

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 106 of 2016

Dated: 24 November, 2016

**CORAM: Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

**In the matter of
Petition of Development Commissioner cum Chairperson, SEEPZ Special Economic
Zone Authority for Specific Conditions of Distribution License for SEEPZ SEZ,
Mumbai to undertake distribution of power within the SEZ area through network of
existing Licensee till its own distribution network is developed**

Development Commissioner : Petitioner
SEEPZ SEZ, Mumbai

V/s

Reliance Infrastructure Ltd. (RInfra) : Respondent No.1
The Tata Power Company Ltd. (TPC) : Respondent No. 2

Representative of the Petitioner : Shri Ajay Porwal (Rep.)
Ms. Bhakti Vyas (Adv.)

Representative of the Respondent No.1 : Shri Ghanshyam Thakkar (Rep.)

Representative of the Respondent No.2 : Ms. Deepa Chavan (Adv.)

Daily Order

Heard the Advocate/Representatives of the Petitioner and Respondents.

1. Representatives of the Petitioner reiterated the submissions in its Petition and stated that:

- i. Development Commissioner, SEEPZ SEZ is a Deemed Distribution Licensee as per the amendment to Section 14 of the Electricity Act, 2003 (EA 2003).
- ii. As per the directions of the Commission in Order dated 13 February, 2015 in Case No. 126 of 2014, the Petitioner has studied the feasibility and its preparedness for undertaking the business of distribution in the SEEPZ SEZ area and has now approached the Commission to specify Specific Conditions of Distribution Licence for SEEPZ SEZ to undertake distribution of power within the SEZ area through the network of the existing Licensees till its own distribution network is developed.
- iii. This would help the SEZ units to get power at a cheaper rate.
- iv. RInfra in its Reply has relied on the Commission's Order dated 11 August, 2011 in Case No. 8 of 2011 to contend that the Petitioner cannot be allowed to use its existing network. However, this Order is not relevant as SEEPZ SEZ, being a Deemed Distribution Licensee, is not seeking a Distribution Licence but only seeking permission to use the existing Licensees' network till its own network is developed.

2. RInfra stated that:

- i. There is no dispute on the Deemed Distribution Licensee status of the Petitioner. However, under 6th proviso to Section 14 of the EA 2003, any Distribution Licensee in the area of the incumbent Licensee has to establish its own distribution network.
- ii. The Commission, while dealing with the Distribution Licence Application of Lanco InfraTech in Case No. 8 of 2011, has held that the Order dated 15 October, 2009 in Case No. 50 of 2009 is to be read with the Judgment of Supreme Court in Civil Appeal No. 2898 of 2006. The ratio of that Judgment is specific to the facts of that case, and the Order in Case No. 50 of 2009 is confined to the case of TPC and RInfra.
- iii. The Petitioner is wrongly relying upon the Electricity (Amendment) Bill, 2014, which is not in force.
- iv. In view of the above, the Petitioner's prayer to use the existing network of RInfra cannot be granted.

The Commission asked regarding the applicability of cross-subsidy surcharge in case the Petitioner uses RInfra's network under Open Access. The Commission also asked for RInfra's views on the applicability of ATE Judgment dated 28 November, 2014 in Appeal No. 246 of 2012. RInfra stated that it would file its submission addressing these issues.

3. TPC stated that:

- i. There is no dispute on the Deemed Distribution Licensee status of the Petitioner. However, as there is a separate procedure for issuance of Specific

Conditions of Distribution Licence under Section 16 of EA, 2003, the additional prayer seeking permission for using the existing Licensees' network should not be combined and needs to be sought in separate proceedings.

- ii. The Petition is not complete as it lacks details of the distribution network to be developed by the Petitioner, its time frame and other specific details such as power procurement, forecast of sales, revenue, funding arrangement, etc. Hence, TPC is not able to make its submission on the merits of the Petition.
 - iii. The Petition states that the incumbent Licensees do not claim various fiscal benefits/ tax benefits available under the SEZ Act, 2005. Hence, the SEZ units are deprived of cheaper tariff. The Petitioner needs to provide clarity on the issue.
 - iv. TPC would file its preliminary submissions on the maintainability of the Petition.
4. In response, the Petitioner stated that it would provide the necessary details. The Petitioner further clarified its position on combining the two prayers and stated that, after obtaining the Specific Conditions of Distribution Licence with own network development requirement, it would have been difficult to seek permission to use the existing Licensees' network.
 5. The Commission enquired about any similar case where the SEZ developers are using existing Licensee's network, particularly in cases such as the SEEPZ area which was an export Zone prior to the EA, 2003. The Petitioner stated that it would check and submit the details.
 6. The Commission observed that there are various issues and possibilities such as existing legal provisions, applicable charges if Open Access is permitted, options such as SEEPZ SEZ acquiring the distribution assets of the existing Licensees, corresponding commercial settlements, etc. which need to be discussed between the parties. This would bring some common understanding among the parties before further proceedings are conducted.
 7. The Parties are directed to make their submissions addressing the issues raised at the hearing. The submissions should be filed within one month with copies served to all parties, the responses to which may be filed within two weeks thereafter.

Next date of hearing shall be communicated by the Secretariat of the Commission.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member