

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 79 of 2010

IN THE MATTER OF

Petition of M/s. Reliance Infrastructure Limited and M/s. Reliance Power Transmission Limited seeking extension/renewal of Transmission Licence under the provisions of the Electricity Act, 2003

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

ORDER

Dated: 9th May, 2011

M/s. Reliance Infrastructure Limited (hereinafter referred to as “RInfra”) and M/s. Reliance Power Transmission Limited (hereinafter referred to as “RPTL”) submitted a joint petition on November 1, 2010 under Sections 14, 15 and 18 of the Electricity Act, 2003 (“the 2003 Act”), with the following prayers:-

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- a) *The Transmission Licence of RInfra be extended for a period of 25 years with effect from 16th August 2011 under the provisions of Section 15 (8) read with Section 18 of the EA '03;*
- b) *In the alternative to a) above this Hon'ble Commission may be pleased to grant Transmission Licence to RInfra for a period of 25 years with effect from 16th August 2011 under the provisions of Section 14 read with Section 16 of the EA '03.*
- c) *for such further and other reliefs as the nature and circumstances of the case may require.”*

2. Briefly, the case of the Petitioners is as under:

(a) The First Petitioner, RInfra, is the successor of the Bombay Suburban Electric Supply Limited, which was incorporated under the Indian Companies Act VII of 1913 in Mumbai on 1st October 1929. The Second Petitioner, RPTL, is a wholly owned subsidiary of the First Petitioner, and is a successor of Reliance Energy Transmission Limited which was originally a successor of Reliance Energy Transmission Private Limited, as incorporated under the Companies Act, 1956.

(b) The Bombay Suburban Electric Licence, 1926 was granted under the Indian Electricity Act, 1910, on 29th May 1926 by the then Governor in Council, to the partners of Messrs. Killick, Nixon & Company and Calendar's Cable & Construction Company Limited, a company incorporated under the English Companies Act. The licence was granted for the supply of electrical energy in certain areas of Mumbai. Relying on Article 13 in the said licence, the Petitioners have contended that the term of licence as granted therein was for a period of 50 years from the date of commencement of the said licence, and that therefore the said licence of 1926 was due for expiry on 2nd June 1976.

(c) Vide Memorandum of Consent No. 562-D dated 13th May 1930, the Public Works Department, Government of Maharashtra, under Section 9 (2) of the Indian Electricity Act, 1910, granted consent to the assignment of the said licence of 1926 in favour of Bombay Suburban Electric Supply Limited.

(d) The said Licence of 1926 was amended from time to time, between January 1931 to November 1987. On 8th August 1991, the Bombay Suburban Electric Supply Limited applied before the Government of Maharashtra, inter alia for extension of the period of the licence till 15th August 2011. It is the submission of the Petitioners that the Government of Maharashtra extended the licence period till 15th August 2011. Thereafter, in or about the year 1992, the name of the licensee of the said licence of 1926 was changed to BSES Ltd. under Section 21 of the Companies Act, 1956 and a fresh certificate of incorporation was issued to BSES Ltd. on account of the change of name. The Petitioners have submitted that with effect from 24th February 2004, the name of BSES Ltd. was further changed to Reliance Energy Limited under Section 21 of the Companies Act, 1956 and a further fresh certificate of incorporation was issued to Reliance Energy Limited for the change of name.

(e) Petitioners have submitted that on 28th April 2008, the name of Reliance Energy Limited was further changed to Reliance Infrastructure Limited, the First

Petitioners herein, under Section 21 of the Companies Act, 1956 and pursuant thereto a further fresh certificate of incorporation was issued to RInfra on account of the change of name.

(f) The Petitioners have contended that the licence of 1926 is a deemed licence under the provisions of Section 14 of the 2003 Act, and that Regulation 11 of the Maharashtra Electricity Regulatory Commission (Transmission License Conditions) Regulations, 2004, applies to the Petitioners. Referring to the said Regulation 11, the Petitioners have contended that the Conditions of License specified under Chapter III of the said Regulations were deemed to be the General Conditions of Licence for Supply as on the effective date. Under the second proviso of Regulation 11, the period of licence of such deemed licensee was to be as stipulated in the licence under the repealed laws and where no period was so stipulated the period of such deemed licence was to be a period of 25 years from the date of commencement of the 2003 Act. It has been submitted that the term of the licence was specified in the deemed licence to be upto 15th August 2011 and thus the period of licence of RInfra was as stipulated in the licence of 1926, that is till 15th August 2011.

(g) The Petitioners have submitted that RInfra filed appropriate proceedings before the Hon'ble High Court of Judicature, Bombay, under Sections 391 and 394 of the Companies Act, 1956, seeking demerger of its various businesses. Under the Scheme for demerger, RInfra had sought to entrust their power transmission business to RPTL. It has been submitted that the said Scheme was sanctioned by the Hon'ble High Court, and therefore, on its becoming effective, the transmission licence deemed to have been granted to RInfra, and the rights and obligations thereunder, would be vested in RPTL and the said licence should be mutated in the name of RPTL.

(h) The Petitioners contended that the Order of the Commission dated 15th March 2010 in Case No. 40 of 2009, approved the assignment of the transmission licence and the transfer of assets in transmission lines of RInfra in favour of RPTL, provided that RPTL retains the ownership and operational control over the assets in transmission lines. It has been submitted that hence RPTL has been joined as a Petitioner in the present petition.

(i) RInfra submitted that pursuant to the said Order of the Commission in Case No. 40 of 2009, the Board of Directors of the First and Second Petitioners have not yet passed any resolution for making the Scheme operative and effective. It has been submitted that as on date, with effect to the said Order of the Commission, the transmission licence, rights and obligations thereunder, and

assets in transmission lines are still vested and continued with RInfrac. It has been undertaken by the Petitioners to intimate the Commission as to the date on which the said Scheme shall be made operative and effective by their Board of Directors.

(j) RInfrac has submitted that its predecessors in title have been engaged in the business of supply of electricity in the State of Maharashtra since 1926, and thus over a period of almost 80 years. Pursuant to the amendments made in the licence of 1926, RInfrac has laid transmission lines for evacuation of power from its generating units at Dahanu. It has been submitted that RInfrac has developed an extensive transmission system for evacuation of power from its generating station at Dahanu, including transmission lines to various load centres in suburban Mumbai at considerable cost. RInfrac has gradually increased its supply network to meet the needs and requirement of electricity of various persons, entities, companies, etc., residing and/or carrying on business in its area of supply. It has been submitted that the consumers of RInfrac has been serviced without any interruption. Further thereto, amongst the overall 28 lakh consumers of RInfrac, there are several low end consumers. The Gross Block Assets and the Net Block Assets of RInfrac is Rs. 444.83 crore and Rs. 224.30 crore, both approximately. RInfrac has 14.52 lakh shareholders and 4293 employees, directly and indirectly connected, which includes 191 employees in their transmission business.

(k) It has been submitted by RInfrac that being subject to the jurisdiction of the Commission, and for the purpose of determination of its tariff for each financial year by the Commission, RInfrac has been submitting before the Commission all necessary data, details, information, and documents as has been required from time to time. It is the contention of RInfrac that therefore it is entitled to legitimately expect extension of the period of its licence for a period of 25 years as provided under sub-section (8) of Section 15 of the 2003 Act, and further since RInfrac is eminently placed and qualified having an extensive infrastructure in place.

(l) RInfrac has submitted that it has duly performed the duties and obligations under the erstwhile legislations prior to the enactment of the 2003 Act, and as well as under the 2003 Act. The licence of RInfrac is valid and subsisting. RInfrac has further submitted that the Administrative Staff College of India which was appointed to investigate their affairs, as was directed by the Commission, has found that the said affairs were above board and has provided a clean report.

(m) It has been contended by the Petitioners that the provisions of Section 18 of the 2003 Act are in *pari materia* with the provisions of Section 4A of the Indian Electricity Act, 1910.

(n) As a submission in support of their prayers, it has been stated by the Petitioners that in the event the Commission decides that the application of the Petitioners ought to be for grant of licence under Section 14 of the 2003 Act, their petition may be treated as an application under the said Section. It has been undertaken by RInfra that in such an event, RInfra shall provide such information, details and data, and complete such formalities, as may be required by the Commission.

3. The Commission served notices to the State Transmission Utility and consumer representatives, and heard the matter on December 3, 2010. A meeting was also conducted by the Commission on December 7, 2010 calling for the presence of M/s. Tata Power Company Limited, Maharashtra State Electricity Transmission Company Limited, Western Regional Load Despatch Centre, Maharashtra Eastern Grid Power Transmission Company Limited, Jaigad Power Transco Limited, State Transmission Utility, and the Maharashtra State Load Despatch Centre, with the Petitioners.

4. The Maharashtra State Electricity Transmission Company Limited and M/s. Tata Power Company Limited have submitted their written recommendations and response in the matter to the Commission. The Maharashtra State Electricity Transmission Company Limited, in the capacity of the State Transmission Utility has stated that the licence of RInfra may be extended with respect to their transmission network being utilized for evacuation of power from their generating units at Dahanu. It was further stated that such project specific independent transmission licences granted through tariff based competitive bidding guidelines to the transmission system developer would be helpful for dispute resolution, execution of transmission service agreement and defining clear cut timelines for duration of transmission licences. M/s. Tata Power Company Limited have stated that in view of the growing demand for electricity for the consumers in Mumbai, it is imperative for utilities like RInfra to further augment and strengthen the existing transmission system, and establish new transmission lines and interconnections with the State Transmission network. It was suggested by M/s. Tata Power Company Limited that the transmission licence of RInfra should be granted to operate within the entire State of Maharashtra.

5. A further hearing was held on 11th February 2011. Having heard RInfra, Maharashtra State Electricity Transmission Company Limited, M/s. Tata Power Company Limited and the authorized consumer representatives and the issues raised in the hearings as well as in the materials placed before the Commission, the Commission is of the view that:

- (i) As regards the first prayer that the Transmission Licence of RInfra be extended for a period of 25 years with effect from 16th August 2011 under the provisions of Section 15 (8) read with Section 18 of the EA'03, the Commission is of the view that the 2003 Act does not provide for extension or renewal of licence.
- (ii) As regards the second prayer that, in the alternative to the above prayer this Commission has been prayed to grant Transmission Licence to RInfra for a period of 25 years with effect from 16th August 2011 under the provisions of Section 14 read with Section 16 of the 2003 Act, the Commission is of the view that the provisions laid down under Section 15 of the 2003 Act are required to be complied with as Section 15 under its various sub-sections lays down the 'Procedure for Grant of Licence'.
- (iii) RInfra had suggested that this Petition may be treated as an application made for grant of licence under Section 14 of the 2003 Act. The Commission had notified "the Maharashtra Electricity Regulatory Commission (Transmission Licence Conditions) Regulations, 2004". These Regulations *inter alia* lay down various aspects of the 'Procedure for Grant of Licence'. Therefore, the Commission is of the view that applicants for grant of licence irrespective of whether they are deemed licensees or not, will need to comply with Section 15 of the Electricity Act 2003 read with the requirements laid down under the aforesaid regulations for applying for grant of transmission licence. This would be consistent with the provisions of the Electricity Act 2003. For these reasons, this Petition cannot be treated as an application made for grant of licence under Sections 14 and 15 of Electricity Act 2003. Accordingly, RInfra will need to comply with Section 15 of the 2003 Act read with the requirements laid down under the aforesaid regulations for applying for grant of transmission licence.

With the above, Case No. 79 of 2010 stands disposed of accordingly.

Sd/-
(Vijay. L. Sonavane)
Member

Sd/-
(V.P.Raja)
Chairman