian Electricity Act, 1910. As such, TPC used to supply electricity in bulk to the bulk electricity consumers (for example, the Indian Railways, Bombay Port Trust, BEST, BSES, Mills in specified mill land areas, and like others), under its said four licenses under the erstwhile laws. Under the said four licenses of TPC, the applicability of Clause VI of the Schedule (which dealt with Universal Service Obligation) of the Indian Electricity Act, 1910, was excluded prior to and until the year of 1964 for TPC, in respect of consumers having maximum demand of less than 1000 kVA.
11. However, in the year of 1964, the said four licenses of TPC were amended by the Government of Maharashtra, by amending the Clause : Purposes of Supply in the said four licenses of TPC, to enable TPC to supply electricity under the said four licenses for all purposes, including supply to other licensees for their own purposes and in bulk. It is pertinent that TPC, however, did not lay out any distribution network for supply of electricity in retail, residential or commercial in the area of supply of BEST, pursuant to the said amendment in the year of 1964 to the said four licenses of TPC.
12. In the circumstances, TPC did not have any distribution network for supply of electricity in retail, residential or commercial, in the area of supply of BEST. As such, TPC continued to supply electricity in bulk to the bulk electricity



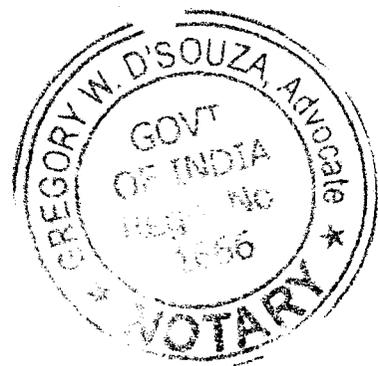
consumers (for example, the Indian Railways, Bombay Port Trust, BEST, Mills in specified mill land areas, and like others), under its said four licenses under the erstwhile laws.

13. It is pertinent that in or about the year of 2002 disputes arose between TPC and Reliance Infrastructure Limited (**hereinafter referred to, for sake of brevity, as "RInfra"**) under Case No. 14 of 2002 before the MERC, about initiation of supply of electricity in retail by TPC in the area of supply (being, suburban Mumbai) of RInfra. The said proceedings under Case No. 14 of 2002 culminated in the Judgment dated 8<sup>th</sup> July, 2008 of the Hon'ble Supreme Court of India reported as (2008) 10 SCC 321 [Tata Power Co. Ltd. V/s Reliance Energy Limited], wherein the Hon'ble Supreme Court of India held interalia that TPC under its said four licenses was authorised to distribute electricity in retail directly to consumers, including those whose maximum demand is less than 1000 kVA, apart from its entitlement to supply electricity to other licensees.
14. After the said Judgment dated 8<sup>th</sup> July, 2008 of the Hon'ble Supreme Court of India reported as (2008) 10 SCC 321 [Tata Power Co. Ltd. V/s Reliance Energy Limited], MERC made and issued on 20<sup>th</sup> August, 2008, the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to The Tata Power Company Limited) Regulations, 2008. Under these Regulations, TPC was interalia deemed to be a distribution licensee under the Electricity Act, 2003 until 15<sup>th</sup> August, 2014, and was authorised to supply electricity to the public for all purposes in the



area of supply as described in the said four licenses of TPC, in accordance with the Electricity Act, 2003.

15. Meanwhile, over past several decades, most (if not all) of the aforesaid Mills in the mill land areas of the Island City of Mumbai, were lying locked, non-operational and / or defunct. As such, TPC did not at all have any distribution network whatsoever for retail, residential or commercial distribution of electricity in these mill land areas of the Island City of Mumbai.
  
16. It is pertinent that the Government of Maharashtra, by amending the Development Control Regulations for Greater Bombay, 1991 in the year of 2001, has permitted development of these Mills and / or the mill land areas in the Island City of Mumbai. This amendment to the Development Control Regulations for Greater Bombay, 1991, was impugned all the way to the Hon'ble Supreme Court of India, and was upheld by that Hon'ble Court in the year of 2006. The landlords of these Mills and / or the mill land areas in the Island City of Mumbai, in the circumstances, have commenced commercial development of these Mills and / or the mill land areas, for commercial and / or residential user, development and / or transfer. There was not any old distribution network laid earlier by TPC, for retail, residential or commercial distribution of electricity, in these mill land areas in the Island City of Mumbai. It is only recently that TPC due to such development of these Mills and / or the mill land areas in the Island City of Mumbai has been or is attempting to lay its distribution network for retail, residential or commercial distribution of electricity, in these mill land areas. The said attempt by TPC is a devious



attempt to “cherry-pick” lucrative commercial and / or residential electricity consumers in the newly developing or developed mill land areas in the Island City of Mumbai.

17. It is pertinent that in or about the year of 2009 disputes arose between TPC and BEST under Case Nos. 60, 81, 83, 84, 85 and 86 of 2009 before the MERC, about the legal authority or right of supply of electricity in retail by TPC in the area of supply (being, Island City of Mumbai) of BEST. The said proceedings under Case Nos. 60, 81, 83, 84, 85 and 86 of 2009 culminated in the Civil Appeal No. 4223 of 2012 [Brihanmumbai Electric Supply and Transport Undertaking V/s Maharashtra Electricity Regulatory Commission and Ors.] before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, by Order dated 10<sup>th</sup> May, 2012 made in the said Civil Appeal No. 4223 of 2012, had ordered the parties to maintain status-quo as of 10<sup>th</sup> May, 2012, pending the hearing and final disposal of the said Civil Appeal No.4223 of 2012.
18. However, an Invitation for Expression of Interest for Distribution of Electricity in Mumbai City and Part of Mumbai Suburban Area was issued and published on 01.01.2014 in various newspapers by MERC and on the website of the MERC (hereinafter, “Invitation for Eol dated 01.01.2014”). The Invitation for Eol dated 01.01.2014 referred to and relied upon the following Regulations 4 and 5 of the MERC (Specific Conditions of Distribution Licence applicable to Tata Power Company Ltd.) Regulations, 2008 :



#### **"4. Area of Supply**

4.1 *The Area of Supply within which the Distribution Licensee is authorised to supply electricity shall be the whole of the area as described in (1) The Bombay (Hydro-Electric) License, 1907; (2) The Andhra Valley (Hydro-Electric) License, 1919; (3) The Nila Mula Valley (Hydro-Electric) License, 1921; (4) The Trombay Thermal Power Electric License, 1953 (collectively referred to as, "TPC Licenses") subject to such conditions and exclusions as specified in the said TPC Licenses.*

4.2 *The Distribution Licensee is authorised to supply electricity to the public for all purposes in accordance with the provisions of the Act.*

#### **5. Term of Licence**

*Subject to the provisions of the Act, the Licence shall remain in force till 15th August 2014, i.e., the remaining period for which TPC shall be deemed to be a Distribution Licensee under the Act."*

19. Thereafter, on 30.1.2014, BEST filed Case No. 37 of 2014 before MERC against TPC and Ors., that MERC ought not and should not (i) allow distribution of electricity in retail in the area of supply of by any licensee (other than BEST), and / or (ii) grant distribution licence in the area of supply of BEST to any person (other than BEST). BEST, under the said Case No. 37 of 2014, prayed for interalia the following reliefs from MERC against TPC and Ors. :-



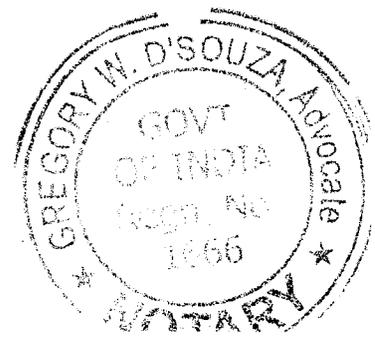
*" a. that the Hon'ble MERC be pleased to refuse grant of distribution licence in the area of supply of BEST to TPC, Rlnfra and / or any person (other than BEST) ;*

*b. that the Hon'ble MERC be pleased to order that distribution licence cannot be granted to TPC, Rlnfra and / or any other person (other than BEST) for the area of supply of BEST.*

*c. that the Hon'ble MERC be pleased to refuse distribution of electricity in retail in the area of supply of BEST, by TPC, Rlnfra and / or any person (other than BEST).*

*d. that the Hon'ble MERC be pleased to set aside the Invitation for Expression of Interest for Distribution of Electricity in Mumbai City and Part of Mumbai Suburban Area, issued and published on 01.01.2014 in various newspapers and on the website of the MERC and / or any proceedings or steps taken thereunder, to the extent of the area of supply of BEST."*

20. It is pertinent that the Case No. 37 of 2014 was filed by BEST, during the pendency of the Civil Appeal No. 4223 of 2012 (Brihanmumbai Electric Supply & Transport Undertaking V/s Maharashtra Electricity Regulatory Commission & Others) before the Hon'ble Supreme Court of India. In the Case No. 37 of 2014, BEST respectfully submitted that the Invitation for Eol dated 01.01.2014 was in grave breach and contravention of the Order dated 10.05.2012 made by the Hon'ble Supreme Court of India in the Civil Appeal



No. 4223 of 2012, which ordered the parties (including, MERC) to maintain status quo as of 10.05.2012 pending hearing and final disposal of the said Civil Appeal No. 4223 of 2012. BEST respectfully submitted that the Invitation for Eol dated 01.01.2014 was in the teeth of the said Order dated 10.05.2012.

21. Thereafter, on 07.04.2014, TPC filed Case No. 90 of 2014 before MERC for grant of distribution licence under Section 15(2) of the Electricity Act, 2003. TPC, under the said Case No. 90 of 2014, prayed before MERC for inter alia the following relief :-

*"a. Admit the present Application alongwith the attached documents, submitted by Tata Power for grant of license under Section 14 and 15 read with Section 86(1)(d) of Electricity Act, 2003;*

*b. Grant Distribution License to Tata Power for a period of 25 years with effect from 16<sup>th</sup> August, 2014, in accordance with the provision of Section 14 read and 15 of the Electricity Act, 2003, read with MERC (General Conditions of Distribution License) Regulations, 2006 for the entire distribution which includes South Mumbai and parts of Mumbai Suburban Areas, areas of Mira Bhayandar Municipal Corporation including area covered under Chene and Varsave."*

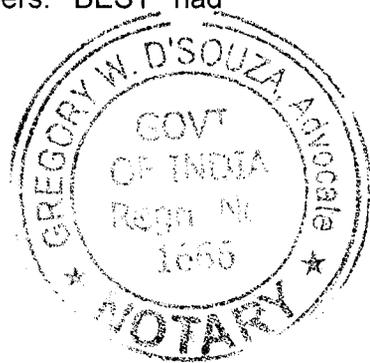
22. The aforesaid Civil Appeal No. 4223 of 2012 (Brihanmumbai Electric Supply and Transport Undertaking V/s Maharashtra Electricity Regulatory Commission & Ors.) was decided by the Judgment dated 8<sup>th</sup> May, 2014 of the



Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India by the Judgment dated 8<sup>th</sup> May, 2014 passed in the said Civil Appeal No. 4223 of 2012, held inter-alia that TPC was a "deemed licensee" until 15<sup>th</sup> August, 2014 under Section 14 of the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to The Tata Power Company Limited) Regulations, 2008. The said Judgment dated 8<sup>th</sup> May, 2014 also held that TPC could supply electricity to any consumer in the area of supply common to BEST and TPC by TPC laying out its own distribution network and without availing of the distribution network of BEST.

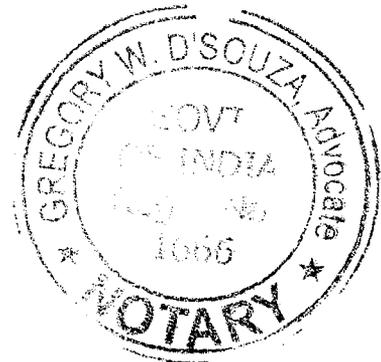
23. It is pertinent that although some of the Grounds raised in the above Case No. 37 of 2014 were covered by the said Judgement dated 8<sup>th</sup> May, 2014 passed in the said Civil Appeal No. 4223 of 2012, but the Grounds [being, Ground (B), Ground (F) and Ground (H)] raised in the above Case No. 37 of 2014 were not covered by, much less adjudicated or decided by, the said Judgement dated 8<sup>th</sup> May, 2014 of the Hon'ble Supreme Court of India. Also the challenge to the Invitation for EoI published on 01.01.2014 by the Hon'ble MERC, was not encompassed by the said Judgement dated 8<sup>th</sup> May, 2014 passed in the said Civil Appeal No. 4223 of 2012.

24. Meanwhile, on 6<sup>th</sup> May, 2014, MERC admitted the Case No. 90 of 2014 filed by TPC for grant of distribution licence, and directed TPC to issue a Public Notice on or before 9<sup>th</sup> May 2014. Thereafter, on 9<sup>th</sup> May 2014, TPC published required Public Notice in English and Marathi newspapers. BEST had

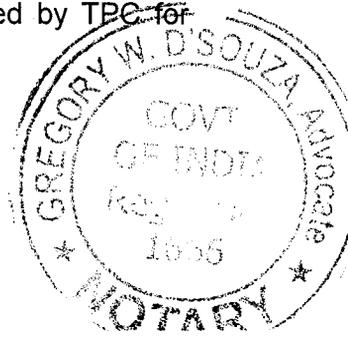


submitted its objections to issuance of Distribution License to TPC in response to the Public Notice by TPC.

25. On 18<sup>th</sup> and 19<sup>th</sup> June 2014, MERC published a Public Notice proposing grant of distribution licence to TPC in English and Marathi newspapers, under sub-section (5) of Section 15 of the Electricity Act, 2003.
26. On 7<sup>th</sup> July 2014, BEST filed in the Case No. 90 of 2014 its Objections on the proposal of MERC to grant distribution licence to TPC. On 8<sup>th</sup> July 2014, BEST also filed in the Case No. 90 of 2014 its Additional Objections.
27. On 8<sup>th</sup> July, 2014, the Case No. 37 of 2014 filed by BEST was heard and reserved for judgement by MERC.
28. On 10<sup>th</sup> July 2014, the Public Hearing in the Case No. 90 of 2014 was held by MERC. At the said Public Hearing, BEST orally submitted before MERC the Objections of BEST to the grant of distribution licence to TPC.
29. On 14<sup>th</sup> July, 2014, BEST filed in the Case No. 90 of 2014 its Written Submissions to oppose grant of distribution licence to TPC.
30. RInfra also apparently had made oral and written submissions before MERC, about its objections to the grant of distribution license to TPC.

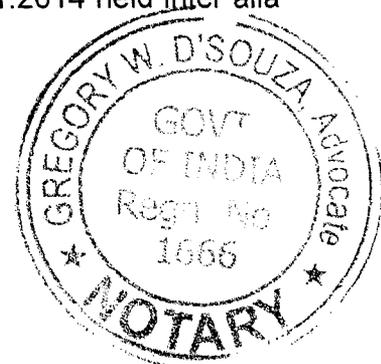


31. Thereafter, on the intervening night of 14<sup>th</sup>/15<sup>th</sup> August 2014, MERC uploaded the Order dated 14<sup>th</sup> August 2014 passed in the Case No. 90 of 2014 filed by TPC, whereby Distribution Licence has been granted by MERC to TPC to supply electricity in the area of supply proposed by TPC for a period of 25 years from 16<sup>th</sup> August 2014, as specified therein. MERC also uploaded the Order dated 14<sup>th</sup> August 2014 passed in the Case No. 37 of 2014 filed by BEST, whereby the reliefs prayed for by BEST were denied by MERC.
32. Rlnfra, being aggrieved and dissatisfied with the Order dated 14.8.2014 passed by MERC in the Case No. 90 of 2014, filed on or about 18.8.2014 the Appeal No. 201 of 2014 against MERC and TPC, to impugn in part the said Order dated 14.08.2014 passed by MERC. BEST craves leave to refer to and rely upon the proceedings and record of the Appeal No. 201 of 2014 filed by Rlnfra before Hon'ble APTEL, if necessary.
33. The Hon'ble APTEL by Order dated 20.08.2014 admitted the Appeal No. 201 of 2014 filed by Rlnfra.
34. The Hon'ble APTEL further by Order dated 04.09.2014 passed in the I.A. No. 314 of 2014 in the Appeal No. 201 of 2014 filed by Rlnfra, granted limited interim relief by staying the para 7.1.7 (d) of the Order dated 14.08.2014 passed by MERC in the Case No. 90 of 2014.
35. Meanwhile, BEST, being aggrieved and dissatisfied with the Order dated 14.08.2014 passed by MERC in the Case No. 90 of 2014 filed by TPC for



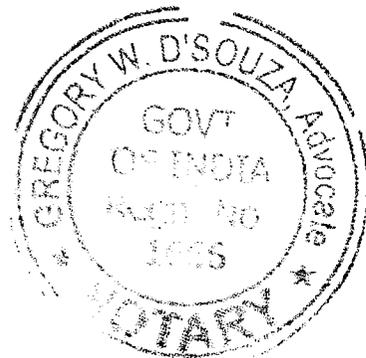
grant of distribution licence, filed on or about 03.09.2014 the Appeal No. 216 of 2014 to challenge and seek setting aside of the Impugned Order dated 14.08.2014 passed by MERC in the Case No. 90 of 2014, insofar as the said Impugned Order related to grant of distribution license in area already served by BEST. BEST also filed an I.A. No. 335 of 2014 in the Appeal No. 216 of 2014 for inter alia stay of the Order dated 14.08.2014 passed by MERC in the Case No. 90 of 2014. The Hon'ble APTEL by Order dated 25.09.2014 made in said I. A. No. 335 of 2014, held that instead of passing any order in the I. A., it would be better to hear the main Appeal by fixing an early date for final disposal.

36. The Hon'ble APTEL by Order dated 12.09.2014 admitted the Appeal No. 216 of 2014 filed by BEST.
37. Also, BEST has separately filed on or about 26.09.2014 another Appeal, being the Appeal No. 243 of 2014 before the Hon'ble APTEL against MERC and others, to impugn and seek setting aside of the Order dated 14.08.2014 passed by MERC in the Case No. 37 of 2014 filed by BEST.
38. The Hon'ble APTEL by Order dated 30.10.2014 admitted the Appeal No. 243 of 2014 filed by BEST.
39. Thereafter, the Appeal No. 216 of 2014 filed by BEST was decided by the Order and Judgement dated 25.11.2014 passed by the Hon'ble APTEL. The Hon'ble APTEL by the Order and Judgement dated 25.11.2014 held inter alia



that the Appeal No. 216 of 2014 was not maintainable, and that the points raised to the merits in the Appeal No. 216 of 2014 will be considered in the Appeal No. 243 of 2014 pending before the Hon'ble APTEL. The Hon'ble APTEL, consequently, dismissed the Appeal No. 216 of 2014 as not maintainable, by the said Judgement dated 25.11.2014. The Hon'ble APTEL by the Order and Judgment dated 25.11.2014 also held that the Noida Power Case [i.e., a full bench decision of Hon'ble APTEL reported as 2011 ELR (APTEL) 686] would not apply to the Appeal No. 216 of 2014 filed by BEST or the case of BEST.

40. Thereafter, on or about 24.12.2014, BEST filed Review Petition No. 5 of 2015 in the Appeal No. 216 of 2014 before Hon'ble APTEL, for review of the Order and Judgment dated 25.11.2014 passed by Hon'ble APTEL in the Appeal No. 216 of 2014. BEST states that the Order and Judgement dated 25.11.2014 was sought to be reviewed before Hon'ble APTEL by the said Review Petition, on account of errors or mistakes apparent on the face of the record, and which have led to failure or miscarriage of justice.
41. Thereafter, the Hon'ble APTEL by Order dated 12.03.2015 made in the Review Petition No. 5 of 2015 in the Appeal No. 216 of 2014, dismissed the said Review Petition.
42. BEST, being aggrieved and dissatisfied by the Order dated 12.03.2015 passed by the Hon'ble APTEL in the Review Petition No. 5 of 2015 in the Appeal No. 216 of 2014, filed on or about 10.04.2015 the Civil Appeal No.



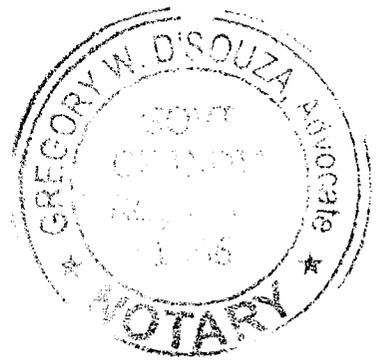
4074 of 2015 before the Hon'ble Supreme Court of India, to impugn the said Order dated 12.03.2015.

43. BEST also, being aggrieved and dissatisfied by the Judgment dated 25.11.2014 passed by the Hon'ble APTEL in the Appeal No. 216 of 2014, filed on or about 10.04.2015 the Civil Appeal (Diary) No. 11771 of 2015 before the Hon'ble Supreme Court of India, to impugn the said Judgment dated 25.11.2014.
44. Thereafter, the Hon'ble Supreme Court of India by common Order dated 15.05.2015 made in the said Civil Appeal No. 4074 of 2015 and the Civil Appeal (Diary) No. 11771 of 2015, admitted both the Appeals, subject to the question of limitation being kept open.
45. In this context, BEST states that the above (i) Appeal No. 243 of 2014 is pending hearing and final disposal before the Hon'ble APTEL, (ii) Civil Appeal 4074 of 2015 and Civil Appeal (Diary) No. 11771 of 2015 are pending hearing and final disposal before the Hon'ble Supreme Court of India. Also, as such BEST reiterates that the issues arising and / or relief sought in these Appeals are material and relevant to the issues arising in the present matter.
46. Without prejudice to the aforesaid Appeal No. 243 of 2014, Civil Appeal 4074 of 2015 and Civil Appeal (Diary) No. 11771 of 2015, BEST is now dealing with the present matter, as hereunder.



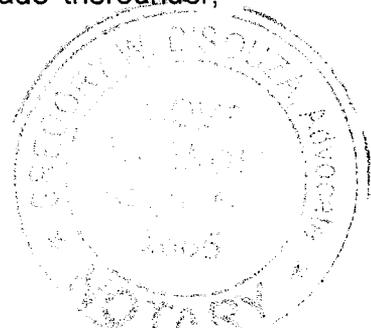
A) BEST states that the Revised Network Rollout Plan submitted by TPC under the present Case No. 182 of 2014, is necessarily required to be examined under a Technical Validation Session (i.e. TVS), thereafter notified to the general public for objections, if any and then decided after a public hearing, by MERC, in compliance with the letter and spirit of Section 15 of the Electricity Act, 2003 and the applicable Rules and Regulations made thereunder. This is moreso as the present Case No. 182 of 2014 is not only a continuation of, but also a part and parcel of, the earlier Case No. 90 of 2014 filed by TPC for grant of distribution licence. As such, BEST humbly submits that the above proceedings be adopted by MERC to decide the present Case No. 182 of 2014.

B) BEST states that the Revised Network Rollout Plan submitted by TPC under the present Case No. 182 of 2014 is (i) inadequate, (ii) not conducive to level playing field and genuine competition, and (iii) not addressing / complying the directions issued under (a) the Order dated 14.08.2014 made in Case No. 90 of 2014 by MERC, and / or (b) the Judgement dated 28.11.2014 passed in Appeal Nos. 246 and 229 of 2012 by Hon'ble APTEL. BEST further states that the said Revised Network Rollout Plan submitted by TPC is not only in contravention of the Universal Service Obligation, but also likely to result in 'cherry-picking' of consumers by TPC. BEST also states that the said Revised Network Rollout Plan submitted by TPC does not meet with the requirements under the Electricity Act, 2003, and the Rules and Regulations



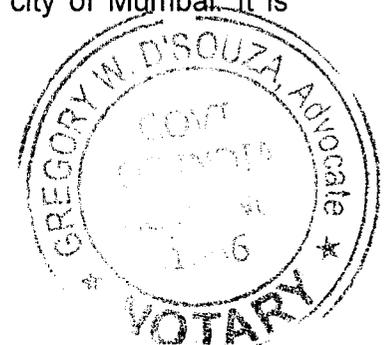
made thereunder, for due and lawful distribution of electricity by a distribution licensee.

- C) In particular, BEST submits that the said Revised Network Rollout Plan submitted by TPC :
- a) is not cost effective,
  - b) does not provide equal access to all categories of consumers, and specifically for low-end residential consumers consuming 0-300 units of electricity, including in slum areas,
  - c) does not create a level playing field,
  - d) is not optimal for the purpose of meeting the Universal Service Obligation in a time bound manner.
- D) BEST states that the said Revised Network Rollout Plan submitted by TPC does not provide for adequate or timely rollout of its distribution network in its licensed area which overlaps the area of supply of BEST. BEST further states that said Revised Network Rollout Plan submitted by TPC has failed and neglected to specify the time period for creation and roll out of the entire and independent distribution network of TPC in its licenced area of supply for island City of Mumbai and suburban Mumbai. BEST submits that the said Revised Network Rollout Plan submitted by TPC merely provides for creation and roll out of an independent distribution network in a phased manner over an indefinite period. BEST further submits that such phased development of distribution network in unspecified timelines, is contrary to and in violation of the Electricity Act, 2003, and the Rules and Regulations made thereunder,



and in particular of the indispensable requirement of the Universal Service Obligation. BEST also submits that such phased development of distribution network in unspecified timelines, is likely to result in selective development of distribution network for 'cherry picking' of lucrative consumers.

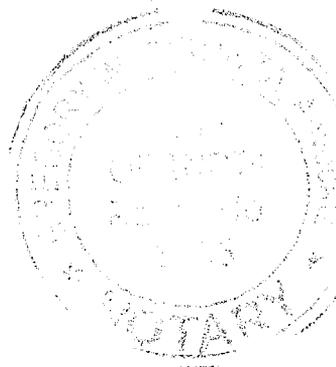
- E) BEST states that the said Revised Network Rollout Plan submitted by TPC is phased over a period of 7 years (i.e. FY 2014-15 to FY 2020-21). In this regard, it is pertinent that the present maximum demand for the island city of Mumbai and suburban Mumbai is about 3,450 MW (inclusive of maximum demand of 900 MW catered by BEST in the island city of Mumbai). However, TPC, in its said Network Rollout Plan, has considered a limited potential load target of only 1065 MW (inclusive of maximum demand of only 195 MW for the island city of Mumbai) for the computation of its entire and independent distribution network for the entire licenced area of supply of TPC. Also, in the said Revised Network Rollout Plan submitted by TPC, there is not any specification of the projected load demand for consumers (category wise) as well as any projection of sales (year-wise) on creation of the backbone distribution network by TPC during the aforesaid period of 7 years.
- F) Furthermore, BEST states that TPC in its said Revised Network Rollout Plan has planned only an addition of installed capacity of 540 MVA with 22 No. of DSS in its entire licenced area, in phases over a period of 7 years. However, such installed capacity is neither adequate to even meet 50% of the total projected load demand in the entire licenced area of TPC nor even sufficient to meet 50% of the current load demand of the island city of Mumbai. It is



pertinent that although the said Revised Network Rollout Plan submitted by TPC specifies the year-wise establishment of DSSs / CSSs, but it does not at all specify the geographical location of the proposed DSSs / CSSs. It is significant that the geographical location of the proposed DSSs / CSSs, is indispensably necessary in the said Revised Network Rollout Plan submitted by TPC, to disclose and substantiate compliance with the Universal Service Obligation by TPC.

G) Also, BEST states that the said Revised Network Rollout Plan submitted by TPC merely makes an unclear and vague statement about the priority to be given by TPC for providing distribution network in slum areas in its entire area of supply. However, even such provision of distribution network in slum areas by TPC, is only with a caveat of availability of existing LT distribution network of TPC. BEST submits that the said Revised Network Rollout Plan submitted by TPC has failed and neglected to even comply or meet with the requirements borne out from the Order dated 14.08.2014 made by MERC in the Case No. 90 of 2014, particularly :

- i) the manner in which supply will be provided to the lowest sections of the society to avoid "cherry picking"; and
- ii) the manner of creation and roll-out of distribution lines in specific areas, so that the development of distribution network by TPC in its entire licenced area is done in a systematic and time-bound manner.



47. In the circumstances and for reasons aforesated, BEST humbly submits and prays that the said Revised Network Rollout Plan submitted by TPC deserves and should be discredited, and the present Petition filed by TPC ought to and should be dismissed, by MERC with costs.



(R. D. Patsute)  
Chief Engineer (Regulatory)  
For Brihanmumbai Electric Supply  
& Transport Undertaking

Place: Mumbai

Date: 29 JULY 2015

