

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 7 of 2011**

**In the matter of**

**Application of Torrent Power Limited for grant of Distribution Licence in the South  
Zone of RInfra-D area**

Shri V.P. Raja, Chairman  
Shri Vijay L. Sonavane, Member

**Torrent Power Limited**

Registered office:

Torrent House,

Off Ashram Road,

Ahmedabad - 380 009,

Gujarat, India

....Applicant

**ORDER**

**Dated: August 11, 2011**

**Background**

The Commission published an ‘Invitation for Expression of Interest for Distribution of Electricity in the Suburbs of Mumbai’, on October 6, 2010. This was in the backdrop of the date of expiry on August 15, 2011 of the licence of Reliance Infrastructure Limited (RInfra) to distribute electricity in the suburbs of Mumbai.

2. In response, by November 4, 2010, the Commission received Expressions of Interest (EoI) from the following eight applicants, namely, Maharashtra State Electricity Distribution Company Limited; Torrent Power Limited; DPSC Limited; Lanco Infratech Limited; GMR Energy Limited; Indiabulls Power Limited; Tata Power Company Limited; and Enzen Global Solution Pvt. Limited. Subsequently the Commission advised all these applicants through separate letters to submit applications for grant of Distribution Licence before the Commission in accordance with the applicable Regulations of the Commission and the provisions contained in the Electricity Act 2003 (hereinafter referred to as the “2003 Act”).

3. Four out of the above eight applicants, namely, Lanco Infratech Limited (LITL), Indiabulls Power Limited (IPL), Torrent Power Limited (TPL) and Maharashtra State Electricity Distribution Company Limited (MSEDCL) applied for the Distribution Licence.
4. TPL filed an application on January 17, 2011, registered as Case 7 of 2011, as per the provisions of Section 14 read with Section 15 of the 2003 Act and in accordance with the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006. The prayers set out in the application are as follows:-
  - i. *“Admit the Application as submitted herewith;*
  - ii. *Grant of Distribution Licence in East Zone and South Zone of R-Infra-D area in accordance with Section 14 and 15 of Electricity Act, 2003 read with MERC(General Conditions of Distribution Licence) Regulations, 2006;*
  - iii. *Allow addition/alternation/changes/modification to the application at a future date;*
  - iv. *Allow any Other Relief, Order or direction which the Hon’ble Commission deems fit to be issued.*
  - v. *Condone any inadvertent Omission/error/rounding off differences/shortcomings”.*
5. The application submitted by TPL was analysed for data gaps. The Commission communicated these data gaps through letter dated February 2, 2011. The Technical Validation Session (TVS) for TPL’s application was held in the presence of authorised Consumer Representatives on February 23, 2011 at the Commission’s office. TPL submitted its response to the data gaps and additional queries raised during the TVS on April 5, 2011.
6. Initially, TPL sought a licence to distribute electricity in the East Zone and South Zone of RInfra-D supply area in its application dated January 17, 2011. Subsequently on April 5, 2011, TPL revised its proposed area of supply in its application and sought a licence to distribute electricity only in the South Zone of RInfra-D supply area.

#### **Admission of TPL’s application and Public Notice**

7. After having examined the data gaps, and holding of Technical Validation Session (TVS), the Commission admitted TPL’s application for Grant of Distribution Licence on May 5, 2011 and directed TPL to issue a Public Notice on or before May 10, 2011 in compliance with Section 15(2) of the 2003 Act read with Regulation 5.3 of MERC (General Conditions of Distribution Licence) Regulations, 2006.

8. TPL informed the Commission that it published a notice on May 10, 2011, of its application for grant of Distribution Licence in two (2) daily English newspapers (Financial Express & Business Standard) and in two (2) daily Marathi newspapers (Sakal and Navakal) in the proposed area of supply. A copy of the same was made available on the Commission's as well as TPL's websites. TPL invited suggestions and/ or objections on its application within thirty (30) days from the date of publication of notice.
9. In accordance with Section 15 (2) (ii) of the 2003 Act, and in order to ascertain whether the Central Government could have any objection to the grant of licence, in the event the proposed area of supply included the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Central Government for defence purposes, the Commission issued letters to the concerned Ministries of the Central Government (Ministry of Defence, Ministry of Civil Aviation, and Ministry of Shipping) inviting objection(s), if any, with reference to the application of TPL for grant of Distribution Licence. The Commission did not receive any objection in this respect within 30 days from the date of the issuance of the said letters.

### **Objections raised against the application of TPL**

10. In response to the Public Notice published by TPL of its application for grant of Distribution Licence, the Commission received several objections from various stakeholders and members of the public against the application submitted by TPL. These objections have been classified broadly under the following heads depending on the reason for which such objections have been raised:-

#### ***Objection 1: TPL does not have experience as distribution licensee***

Some of the consumers have objected that TPL does not have enough experience in distribution of electricity. They expressed apprehension that TPL may not have required manpower for distribution operations. Objectors wondered as to how TPL would manage to arrange for offices and staff to handle consumer complaints.

#### ***TPL's response***

TPL responded that it is currently carrying out distribution operations in Ahmedabad, Gandhinagar, Surat, Bhiwandi, Agra and Dahej and has a critical mass of required manpower. TPL has substantially improved the performance of the Surat Electricity Company and the Ahmedabad Electricity Company after acquiring management control of these companies in 1996 and 1997 respectively. The area of distribution, maximum demand and annual sales of the two licence areas are 52 sq km and 356 sq km; 561 MW and 1,152 MW; and 3,085 MUs and 5,444 MUs; respectively. Performance parameters like AT&C loss of less than 9% and power reliability of more than 99.85% are a testimony to the capabilities of TPL in the distribution sector. It may be pertinent to note

that both are urban utilities in Ahmedabad, Gandhinagar and Surat and is comparable with the proposed area of distribution licence.

All new ventures require organization of supplementary manpower. In this regard, TPL has demonstrated its ability and prowess in timely deployment of manpower in Bhiwandi, Agra and Dahej. TPL also mentioned that it would acquire and create offices to handle consumer complaints.

#### ***Commission's view***

The Commission does not find any merit in the contention that TPL does not have any experience of electricity distribution, as TPL has that experience in other parts of the country. The Commission notes TPL's response about arranging manpower and facilities. Therefore, the Commission does not find any merit in this objection.

#### ***Objection 2: TPL has not met the requirement of minimum area of supply and it is creating monopoly by applying for exclusive licence which is against the spirit of the 2003 Act***

The objectors highlighted that TPL's application does not comply with minimum area requirements. One objector also contended that TPL is creating monopoly by applying for exclusive licence which is against the spirit of the Electricity Act.

#### ***TPL's response***

MERC has invited expression of interest calling for submission of application for grant of distribution licence in existing licensee's area of supply under section 14 of the Electricity Act, 2003. TPL has applied for the distribution licence considering that it is the only distribution licensee in the proposed area, for which minimum area requirements are not applicable. Section 14 of the Act provides for the appropriate Commission to grant distribution licence to any person to distribute electricity in any area as may be specified in the licence. TPL submitted that it believed that the Hon'ble Commission has required powers under the Electricity Act, 2003 to grant licence for the South Zone of the existing licensee.

TPL has further submitted that it has applied for the South Zone considering the demand of South Zone which is in line with its capability to arrange for long term power at competitive rates.

#### ***Commission's view***

In the area of supply proposed by TPL, RInfra and Tata Power Company Limited (TPC) are incumbent licensees. On the date of expiry of RInfra's licence, TPC will continue to be the incumbent licensee in the same area. TPL submitted that it was seeking "*Exclusive*

*Distribution Licence only for South Zone of R-Infra Area*". An exclusive licence in favour of the Applicant herein cannot be granted as it would either entail reducing the licensed area of supply of the existing incumbent distribution licensee or by carving out the proposed area of supply of the Applicant from the licensed area of supply of the existing incumbent distribution licensee and because the same would be contrary to the overwhelming aspect of "promoting competition" expressly stipulated in the pre-amble of the 2003 Act as well as the same would run contrary to the expression "*grant licence to two or more persons for distribution of electricity*" as expressly stated in the sixth proviso to Section 14 of the 2003 Act which also stipulates that "*there already exists a licensee in the same area for the same purpose*". Thus, the Commission is mandated to follow the object of the 2003 Act stated in the pre-amble as well as the enabling powers vested on the Commission under the sixth proviso of Section 14 of the 2003 Act to grant a licence to two or more persons where there already exists a licensee in the same area for the same purpose. Giving an exclusive distribution licence to the Applicant in the proposed area of supply to the exclusion of the existing incumbent distribution licensee would not be in conformity / consonance with the pre-amble of the enactment as well as the sixth proviso to Section 14 of the 2003 Act. Furthermore, the pre-amble of the 2003 Act requires "protecting interest of consumers" and, therefore, grant of exclusive licence in the area of supply in favour of the Applicant would retard availability of choice to the consumers of the said area which would be contrary to "protecting interest of consumers". Therefore, the Commission finds TPL's prayer for an exclusive licence in the proposed area of supply legally not tenable.

Therefore, if a licence has to be granted to TPL in its proposed area of supply, the issue of grant of licence to more than one person in the same area will arise. In such a situation, the sixth proviso to Section 14 of the 2003 Act, contemplates that an applicant must comply with the additional requirements relating to the Capital Adequacy, Creditworthiness, and Code of Conduct as may be prescribed by the Central Government. The criteria of minimum area of supply are specified in the Explanation to Rule 3 of the said rules by the Central government. It states, "*For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply*". TPL's submission about requirement of minimum area of supply have been analysed in the subsequent portions of this Order (Para 18 to Para 23).

***Objection 3: TPL has applied for an area which is lucrative and has fewer slums which would result in different tariff rates in different area.***

One of the objectors has highlighted that TPL has opted for South Zone of RInfra-D supply area since it is lucrative and has fewer slums. One objector contended that TPL's

application for only a portion of RInfra's area of supply would result in different tariff rates in different parts of present RInfra's area.

***TPL's response***

TPL submitted that the term of the existing licensee would end on August 15, 2011 and the Hon'ble MERC has invited EoIs for fresh distribution licenses. TPL has applied for the South Zone of RInfra-D supply area considering the demand of South Zone which is in line with the capability of TPL to arrange for long term power at competitive rates.

TPL further submitted that a distribution licensee would be permitted fixed percentage of Return on Equity as per MERC Regulations irrespective of the area of operation. Hence, there are no lucrative areas and presence of slums has no bearing on regulated returns, which is the earning potential of the distribution licensee. As submitted in the application, the selection of area is governed by the capability to make long term power arrangements.

***Commission's view***

The Commission deals with tariff related matters under the provisions of its Tariff Regulations in a transparent manner. The Commission allows a Distribution Licensee to recover all costs with the approval; it is also allowed to recover a return on its equity at a regulated rate. However, the objector has not explained as to how existence of different tariff rates could be a ground for disqualifying an applicant from grant of distribution licence. As such, the objection raised has no substance.

***Objection 4: Do new companies have sufficient power arrangement to sustain total area? TPL does not have adequate power supply. TPL would buy expensive power till commissioning of its generation facility in Dahej***

Some respondents have objected that TPL does not have sufficient power procurement arrangement to sustain total area. It would have to buy expensive power till commissioning of its generation facility at Dahej.

***TPL's response***

TPL responded that it has applied for the South Zone of RInfra-D supply area considering the demand of South Zone which is in line with the capability of TPL to arrange for long term power at competitive rates. As outlined in the Information to Bidders document published by Hon'ble Commission, the basic issue in Mumbai's power scenario today is lack of committed sources of long term power at competitive rates. TPL stated that it is offering a long term solution for power starved Mumbai by committing capacity allocation from its own power generation at competitive rates. For the interim period till its own generation is commissioned, TPL has attempted to get power at competitive rates

on bilateral arrangement basis. TPL has arranged for adequate long term power supply for the area for which TPL has applied for distribution licence as outlined in the Business plan submitted to the Hon'ble Commission.

### ***Commission's view***

The Commission notes TPL's response to arrange long term power from its generation sources at competitive rate for consumers of Mumbai. Moreover, the Commission would like to highlight that in a notification issued on December 9, 2010 by the Ministry of Power, Government of India, it was stated that the issue of competitive bidding route for PSUs/CPSUs beyond five years after the implementation of the paragraphs 5.1 and 7.1 of the Tariff Policy was discussed in the meeting of Group of Ministers on Power Sector Issues held on October 29, 2010 and the following decision taken:

*“States should fully migrate to procurement of power by Discoms through tariff based competitive bidding both for public and private sector generation and transmission projects. For the sake of abundant clarity, MoP would issue a clarification regarding the permitted exemptions in the Tariff Policy for the expansion/ upgradation of projects, excluding the hydro sector.”*

Pursuant to the above, the notification stated that generation projects of PSUs/CPSU and transmission projects of STUs/CTU, for which PPA(s)/ TSA(s) have been signed on or before January 5, 2011 are exempted from the tariff based competitive bidding route. Therefore, it will be consumers' interest to stipulate that power procurement by the distribution licensee would have to be done through competitive bidding.

### ***Objection 5: There is no guarantee that power will be supplied at low costs***

Few objectors have apprehended that there is no guarantee that power will be supplied by TPL at low costs as committed in the application filed by TPL. They wondered if TPL would offer lower tariff than RInfra.

### ***TPL's response***

The term of the existing licence would end on August 15, 2011 and the Hon'ble MERC has accordingly invited EoIs for fresh distribution licence. TPL has accordingly applied for distribution licence. Once licence is granted, TPL would be required to submit its ARR and make long term projections related to tariff in compliance with relevant MYT requirements. The tariff is determined by the Hon'ble MERC according to relevant Regulations framed under the 2003 Act. TPL would abide by the tariff determined by the Hon'ble MERC.

TPL has provided information in its application regarding its power purchase arrangement based on preliminary offers on best effort basis under the given circumstances. These have been based on long term power purchase arrangements and demonstrate TPL's intention to supply competitive power in the interests of prospective consumers.

***Commission's view***

The business plan submitted along with the application for grant of licence is an important part of the application, which provides a bird's eye view of the proposed licensed business. However, the assumptions have effects on retail tariff, which the Commission deals with through a separate process under the provisions of its Tariff Regulations. The objector has not explained as to how this objection could be a ground for disqualifying an applicant from grant of distribution licence. Therefore, the Commission believes that such assumptions by TPL, in relation to its business plan submitted for the purpose of grant of licence; do not adversely affect its eligibility for the grant of the licence.

***Objection 6: Costs related to TPL creating its own distribution network would be onerous on consumers***

One objector highlighted that costs related to TPL creating its own distribution network would be onerous on consumers.

***TPL's response***

TPL submitted that it is a well known fact that laying a parallel network in crowded area like Mumbai is not feasible technically. Further, it would impose disproportionate burden on consumers, which is against the intention of the Hon'ble MERC. Hence, TPL has proposed distribution in proposed area of supply by acquisition of existing distribution network. TPL would augment the same in tandem with additional demand.

***Commission's view***

In light of the Commission's views expressed in the context of preceding objections, TPL's application for exclusive licence in the proposed area of supply is not sustainable. Therefore, a licence can be granted to TPL only as a second or subsequent licence in the same area of supply. Under such circumstances, the sixth proviso to Section 14 of Electricity Act, 2003 is crystal clear about the ground conditions of grant of licence. It gives power to the Commission to grant licences to two or more persons to distribute electricity within the same area, but only through their own distribution system. Accordingly, the applicant for distribution licence will have to supply electricity through its own distribution system.

The Commission has had the occasion to examine the opinion dated May 14, 2011 rendered by Shri. Gopal Subramaniam, the Learned Former Solicitor General of India, to the Forum of Regulators. A copy of this opinion as available on the website of the Forum of Regulators was made available to all applicants for grant of licence pursuant to the aforesaid EoI, and uploaded on the website of the Commission. In the opinion, Learned Former Solicitor General of India examined the issue of economic viability of duplicating existing network due to sunk cost associated with it and economies of scale derived from network operation while examining the queries raised as follows:-

- (i) Can a licence be granted to a new entrant/applicant to distribute electricity within the area of an existing distribution licensee without requiring/mandating such an entrant/applicant to lay down its own distribution system within the same area?
- (ii) If so, could the Appropriate Commission decide that there is no requirement of capital investment for distribution network in terms of Rule 3(1) of the Rules, 2005?
- (iii) Could there be wheeling de hors open access so as to enable the new entrant to use the distribution system of the existing incumbent distribution licence to wheel power but without seeking open access? In other words, does the 2003 Act envisage any means other than open access for separation of carriage and content in distribution business?
- (iv) To enable choice of supplier and competitive tariffs to the consumer/any person, could it be inferred that such a consumer/any person could seek supply from a licensee or a generating company other than the distribution licensee within whose area of supply such a consumers'/any persons' premises are situated, on a basis other than open access for avoiding payment of cross subsidy surcharge mandated under the first and second provisos to sub-section (2) of Section 42 of the 2003 Act?
- (v) If distribution & supply are separated should the existing consumers be made to pay full cross subsidy to cover the existing level of cross subsidy or allow them to pay cross subsidy at reduced rates and eliminate the cross subsidy over a given time frame?
- (vi) Is it mandatory for a distribution licensee to own the network as well as supply electricity to its consumers?
- (vii) Can distribution and retail supply business be separated under the existing provisions of the 2003 Act?
- (viii) Could two different types of distribution licenses be issued under the 2003 Act, one requiring the distribution licensee to be the network operator and the other requiring another entity to effect supply to its consumers?
- (ix) If retail supply is segregated from wires business, what should be the minimum area?
- (x) Does separation of supply from wire business to make retail supply competitive, necessarily require an amendment to the 2003 Act?

- (xi) Would the ratio quoted above in the aforesaid judgment of Hon'ble Supreme Court in the case of Tata Power Co v. Reliance Energy Ltd be confined to the said case or apply to similar situations in the electricity sector?

In a nutshell and to the extent relevant to the contention raised by TPL, Learned Former Solicitor General of India took the view that multiple distributors must come with the condition that each of the distributors supply electricity through their own distribution system in accordance with the sixth proviso to Section 14 of the 2003 Act, and therefore in accordance with Rule 3 of the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 it is mandatory for the Commissions to decide the capital investment for distribution network. The definition of "distribution licensee" under Section 2 (17) of the 2003 Act does not leave a scope for two different types of licensees i.e., one who operates the distribution system/ network and the other who supplies electricity. Hence, retail supply and wires business cannot be segregated. However, as regards, the Supreme Court judgment in the case of Tata Power Co. Ltd vs. Reliance Energy Ltd., reported in (2008) 10 SCC 321, on a specific query as to whether the ratio in this case would be confined to the said case or apply to the similar situations in the electricity sector, Learned Former Solicitor General of India took the view that in the said case TPC was supplying electricity in an area for which the distribution licensee was BSES Ltd. This is not a case where TPC is a subsequent applicant to procure a distribution licence for an area for which the existing licensee was BSES Ltd. TPC's licenses came to be granted long before BSES's licenses were granted. Since, Hon'ble Supreme Court held that "*There is sufficient material on record to establish that Tata Power had been supplying energy to domestic consumers on retail basis within areas which subsequently came to be included in BSES' (and subsequently REL's) area of supply and no objection was raised in that regard..*" the requirement of supplying electricity through one's own distribution system laid down in the sixth proviso to Section 14 need not be adhered to. These observations were made by Hon'ble Supreme Court in the light of the facts of the case in hand, and not while deciding an issue whether a subsequent licensee for an area or multiple licensees for an area can use the distribution system of the distribution licensee for retail without owning a distribution system as expressly required under the sixth proviso to Section 14 of the 2003 Act. Hence, the ratio of the Hon'ble Supreme Court judgment in the case of Tata Power Co. Ltd vs. Reliance Energy Ltd., *Supra* is specific to the facts of the case.

The Commission has independently applied its mind on the aforesaid opinion dated May 14, 2011. The Commission is in agreement with the views of the Learned Former Solicitor General of India. A copy of this opinion as available on the website of the Forum of Regulators was made available to all applicants for grant of licence pursuant to the aforesaid EoI, and uploaded on the website of the Commission, for their views.

The Commission notes that TPL does not intend to own a distribution network in the area of supply in which the licence is sought. TPL's submission about requirement of its own

network rollout have been analysed in the subsequent portions of this Order (Para 29 to Para 37).

***Objection 7: It is not clear how applicant will acquire RInfra assets if they are not for sale***

One objector raised a concern that how applicant will acquire RInfra assets if they are not for sale.

***TPL's response***

TPL submitted that the distribution assets of a licensee are funded by the consumers through service line charges and tariff. The utility is associated with the licence and the appropriate Commission is authorized to decide accordingly as per the relevant provisions of the Electricity Act, 2003. It further submitted that the Hon'ble MERC has already exercised such powers in Case No 85 and 87 of 2010 while transferring assets of Mula Pravara Electric Co-operative society Ltd to MSEDCL.

***Commission's view***

TPL does not intend to own a distribution network in the area of supply in which the distribution licence is sought. It has admittedly not submitted a separate network rollout plan since its business plan assumes complete takeover of the existing licensee's assets in its proposed area of supply. However, TPL has not produced a firm substantiation indicating its agreement with the owner of the said assets.

**Salient features of TPL's application**

11. The salient features of TPL's application are highlighted below identified against each section of the data format of the application specified in the MERC (General Conditions of Distribution Licence) Regulations, 2006:

<b>Part/Section</b>	<b>Description</b>	<b>Details provided</b>
<b>Part A: General Information</b>	General Information	TPL has provided all the basic details as specified in this section of the application. Primary contact details, registered office details, registration number, date of incorporation and registration are provided.
<b>Part A: 7 (c)</b>	Name and addresses of the Board of Directors	TPL has provided details of the Board of Directors and promoters in Attachment 1 of its application.
<b>Part A: 7 (c)</b>	Ownership/Shareholding pattern	TPL has provided the shareholding pattern in Attachment 1 of its application.

		According to this, the promoter group holds 52.78% of the total shares; institutional investors hold 26.21% of the shares and 21.02% is held by non-institutional investors. The maximum number of shares is held by Torrent Private Ltd, at 52.77% of the total shares.
<b>Part B: 1</b>	Memorandum and Articles of Association (in case of a company) as in force on the date of application	TPL has provided a copy of the Memorandum of Association & Articles of Association in Attachment 2 of its application form.
<b>Part B: 2a</b>	An organization chart detailing the management structure of the Applicant, which shall include information (in respect of operations, projects, commercial, finance, regulatory IT and HR functions) a) Senior Executive Management (along with curriculum vitae);	The organization chart is attached in Attachment 3 of the application. TPL submitted all the necessary information with respect to the management details in Attachment 3 of the application.
<b>Part B: 2b</b>	b) Board of Directors (along with curriculum vitae);	TPL has submitted that they have 10 Directors on the Board. The details of the Board of Directors along with curriculum vitae are provided in Attachment 5 of the application.
<b>Part B: 2c</b>	Number of middle/lower management personnel	No of middle/lower management personnel – 1,216.
<b>Part B: 2d</b>	Relationship (including intending relationship, where applicable between the Applicant and key ..... to the application for grant of Licence.	Not applicable
<b>Part B: 3, 4</b>	Details of Income tax PAN/TAN; Details of import licence, if any	The details of the Income tax PAN and TAN were provided in Attachment 6 and Attachment 7 of the application respectively. The copy of import licence is enclosed in Attachment 8 of the application.
<b>Part B: 5</b>	Bank references asserting that the Applicant is financially solvent	It was attached in Attachment 9 of the application. IDBI Bank has provided a certificate stating that Torrent Power Ltd is maintaining various accounts with the Bank since the last 3 years. The certificate also provided the fund based and non fund based limits including guarantees, L/C and

		other credit facilities to the extent of utilization, as on March 31, 2010. TPL also submitted a solvency certificate from HDFC Bank dated February 14, 2011 stating that TPL may be treated as solvent/good up to a sum of Rs 3,959 crore
<b>Part B: 6</b>	Annual Audited Reports for the past 3 years for the Applicant and for any Holding Company, Subsidiary or affiliated company (if any).	TPL submitted Annual audited Reports for the past 3 years FY 2007-08, FY 2008-09 and FY 2009-10 for TPL, its holding company and subsidiary companies in Attachment 10 of the application.
<b>Part B: 7</b>	Any other documentary evidence to substantiate the financial capabilities, technical competence and others.	TPL provided awards presented to it meritorious performance and profile of Torrent Group.
<b>Part B: 8</b>	Details of the actual or proposed location of the system of electric lines and electrical plant by means of which the applicant intends to enable distribution of electricity, indicating which plant and lines are to be constructed and which are existing plant and liens, and the area to which the application for Licence relates.	TPL did not submit the details of actual or proposed location of the system of electric lines and electrical plant as part of the original application submitted on January 17, 2011. The data gap was subsequently highlighted to TPL. TPL has submitted vide letter dated May 7, 2011, to the Commission that TPL proposes to take over existing assets in South Zone of existing distribution licensee's area as shown in the Area of Supply map which is a part of Information for Bidders. TPL has submitted that details in this regard are requested from the existing licensee; however the same is not available till date.
<b>Part B: 9</b>	Detailed electrical distribution map or maps of the proposed geographical area of supply, on a scale of not less than 10 centimetres to a kilometre, The map shall clearly distinguish between the existing system and new facilities.	TPL did not submit the details of actual or proposed location of the system of electric lines and electrical plant as part of the original application submitted on January 17, 2011. The application was, however, admitted as this data gap was not considered crucial for the purpose of admission. The data gap was subsequently highlighted to TPL. TPL vide letter dated May 7, 2011, to the Commission, has submitted that it proposes to take over existing assets in South Zone of existing licensee's distribution area as shown in the Area of Supply map which is a part of Information for Bidders. TPL has provided this map as attachment 12 of the application. TPL has stated that the details

		in this regard are requested from the existing licensee; however the same is not available till date.
<b>Part B: 10</b>	Business plan details	TPL submitted its revised business plan on April 5, 2011, after taking into consideration the scenarios discussed during the TVS.
<b>Part B: 12</b>	Supporting information on compliance with the additional requirements prescribed by the Central Government, as may be applicable.	TPL provided a certificate signed by the Company Secretary for Compliance with the provisions of Distribution of Electricity Licence (Additional requirements of Capital adequacy, Creditworthiness and Code of conduct) Rules, 2005 on June 2, 2011.
<b>Part C</b>	Format for assessing competence of applicant	TPL submitted its previous experience (past 5 years for Related Business), Details of Proposed Business, Revenue Potential, Information on Appropriate Expertise (Personnel), Details of Financial Soundness of Subsidiaries, Baseline Information through its original application and the additional data gaps submitted on February 14, 2011 and the revised application submitted on April 5, 2011.

### **Evaluation of TPL's eligibility for grant of Distribution Licence**

12. On the date of expiry of the present licence of RInfra, another Licensee viz., Tata Power Company Limited (TPC), would exist in the same area. Hence, the issue of grant of licence to more than one person in the same area will arise when grant of distribution licence in the area of supply of an existing licensee is considered. In such a situation, the sixth proviso to Section 14 of the 2003 Act, contemplates that an applicant where "there already exists a Licensee in the same area for the same purpose" must "comply with the additional requirements relating to the Capital Adequacy, Creditworthiness, and Code of Conduct as may be prescribed by the Central Government." This would be without prejudice to the other conditions or requirement, if any, under the 2003 Act. The sixth proviso to Section 14 of the 2003 Act is extracted as follows:-

*"Provided also that the Appropriate Commission may grant a Licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of Licence within the same area shall, without prejudice to the other conditions or requirement under this Act, comply with the additional requirements relating to the Capital Adequacy, Creditworthiness, and Code of Conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant*

*of Licence, shall be refused grant of Licence on the ground that there already exists a Licensee in the same area for the same purpose:”*

13. Accordingly, the provisions of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 notified by the Central Government as per the provisions of Section 14 of the 2003 Act, have been applied in the present case. The extracts thereof are as follows:-

*“... 3. Requirements of capital adequacy and creditworthiness.-*

*(1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.*

*(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.*

*Explanation: - For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.*

*4. Requirement of Code of Conduct.-*

*The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:*

*(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;*

*(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;*

*(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;*

*(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;*

*(e) section 132 or section 135 of the Customs Act 1962,*

*and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:*

*Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.”*

14. Apart from the above requirements, according to the sixth proviso to Section 14 of the 2003 Act, licence can be granted only to those applicants, who would distribute electricity through their own distribution system.
15. The Commission assessed TPL’s eligibility for grant of the distribution licence on the basis of the framework described above, and various information provided in TPL’s application and other submissions made by TPL from time to time. Accordingly, the Commission used the following criteria to determine TPL’s eligibility for grant of distribution licence:
  - Minimum area of supply requirement (E1)
  - Capital Adequacy requirement (E2)
  - Creditworthiness requirement (E3)
  - Code of Conduct requirement (E4)
  - Requirement of own network rollout plan (E5)

#### **Minimum area of supply requirement (E1)**

16. Till 1985, BSES Ltd’s licensed area included the area of Municipal Council of Mira Bhayandar (as it was known then). Thereafter, the Government of Maharashtra (GoM), by a notification dated January 10, 1990, revised the area of Mira Bhayandar Municipal Council to include the areas to the East covered by the revenue villages of Chene and Varsova (additional area).
17. By notification in Gazette Extra Ordinary dated December 1, 2001, the Govt of Maharashtra (“GoM”) declared that the whole of the local area comprising the Mira Bhayandar Smaller Urban Area should cease to be a Municipal Area from February 28, 2002. In the same Extra Ordinary Gazette, the said area was further notified as larger urban area as a municipal corporation by the name of Mira Bhayandar Municipal Corporation with effect from the same date.
18. TPL submitted that it was seeking “*Exclusive Distribution Licence only for South Zone of R-Infra Area*”. An exclusive licence in favour of the Applicant herein cannot be granted

as it would either entail reducing the licensed area of supply of the existing incumbent distribution licensee or by carving out the proposed area of supply of the Applicant from the licensed area of supply of the existing incumbent distribution licensee and because the same would be contrary to the overwhelming aspect of “promoting competition” expressly stipulated in the pre-amble of the 2003 Act as well as the same would run contrary to the expression “*grant licence to two or more persons for distribution of electricity*” as expressly stated in the sixth proviso to Section 14 of the 2003 Act, which also stipulates that “*there already exists a licensee in the same area for the same purpose*”. Thus, the Commission is mandated to follow the object of the 2003 Act stated in the pre-amble as well as enabling powers vested in the Commission under the sixth proviso of Section 14 of the 2003 Act to grant a licence to two or more persons where there already exists a licensee in the same area for the same purpose. Giving an exclusive distribution licence to the Applicant in the proposed area of supply to the exclusion of the existing incumbent distribution licensee would not be in conformity / consonance with the pre-amble of the enactment as well as the sixth proviso to Section 14 of the 2003 Act. Furthermore, the pre-amble of the 2003 Act requires “protecting interest of consumers” and, therefore, grant of exclusive licence in the area of supply in favour of the Applicant would retard availability of choice to the consumers of the said area which would be contrary to “protecting interest of consumers”.

19. In the area of supply proposed by TPL, RInfra and Tata Power Company Limited (TPC) are incumbent licensees. On the date of expiry RInfra’s licence, TPC will continue to be the incumbent licensee in the same area. Therefore, if a licence has to be granted to TPL in its proposed area of supply, the issue of grant of licence to more than one person in the same area will arise. In such a situation, the sixth proviso to Section 14 of the 2003 Act, contemplates that an applicant must comply with the additional requirements relating to the Capital Adequacy, Creditworthiness, and Code of Conduct as may be prescribed by the Central Government. The criteria of minimum area of supply are specified in the Explanation to Rule 3 of the said rules by the Central government. It states, “*For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply*”.
20. Initially, TPL sought a licence to distribute electricity in the East Zone and South Zone of RInfra-D supply area in its application dated January 17, 2011. Subsequently, through its letter dated April 5, 2011, TPL revised the proposed area of supply in the application and sought a licence to distribute electricity only in the South Zone of RInfra-D supply area, which is a part of supply area of the existing distribution licensee. TPL has applied for the area of supply, which comprises the Bandra, Khar, Santa Cruz and Vile-Parle areas admeasuring about 34.66 sq km.
21. In its revised business plan TPL has also indicated that it is neither interested in the wheeling option (utilizing RInfra network by paying a wheeling charge) nor in 3<sup>rd</sup> parallel

licence for the area. In fact, TPL submitted that it was seeking “*Exclusive Distribution Licence only for South Zone of R-Infra Area*”.

22. The proposed area of supply covers a part of Mumbai Sub-urban Revenue District. Therefore, the proposed area of supply does not cover a Revenue District completely. Alternatively, the proposed area of supply does not include any Municipal Council or Municipal Corporation. It covers a part of the Municipal Corporation of Greater Mumbai (MCGM). Therefore, the proposed area of supply does not cover a Municipal Corporation completely.
23. The Commission is of the view that since the area of supply as proposed by TPL in its application for grant of Distribution Licence does not cover an entire Municipal Corporation or an entire Revenue District, TPL’s proposed area does not conform to the minimum area of supply in terms of the Explanation to Rule 3 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. Therefore, the prescription that “*the area falling within a ....Municipal Corporation .....shall be the minimum area of supply,*” is not fulfilled. Therefore, the Commission is of the view that in totality the minimum area of supply requirement in terms of the Explanation to Rule 3 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 is not complied with.

### **Capital Adequacy requirement (E2) and Creditworthiness requirement (E3)**

24. In terms of Rule 3 of the 2005 Rules, the requirement of capital investment for distribution network is to be decided keeping in view the size of the area of supply. The Explanation to Rule 3 provides what should be the “minimum area of supply”. TPL has sought an “*Exclusive Distribution Licence only for South Zone of R-Infra Area*”. TPL has applied for the area of supply, which comprises the Bandra, Khar, Vile-Parle and Santa Cruz areas admeasuring about 34.66 sq km. The proposed area of supply does not cover a Revenue District completely. Alternatively, the proposed area of supply does not include any Municipal Council or Municipal Corporation. It covers a part of the Municipal Corporation of Greater Mumbai. Therefore, the proposed area of supply does not cover a Municipal Corporation completely. For the reasons stated in the preceding paragraph the Commission has taken the view that the minimum area of supply requirement in terms of the Explanation to Rule 3 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 is not complied with.

Thus, it would be futile to decide the requirement of capital investment for distribution network for such a small area of supply comprising of the Bandra, Khar, Santa Cruz and Vile-Parle areas of RInfra-D South Zone supply area admeasuring about 34.66 sq km. In view thereof, determination of Capital Adequacy requirement (E2) and Creditworthiness requirement (E3) does not arise.

#### **Code of Conduct requirement (E4)**

25. As provided in Rule 4 of the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, TPL was required to meet the Code of Conduct requirements as per the provisions of the following Acts:

- Companies Act, 1956
- Income Tax Act, 1961
- Securities and Exchange Board of India Act, 1992
- Excise Act, 1944
- Customs Act, 1962

The relevant sections of the Central Government Rules are highlighted below:

*“4. Requirement of Code of Conduct.- The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:*

*(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;*

*(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;*

*(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;*

*(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;*

*(e) section 132 or section 135 of the Customs Act 1962,*

*and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:*

*Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.”*

26. TPL, in its original application dated January 17, 2011, had submitted a statutory auditor's certificate under the requirement of Code of Conduct (Rule 4) of the

Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 issued by the Central Government. However, this declaration needed to be certified by the Company Secretary of Torrent Power Ltd. The Commission, vide email dated May 27, 2011 had directed TPL to submit a declaration, as required under the said rules. TPL vide letter dated June 2, 2011 submitted the said declaration.

27. Based on the information submitted by TPL, the Commission is satisfied that TPL is not in violation of the Code of Conduct and meets the requirement of the Rule 4 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. However, TPL is not eligible for grant of a distribution licence because of non-fulfilment of other requirements of the said Rules.

#### **Requirement of own network rollout plan (E5)**

28. The sixth Proviso to Section 14 of the 2003 Act provides that two or more licensees can distribute electricity within the same area, but through their own distribution system. Accordingly, the applicant for distribution licence will have to supply electricity through its own distribution system. Therefore, Network Rollout is a mandatory requirement for grant of distribution licence in the proposed area of supply. The plan should give an overview of timelines required to set up the network and the way the applicant proposes to meet the Universal Service Obligation of a Distribution Licensee.

#### ***TPL's Network Rollout Plan***

29. TPL does not intend to own a distribution network in the area of supply in which the licence is sought. Also, TPL did not submit a network roll-out plan as part of the business plan. The applicant was asked to submit a roll-out plan for the complete distribution network over the proposed area of supply vide letter dated May 25, 2011. It was also asked to submit a geographical roll-out plan for the same. TPL, in its response, has submitted that it plans to take over the assets of the existing distribution licensee in the South Zone of R-Infra-D supply area and to augment the same in tandem with the load growth in the applied area. The applicant has clarified that the business plan submitted does not cater to the requirement to invest and establish its own distribution network and has preferred to acquire existing licensee's assets. In its revised business plan submitted on April 5, 2011, TPL has indicated that it is neither interested in the wheeling option (utilizing R-Infra network by paying a wheeling charge) nor in 3<sup>rd</sup> parallel licence for the area. In fact, while submitting the revised business plan TPL submitted that it was seeking "*Exclusive Distribution Licence only for South Zone of R-Infra Area*". However, in the matter of purchasing the existing licensee's assets, as proposed in the business plan, TPL has not produced a firm substantiation in the form of a mutual agreement reached between the concerned entities.

30. It is clear from TPL's submissions that it does not intend to build its own network to distribute electricity in the proposed area of supply. Although, the Electricity Act, 1910 has been repealed in terms of Section 185(1) of the 2003 Act, it may be relevant to note that Section 3(2) (e) of the 1910 Act provides that "*the grant of a licence under this Part for any purpose shall not in anyway hinder or restrict the grant of licence to another person within the same area of supply for a like purpose*". The requirement that the applicant for distribution licence should have its own distribution system in order to distribute electricity is an express provision added in the sixth proviso to Section 14 of the 2003 Act. It would also be relevant to take a note of the comments of the Standing Committee on Energy (2002) that the area of supply for a new entrant should necessarily include a mix of urban and rural or any composite remunerative and un-remunerative clusters having mixed load, so that it is ensured that both the rural and urban areas get equal opportunities in the development of infrastructure, including power [Para 6.37 of the Report of the Standing Committee on Energy (2002)]. This provision also clarifies the intention of the Parliament that new incumbent applicants/distribution licensees are supposed to make capital investment and lay down distribution system/network in the area of supply with regard to which they would seek a licence under the sixth proviso to Section 14 of the 2003 Act.

31. The new licensee in the area of an incumbent licensee has to establish its own distribution system. The sixth proviso to Section 14 of Electricity Act, 2003 is crystal clear on this matter. It gives power to the Commission to grant licences to two or more persons to distribute electricity within the same area, but only through their own distribution systems. Accordingly, the applicant for distribution licence will have to supply electricity through its own distribution system.

32. Sub-section (1) of Section 42 of the 2003 Act mandates the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply. There is no exception contained in this provision from the duty of a distribution licensee, be it a new entrant or an existing incumbent distribution licensee, to develop distribution system in his area of supply.

33. A distribution licensee (irrespective of whether he is a new entrant or an existing incumbent distribution licensee) is required to operate and maintain a distribution system comprising of wires and associated facilities. The term "distribution licensee" defined in Section 2(17) is extracted below:

*"(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;"*

34. The term "operate" is defined as follows in the Law Lexicon by P Ramanatha Iyer [2006 edn.]:

*"To put in action and supervise the working of; to perform a work of labour; to effect any result; to bring about a specified result; to produce the proper or intended effect.*

*The word 'operate' means to put into or to continue in operation or activity, to work as to operate a machine and is distinct from maintaining or keeping in repair. 1. To take effect; 2. to be in activity; 3. to work."*

35. The term "maintain" is defined as follows in the Law Lexicon by P Ramanatha Iyer [2006 edn.]:

*"Webster's International Dictionary defines "maintain" to mean to hold or keep in any particular state or condition; to support; to sustain; to uphold; to keep up; to keep possession of; not to surrender; to continue; not to suffer to cease or fail; to bear the expense of.*

*The word "maintain" does not mean to provide or construct, but means to keep up; to keep from change; to preserve.*

*"maintain" also means to bear the expense of; to support; to keep up; to supply with what is needed."*

36. Although, a distribution licensee is required to operate and maintain a distribution system in terms of the definition contained in Section 2(17), the 2003 Act in sub-section (1) Section 42 thereof has expressly specified the mandatory duty of a distribution licensee to develop and maintain distribution system in his area of supply.
37. TPL does not have any action plan in terms of geographical coverage and time frame for rolling out its own distribution network in the area of supply for which the licence is sought for. It has admittedly not submitted a separate network rollout plan since its business plan assumes complete takeover of the existing licensee's assets. However, in the matter of purchasing the existing licensee's assets, as proposed in the business plan, TPL has not produced a firm substantiation in the form of a mutual agreement reached between the concerned entities. The Commission is of the view that such a stipulation on the part of TPL is contrary to the Sixth Proviso to Section 14 of the 2003 Act. For these reasons, TPL's contentions are not sustained in law. Therefore, the Commission found that TPL's application does not conform to the provisions of the 2003 Act as well as the aspects relevant to grant of licence. Therefore, the Commission found that TPL's application does not conform to the provisions of the 2003 Act as well as the aspects relevant to grant of distribution licence.
38. Considering all the material on record, the Commission is of the view that TPL's application for grant of a Distribution Licence has not complied with additional requirements as specified by the Central Government in the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. Further, TPL's application did not fulfil a mandatory requirement specified under the 2003 Act, which is to lay out its own distribution system in the proposed area of supply.

39. The Commission decided to assess TPL's application in terms of the benefits it may bring to the consumers in and around Mumbai Suburban areas. Based on various information provided in the application and other submissions by TPL from time to time, the Commission assessed TPL's application for its

- Power Procurement Plan (S1); and
- Management and Technical Expertise (S2)

40. The Commission has noted that TPL, in its application, has provided its plan for power procurement, information related to its management and technical expertise, its shareholding, experience of its key personnel and other details as were required by the Commission from time to time. The same has been considered for evaluation for the grant of distribution licence. However, in view of it being ineligible for grant of distribution licence, these parameters as below cannot condone the ineligibility.

### **Power Procurement Plan (S1)**

TPL estimated the system maximum demand and the sales (in MU's) in South Zone based on the ARR's of RInfra. TPL estimated a growth rate of 5% per annum in sales based on potential for new load growth based on a field survey conducted by TPL. TPL has assumed a distribution loss level of 8.69% going down to 8.29% over the period of the next 5 years. Based on the distribution and transmission loss, TPL has estimated that the total energy requirement would be 1874 MUs in Year 1 going up to 2268 MUs in the next 5 years.

<b>Particulars</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
System Maximum demand (MVA)	285	295	306	317	328
Energy Sales (MUs)	1,560	1,638	1,720	1,806	1,897
Energy requirement (MUs)	1,874	1,966	2,062	2,163	2,268

TPL, in power procurement plan considered availability of power from the following sources:

- a. Bilateral power from Western region based on preliminary offers received from traders.
- b. TPL is in the process of establishing a 1200 MW gas based generation plant in Dahej, Gujarat. The plant is likely to get commissioned in FY 2013-14. Out of this, 325 MW would be made available for distribution in the proposed area of supply.
- c. Shortfall during peak hours, if any, is proposed to be met through short term procurement/ Imbalance pool.

Considering the above, the source wise availability of power tied up to meet the demand in the proposed licence area is as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Bilateral (MW)	267	280	94	0	0
Dahej Generation of TPL (MW)	0	0	200	308	323
Total tied up power (MW)	267	280	294	308	323
Estimated demand of South Zone (MW)	285	295	306	317	328
Shortfall/(Surplus) (MW)	18	15	12	9	5

TPL submitted that it estimated the power purchase cost on the basis of the following key assumptions:

- Inter state transmission charges at 4.5% for western region
- Intra state transmission charges at 4.56% for Maharashtra
- Inter state transmission charges at Rs. 2800/MW/day for long term Open access for western region
- Intra state transmission charges @ Rs. 5414/MW/day for long term Open Access in Maharashtra.
- Annual load factor of 80% for both Bilateral power and the Dahej generation of TPL
- Bilateral power cost is based on current offers received by TPL and are valid for a limited period and the same would require revalidation once a licence is granted.
- TPL's generating station in Dahej likely to get Commissioned by FY 2013-14
- Short term power procurement at Rs. 7 per unit for the entire quantity

Based on the assumptions, the power purchase cost is summarised as below:

Sources		Year 1	Year 2	Year 3	Year 4	Year 5
Bilateral power	Units Purchased (MUs)	1871	1962	659	0	0
	Rate per unit (Rs./unit)	4.49	4.49	4.49	-	-
	Total cost (Rs. Crs.)	840	881	296	0	0
Dahej (TPL) Generation	Units Purchased (MUs)	0	0	1402	2158	2264
	Rate per unit (Rs./unit)	-	-	4.01	4.01	4.01
	Total cost (Rs. Crs.)	0	0	562	865	907

Shortfall/ Imbalance pool	Units Purchased (MUs)	3	4	2	4	5
	Rate per unit (Rs./unit)	7	7	7	7	7
	Total cost (Rs. Crs.)	2	3	1	3	3
Total	Units Purchased (MUs)	1875	1966	2062	2163	2268
	Rate per unit (Rs./unit)	4.49	4.49	4.16	4.01	4.01
	Total cost (Rs. Crs.)	842	883	859	868	910

### **Management and Technical Expertise (S2)**

From the information provided in the application, following can be summarised about TPL's application.

#### ***Expertise of key personnel***

TPL's senior management possesses relevant expertise in the areas of people management, strategy and planning, change management and corporate functions. The key personnel has experience across the power sector value chain in areas such as O&M of electrical apparatus and systems, commercial aspects including vigilance, financial management, regulatory affairs, consumer services and network development and management.

#### ***Experience of management in handling businesses with large number of consumers and employees***

TPL has managed business where the average number of consumers served was ~22 lakhs in 2009-10 and has ~6500 managed employees in 2009-10. Below is submission of TPL in this regard.

<b>Particulars</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>
Avg number of consumers (in Lacs)	19.68	21.24	21.92
Avg. Number of employees	6,155	6,184	6,467

#### ***Experience in the last 3 years in the value chain of electricity***

TPL has submitted that it has all-round experience in generation, transmission and distribution of power and a proven track record of implementing large power projects.

**Generation:** TPL submitted that it has a total installed capacity of 1647.5 MW in operation. The stations include a coal based station in Sabarmati (400MW), a gas based CCPP (100 MW) in Vatva and a gas based SUGEN plant in Akhakhol. These stations have achieved PAF of over 93% and PLF of over 85% consistently in the last 3 years. In addition, one more unit of 382.5 MW at SUGEN is under implementation.

**Transmission:** TPL submitted that they have created Torrent Power Grid Limited (TPGL), for evacuation of power from SUGEN to Ahmedabad distribution area and has established a 400 kV D/C transmission network for the same. It has also installed and commissioned 3 Nos 200 kW D/C transmission lines to connect SUGEN plant with Surat distribution area.

**Distribution:** TPL has submitted that it is engaged in distribution of power in the licence areas covering cities of Ahmedabad, Gandhinagar and Surat. It caters to the customer base of over 2 million with very low T&D loss and very high supply availability. TPL has said that it has successfully managed power distribution in Ahmedabad, Gandhinagar and Surat with T&D loss of 7.62% for 2009-10. In 2009-10, TPL has submitted that it has supplied more than 9 billion units at a reliability of 99.9%. Also, as recognition of its performance, the Ministry of Power, Government of India has awarded TPL with Award of Excellence in the area of distribution for 3 consecutive years from FY 2005 to FY 2007.

#### ***Experience in rolling-out advanced technologies in utility-like business***

TPL has submitted that it has established an accurate and reliable metering system for its consumers in the distribution network. The energy management system stores data and provides information on losses in every segment of the network. AMR has been implemented for high value consumers capable of giving real time data of consumption and tamper.

It also submitted that consumer indexing relating the distribution network with consumers and related geographic information is complete and GIS is being implemented. SCADA and ABT monitoring system have been implemented. An advanced hybrid communication system consisting of OFC and GPRS provides required connectivity to various applications.

TPL has submitted that it has successfully deployed various technologies for enhance monitoring and control of activities related to distribution.

41. Since, the Commission found that TPL's application does not conform to the provisions of the 2003 Act as well as the aspects relevant to grant of distribution licence, the proviso to clause (b) of Section 15(6) of the 2003 Act was required to be complied with.

42. In terms of the proviso to clause (b) of Section 15(6) of the 2003 Act, an opportunity of being heard was granted by the Commission to TPL on August 2, 2011 before rejection of its application. During the course of the hearing, the Commission communicated its intention to reject the application of TPL for grant of distribution licence after explaining the grounds, as described in the preceding Para No. 22, 23, 24, and 30.
43. Consumer Representatives authorized under Section 94(3) of the 2003 Act to represent the interest of the consumers in the proceedings before the Commission, expressed that the application should be rejected. Shri Rakshpal Abrol and Shri Ponrathnam expressed their satisfaction about the conclusions reached by the Commission.
44. During the hearing, Shri Jagrut Vyas, Executive Director appearing on behalf of TPL submitted that he accepts the Commission's decision in this regard.
45. The Commission is of the view that the application filed by TPL for grant of licence does not fulfil the requirements for grant of licence on account of the following:-
- a. The minimum area of supply requirement in terms of the Explanation to Rule 3 of the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 has not been complied with;
  - b. In view thereof, determination of Capital Adequacy requirement and Creditworthiness requirement does not arise as the proposed area of supply itself is not fulfilling the requirement of "minimum area of supply";
  - c. On account of lack of action plan in terms of geographical coverage and time frame for rolling out its own distribution network in the area of supply for which the licence is sought for the requirement laid down in the sixth proviso to Section 14 of the 2003 Act of having its own distribution system have not been complied with by TPL, as well as non-compliance of the requirement of "minimum area of supply";
  - d. An exclusive licence being contrary to the 2003 Act as well as the same would run contrary to the expression "*grant licence to two or more persons for distribution of electricity*" as expressly stated in the sixth proviso to Section 14 of the 2003 Act which also stipulates that "*there already exists a licensee in the same area for the same purpose*".
46. Thus, the additional requirements as specified by the Central Government in the Distribution of Electricity Licence (Additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and the requirement laid down in the sixth proviso to Section 14 of the 2003 Act of having its own distribution system have not been complied with by TPL apart from seeking an exclusive licence being contrary to the 2003 Act.

47. Therefore, the application filed by TPL is rejected as it does not conform to the provisions of the 2003 Act as discussed above. However, the statute enables the making of application for grant of distribution licence at any time and enables the Commission to consider at any time the grant of two or more licenses in the same area.
48. In view of the above, the application of Torrent Power Limited for grant of Distribution Licence in the South Zone of RInfra-D supply area in Case No. 7 of 2011 stands dismissed. Liberty is granted to apply afresh for grant of distribution licence keeping in view the statutory requirements of eligibility.

Sd/-  
Vijay L. Sonavane  
(Member)

Sd/-  
V. P. Raja  
(Chairman)