

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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In the matter of
Investigation of Reliance Infrastructure Ltd. Distribution Business (RInfra-D) under
Section 128 of the Electricity Act, 2003

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

ORDER

Dated: September 8, 2009

The Government of Maharashtra (“GoM”) has vide its letter dated June 25, 2009, issued directions to the Commission under Section 108 of the Electricity Act, 2003 (“EA 2003”) to inter alia investigate whether M/s. Reliance Infrastructure Ltd., has discharged its duties as envisaged in EA 2003 in the most economical and efficient manner. The relevant extracts of the aforesaid letter is as follows:

“Therefore, under the powers delegated under Section 108 read with Section 86(2), Government hereby directs Maharashtra Electricity Regulatory Commission to investigate as to whether M/s. Reliance Infrastructure Ltd. has discharged its duties as envisaged in the Act in the most economical and efficient manner so as to result in unnecessary avoidable burden on the consumers of that area and taken such further action as may be considered necessary. The said investigation shall be carried out considering the above points and any other relevant points and any other relevant point in that context.

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The Government of Maharashtra also directs Maharashtra Electricity Regulatory Commission to take emergent steps as it may deem fit, relating to policy of Government of Maharashtra of protecting consumers interest in a monopoly situation, as may be necessary to ensure that no unreasonable and unjustified bills are collected in the intervening period in which this investigation is in progress.”



2. Accordingly, the Commission has submitted its Report titled “A Report on Reliance Infrastructure Distribution Business” to the GoM vide its letter dated July 15, 2009. The Report submitted to the GoM states that the Commission has reasons to believe that there is a need to order an investigation into the power purchase transactions, accuracy of the electronic meters installed by RInfra-D, the steep increase in capital expenditure being undertaken by RInfra-D and related books of accounts. In this context, the Commission has powers under Section 128 of the EA 2003 to conduct an investigation into the functioning of the licensee and Generating Company. Section 128 of the EA 2003 provides as under:

Investigation of certain matters

“128. (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of this Act or rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Appropriate Commission, cause an inspection to be made, by one or more of his officers, of any licensee or generating company and his books of account; and the Investigating Authority shall supply to the licensee or generating company, as the case may be, a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the licensee or generating company, as the case may be, to produce before the Investigating Authority directed to make the investigation under subsection (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and



information relating to the affairs of the licensee or generating company, as the case may be, as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify

(4) Any Investigating Authority, directed to make an investigation under subsection (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the licensee or generating company, as the case may be, in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Appropriate Commission to cause an inspection to be made, and may, in any other case, report to the Appropriate Commission on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission, seems reasonable, by order in writing-

(a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or

(b) cancel the licence; or

(c) direct the generating company to cease to carry on the business of generation of electricity.”

(7) The Appropriate Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Appropriate Commission may specify the minimum information to be maintained by the licensee or the generating company in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by licensee or the generating company in that connection and all



other matters incidental thereto as are, in its opinion ,necessary to enable the Investigating Authority to discharge satisfactorily its functions under section.

Explanation. - For the purposes of this section, the expression “licensee or the generating company” shall include in the case of a licensee incorporated in India-

- (a) all its subsidiaries formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and*
- (b) all its branches whether situated in India or outside India.*

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the licensee or the generating company, as the case may be, and shall have priority over the debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue.”

As regards investigation of accuracy of meters installed by RInfra-D and to ensure that the electronic meters are well calibrated, the Commission has appointed NABL accredited M/s Institute for Design of Electrical Measuring Instruments (IDEMI), MSME-Technology Development Centre, Govt. of India, Mumbai, vide its letter MERC/TEC/TMT/1007/6164/1430 dated July 24, 2009 for undertaking the meter testing activity separately which is expected to be undertaken in the next five months duration.

3. In view of the foregoing and broad analysis of RInfra-D’s business operation, the Commission is satisfied that there is a case to investigate the operations and books of RInfra-D under Section 128 of EA 2003 in respect of following broad areas, where RInfra-D has failed to comply with the provisions of EA 2003 and Regulations mentioned therein:

- a) **Power Purchase Cost:** Despite the statutory provision under Section 86(1) (b) of the EA 2003 requires “agreements for purchase of power” to be regulated, RInfra-D has till date not intimated to the Commission regarding such agreements that it has executed. In fact, as recorded in the Commission’s Order dated June 15, 2009, RInfra-D has yet not executed any such agreement with Tata Power Co. Ltd. Even the Supreme Court has in its judgment dated May 6, 2009 in Civil Appeal NOS. 3510 - 3511 OF 2008, 4269 OF 2008, 3593 OF 2008, 6098 OF 2008, 6099 OF 2008, observed as under:



“Regulation 23 mandates the distribution of licenses to prepare long term power procurement plan which should fulfill the requirements specified thereunder.

We may now notice that Regulation 24 provides for approval of power purchase agreement/arrangement.”

“The proposal of TPC (G) that RInfra should enter with it a long term agreement assumes significance.”

“The agreement of distribution (PPA) being subject to approval, indisputably the Commission would have the public interest in mind.”

Each time the Commission has asked RInfra-D of such non-compliance, the later instead insisted on obtaining a much higher quantum of power based on its consumer demand which has been rejected by TPC keeping in view its continuing obligation to its own consumers and also those of BEST. No consensus was therefore reached with respect to the said PPA between TPC-G and RInfra.

Other than a PPA with its own generation division, R-Infra-D has yet not submitted any PPA for approval of the Commission.

This is one of the main causes for significant increase in the power purchase cost of R-Infra-D, which is being borne by its retail consumers for no fault of theirs. There is no doubt that RInfra-D has failed to comply with the following statutory provisions:-

i. Regulation 8.3.3 of Maharashtra Electricity Regulatory Commission (General Conditions of Distribution Licence) Regulations, 2006:-

“8.3.3 After seeking prior approval of the Commission, the Distribution Licensee shall purchase electricity from generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the area of supply and for meeting the obligations under the Licence and under the provisions of the Act, provided that such procurement shall be made in an economical manner and under a transparent power purchase and procurement process which shall be required to be in

accordance with the regulations, guidelines, directions made by the Commission from time to time.”

ii. Regulation 24 of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 :-

“Regulation 24. Approval of power purchase agreement / arrangement

“24.1 Every agreement or arrangement for long-term power procurement by a Distribution Licensee from a Generating Company or Licensee or from other source of supply entered into after the date of notification of these Regulations shall come into effect only with the prior approval of the Commission:

Provided that the prior approval of the Commission shall be required in accordance with this Regulation 24 in respect of any agreement or arrangement for procurement of electricity by the Distribution Licensee from a Generating Company or Licensee or from any other source of supply on a standby basis:

Provided further that the prior approval of the Commission shall also be required in accordance with this Regulation 24 for any change to an existing arrangement or agreement for long-term power procurement, whether or not such existing arrangement or agreement was approved by the Commission.”

The Commission is therefore satisfied of the necessity to investigate into the procedure adopted by R-Infra-D and the reasons for procurement or non-procurement of power through long term power purchase agreements and related transactions as reflected in the books of accounts maintained by RInfra-D to ensure the optimal impact on cost of supply and tariff charged by RInfra-D. The Commission is mandated under Section 86(1) (b) of the EA 2003 to regulate electricity purchase and procurement process of RInfra-D including the price at which electricity shall be procured from generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. This is to protect the interests of consumers.



b) **Capital Investment:** RInfra-D has been submitting their investment plan with details of its proposed capital expenditure projects to the Commission for approval. The investment plan is required to be a least cost plan for undertaking investments on strengthening and augmentation of the distribution system of the R-Infra-D. The investment plan is required to show the need for the proposed investments, alternatives considered, cost/ benefit analysis and other aspects that may have a bearing on the wheeling charges. The prudence of the proposed expenditure and estimated impact on tariff is required to be examined by the Commission. In accordance with the provisions of Regulation 59 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, the Commission has accorded in-principle approvals to the investment plans submitted by R-Infra-D from time to time. RInfra-D has, along with its application for determination of tariff / annual performance review, was required to provide, details showing the progress of capital expenditure projects, together with such other information, particulars or documents as the Commission may require to assess such progress. Though, certain of such information has been provided, due to the steep increase in the capital expenditure by RInfra-D, there is a need to investigate and examine/undertake scrutiny of the actual scope, objective and procedure adopted for procurement of capital equipments and its installation for capital investment schemes undertaken by RInfra-D and evaluation of benefits stated at the time of in-principle approval vis-à-vis the actual benefits accrued to the operation of RInfra-D. This investigation will lead to the cause(s) as to why addition to the asset base of RInfra-D is neither commensurate with the increase in energy sale or increase in MW demand served by RInfra-D nor reflected in the performance of RInfra-D. Therefore, the prudence and rationale of this disproportionate sharp increase in the capital investment requires an investigation to be carried out under Section 128.

c) **Expenses of Regulated Business vis-à-vis Other Business:** In the past proceedings before the Commission under Section 64 of the EA 2003, stakeholders had raised the issue that RInfra-D is mandated under Section 51 to maintain separate accounts for “other businesses”. The other statutory provisions that require RInfra-D to do so, are as follows:-

- **Regulation 8.4 of Maharashtra Electricity Regulatory Commission (General Conditions of Distribution Licence) Regulations, 2006 :-**



“8.4.2 The Distribution Licensee shall, in respect of the Licensed Business and in respect of any Other Business engaged in by the Distribution Licensee:

8.4.2(a) keep such accounting records as would be required to be kept in respect of each such business so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to the Licensed Business are separately identifiable in the books of the Distribution Licensee, from that of Other Business in which the Distribution Licensee may be engaged;

8.4.2 (b) prepare on a consistent basis from such accounting records and deliver to the Commission periodic Accounting Statements supported by Auditor’s certificates, which shall, unless otherwise directed by the Commission, show separately the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either charged from the Licensed Business to any Other Business or from any Other Business to the Licensed Business, as the case may be, together with a description of the basis of that charge; or determined by apportionment or allocation between the Licensed Business and any Other Business of the Distribution Licensee together with a description of the basis of the apportionment or allocation.”

Despite the above provisions as well as other provisions under MERC Tariff Regulations, RInfra-D has not been submitting separate Accounts for its regulated and unregulated business, and the Commission has had to rely on the consolidated Accounts of RInfra, which includes the expenses and revenue from other businesses, such as EPC business, electricity business in other States, infrastructure projects like Mumbai Metro, etc. The Commission has hence, sought and obtained allocation statements duly audited by the Company’s Auditors, as well as a reconciliation statement between the consolidated Audited Accounts and the individual regulated businesses, at the time of determination of Aggregate Revenue Requirement (ARR) and tariff. The practical view has been taken, since the statutorily time bound process of tariff determination cannot be kept in abeyance till such time the separate Accounts are available and submitted.

Although, RInfra-D has, during past tariff determination processes submitted a brief affidavit stating therein that it does not have any other income, it is necessary, in view of the steep rise in the costs of RInfra-D under various expense heads to undertake a detailed item-by-item examination of the various expense and revenue heads, to ensure that expenses of other businesses are not being passed on to the consumers under regulated business, and also that the complete and due income of the regulated business is being retained under the regulated business, as also to ensure that the assets being reported under regulated business are actually physically existing and are being used for the benefit of the regulated business. While doing so, the basic accounting records including basic vouchers would need to be examined and investigated into. Similarly, there is a need to investigate and examine/undertake scrutiny of accounts so as to find out whether Mumbai electricity consumers are being burdened with or saddled with any expenses incurred in RInfra-D's other businesses.

Therefore, an Investigating Authority is required to be appointed under Section 128 of EA 2003 to investigate in the matter on the above main three areas.

4. Hence, the Commission hereby appoints and directs Administrative Staff College of India (ASCI) , Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad - 500 082, to act as an "Investigating Authority" to investigate the affairs of RInfra-D as per the provisions of Section 128 of EA 2003 on the aforesaid three broad areas, which would include following broad tasks, inter-alia:

a. The Investigating Authority shall scrutinise Petitions, Record of Proceedings/Minute of meetings and data submitted to the Commission by RInfra-Distribution Business (including Petitions and data submitted by the erstwhile BSES Ltd and Reliance Energy Limited) during the period from 1st April 2003 to 31st March 2009 so as to relate the same to the actual results of the investigation, and to report to the Commission regarding discrepancy, found if any.

b. Considering the above, the Investigating Authority shall verify the physical vouchers for each transaction/actual expenses recorded in the books of accounts related to the investigation areas referred to above for the aforesaid period (i.e. Period from 1st April 2003 to 31st March 2009), so as to examine the correctness and appropriateness of the transactions reflected in the books of accounts.



c. Examine the procedure adopted for procurement of power and its related transactions reflected in the books of accounts maintained by RInfra-D to ensure the optimal impact on cost of supply and tariff being charged by RInfra-D to its retail consumers.

d. Examine/undertake scrutiny of actual scope, objective and procedures adopted for procurement of equipments for capital investment schemes undertaken by RInfra-D and evaluation of benefits stated at the time of in-principle approval vis-à-vis the actual benefits accrued in the operations of RInfra-D.

e. Undertake detailed item-by-item examination of the various expense and revenue heads, to examine that expenses of other businesses are not being passed on to the consumers under regulated business, and also that the complete and due income of the regulated business is being retained under the regulated business, examine as to whether the assets being reported under regulated business are actually physically existing and are being used for the benefit of the regulated business. While doing so, the basic accounting records including basic vouchers shall be examined.

5. The investigating Authority shall endeavour to submit its Report to the Commission within 16 weeks from the date of its appointment hereunder.

6. The Commission hereby directs RInfra-D to cooperate with the Investigating Authority i.e., Administrative Staff College of India, Bella Vista, Raj Bhavan Road, Khairatabad, Hyderabad - 500082, in its investigation and make available all the required data as desired.



7. The Investigating Authority shall act as per Section 128 of the EA 2003, as directed by the Commission and authorised by the Commission to do so under this Section including whenever necessary employ any auditor or any other person for the purpose of assisting it in the investigation.

Sd/-
(V.L.Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/
(V. P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC