

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: [mercindia@mercindia.org.in](mailto:mercindia@mercindia.org.in)**  
**Website: [www.mercindia.org.in](http://www.mercindia.org.in)**

**Case Nos. 60, 81, 83, 84, 85 and 86 of 2009**

**In the matter of**  
**Petitions seeking changeover from BEST Undertaking to**  
**Tata Power Company Limited**

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

**Case No. 60 of 2009**

Shri. Guruprasad C. Shetty	....	Petitioner
Vs.		
1. Tata Power Company Limited		
2. Brihan Mumbai Electric Supply and Transport Undertaking	....	Respondents

**Case No. 81 of 2009**

Metro Entertainment (Bom) Private Limited	....	Petitioner
Vs.		
1. Tata Power Company Limited		
2. Brihan Mumbai Electric Supply and Transport Undertaking	....	Respondents



**Case No. 83 of 2009**

Automatic Electric Limited ..... Petitioner

Vs.

1. Tata Power Company Limited

2. Brihan Mumbai Electric Supply  
and Transport Undertaking ..... Respondents

**Case No. 84 of 2009**

Minerva Premises Co-operative Society Limited .... Petitioner

Vs.

1. Tata Power Company Limited

2. Brihan Mumbai Electric Supply  
and Transport Undertaking ..... Respondents

**Case No. 85 of 2009**

Ms/ Aldowict Engineering Co. .... Petitioner

Vs.

1. Tata Power Company Limited

2. Brihan Mumbai Electric Supply  
and Transport Undertaking ..... Respondents

**Case No. 86 of 2009**

Smt. Anila Gupta ..... Petitioner

Vs.

1. Tata Power Company Limited

2. Brihan Mumbai Electric Supply  
and Transport Undertaking

3. Reliance Infrastructure Limited ..... Respondents



## ORDER

February 22, 2010

Shri Guruprasad C. Shetty, a consumer of electricity (LT – II category) whose premises are situated within the area of supply of Brihan Mumbai Electric Supply and Transport Undertaking (“BEST”), filed a petition before the Commission on 25-9-2009. Shri Shetty has stated that, being an LT-II category consumer, he was paying a tariff of Rs. 10.17/- per unit as Energy Charges in FY 2008-09 to BEST, as against similarly placed consumers with Tata Power Company Limited (“TPC”) who were paying Rs. 5.91/- per unit as Energy Charges in FY 2008-09. Currently, he is paying a tariff of Rs. 8.90 per unit as Energy Charges to BEST, as against similarly placed consumers with TPC who are paying Rs. 3.85/- per unit as Energy Charges in terms of the Tariff Order dated 15.6.2009. It is stated that BEST’s tariff is 131% higher than TPC’s for the consumer categories in which Shri. Shetty is placed. Therefore, to avail electricity supply at cheaper tariff Shri. Shetty made an application to TPC on 23.4.2009 to avail supply by switching over from BEST to TPC. However, by letter dated 8.7.2009, TPC advised Shri. Shetty to approach BEST and seek BEST’s permission for use of its distribution network by TPC so that in turn TPC could supply electricity to Shri. Shetty by using the network of BEST. Such a stand taken by TPC is stated to be based on the following observations made in an Order dated 15.6.2009 passed by the Commission in Case No. 113 of 2009:-

*“As stated above, TPC-D has proposed a roll-out plan covering only 9 Wards, primarily overlapping with the licence area currently being served primarily by Reliance Infrastructure Limited – Distribution Business (RInfra-D), and no roll out plan has been proposed for the Wards being served primarily by the BEST till FY 2011-12, except one Ward at Wadala. TPC-D will have to meet its licence obligations in its entire licence area, and cannot pick and choose the Wards wherein it will supply electricity. Moreover, incurring heavy capital expenditure for the network roll-out is not the only option available to TPC-D in its efforts to supply electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by TPC-D, so that the cost is optimised. The Honourable Supreme Court also, in its Judgment on the matter of TPC’s distribution licence, observed that TPC could supply to consumers in its licence area, by utilising the distribution network of the other distribution licensee already present in the area. Hence, incurrence of capex cannot be a condition for meeting the Licensee’s obligations to all the consumers. In fact, the capital costs should be incurred only when there is no better optimal solution.”*



2. On so approaching BEST, the response received by Shri. Shetty vide letter dated 31.7.2009 was as follows:-

“..

*We are in receipt of your above referred letter requesting to allow Tata Power Co. Ltd to use BEST distribution network to provide you electricity. In this regard, we have to inform as follows:*

*Distribution system of distribution licensee in the State of Maharashtra is regulated by the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005. Regulation No. 19 mentions that the said Regulation shall not apply to a “local authority” engaged in the business of distribution of electricity before the appointed date. The above Regulation therefore grants exemption to the “local authority” and BEST being the “local authority” therefore comes within the purview of the said exemption”.*

*In view of above, we regret to inform you that, BEST will not allow wheeling energy through our network and hence, BEST can not allow M/s. Tata Power Co. Limited to use BEST’s distribution network to provide electricity to you.*

*We shall however, continue to provide you the most efficient services and look forward to continue this relationship.*

...”

3. On his turn, Shri. Shetty applied to TPC for supply on the ground that it was TPC’s obligation under its licence to supply electricity to consumers. However, TPC again expressed its helplessness to provide supply vide its letter dated 10.8.2009 as follows -

“... ”

*As informed vide our letter dated 8<sup>th</sup> July 2009, the Maharashtra Electricity Regulatory Commission has directed Tata Power to explore the possibility of using existing distribution network of another distribution licensee, so that the cost is optimized.*

*In view of above, Tata Power will be able to provide you power supply only after obtaining the permission for use of distribution network of Brihanmumbai Electric Supply & Transport.*

..”

4. The aforesaid consumer states that TPC is in dereliction of its statutory duty of its Universal Service Obligation enjoined upon it under the Electricity Act, 2003 (“EA 2003”) by failing to supply to the consumer and for which its license should be liable for cancellation and that TPC is also liable to pay compensation to the consumer as provided in the Regulation 3.2 read with Regulation 12 of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (“SOP Regulations”). According to the Petitioner, it has a

right in law and an option of choosing his electricity supplier. Thus, TPC is bound and obliged to give supply to the Petitioner within the time line specified in the Act and the Regulations. Denial by TPC has deprived the Petitioner of his fundamental right of choice and freedom conferred under the EA 2003. As regards the stand taken by BEST that it is exempted from the obligation of being a common carrier providing non-discriminatory open access, the Petitioner states that the said stand in no way, hinders TPC from meeting its obligations, as a distribution licensee to provide supply to the Petitioner, even if the same requires extension of TPC's own distribution network. The Petitioner states that TPC already has its own distribution network within BEST's area of supply and the question is only to extend it to connect it to the premises of the Petitioner. It has been alleged that TPC is supplying to some consumers on one hand and on the other hand, it is refusing to supply to the Petitioner, thus meting out a discriminatory treatment. In this regard, it is submitted that a distribution licensee cannot pick and choose between his consumers. Referring to the aforesaid order dated 15.06.2009, the Petitioner submits that in the said order, the Commission has held that, "*TPC-D will have to meet its license obligations in its entire license area, and cannot pick and choose the Wards wherein it will supply electricity.*" According to the Petitioner, TPC has relied on the above quoted observation of the Commission entirely to suit its own convenience.

5. In the circumstances, Shri Shetty has submitted that unless the following reliefs are granted, grave and irreparable harm, loss and damage will be caused to him as the present tariff levied by BEST is making it difficult for him to run his business profitably:

*“(a) That this Hon’ble Commission may be pleased to direct TPC to provide electricity supply to the Petitioner and make such supply available as early as possible, either on BEST network or by extending its own network, as may be necessary, failing which TPC’s distribution license should be cancelled by this Hon’ble Commission.*

*(b) that this Hon’ble Commission may be pleased to direct the Respondent to pay compensation to the Petitioner under Regulations 3.2 and 12 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2005;*

*(c) for interim and ad-interim reliefs in terms of prayers (a) and (b) above;*

*(d) that the cost of the Petition be provided for;*

*(e) for such further and other reliefs as the nature and circumstances of the case may require.”*

6. A preliminary hearing was held on 23-11-2009 on the Petition filed by Shri Guruprasad C. Shetty. The application for intervention filed by one Shri. N. Ponrathnam was allowed. Counsel appearing for BEST submitted that the petition as filed by Shri Shetty was not maintainable in view of the provision contained in sub-section (3) of Section 43 of the EA 2003 read with Regulation 19 of the MERC (Distribution Open Access) Regulations, 2005. However, Counsel appearing for TPC submitted that TPC was in a position to supply power to the consumers, using BEST's network, if BEST agreed to the same, or by creating their own distribution infrastructure for the same as per a roll out plan. During the hearing, TPC and BEST were directed to submit their replies, and rejoinder by the Petitioner. The matter stood posted for 28-12-2009.

7. TPC filed its reply on 11-12-2009. In its reply, TPC has objected to the stand taken by BEST as a misconceived interpretation of Section 42(3) of the EA 2003. TPC's reply provides *"It is submitted that the provision of open access under the Act is not restricted to the nature of open access provided under sec. 42(3) or 42(4) of the Act."* In its reply, TPC has stated that the capital expenditure for putting up infrastructure in order to give supply directly to Shri. Shetty could be distributed by TPC amongst the greatest number of consumers if indeed the need to establish such infrastructure does arise. TPC also states that *"Apart from the fact that the MERC (Standard of Performance of Distribution Licensees) Regulations, 2005 (hereinafter referred to as the "Standards of Performance") provides a maximum period of one year for providing supply where commission of sub-station is required, Tata Power in compliance with the directions of the Hon'ble Commission in its order dated 15.6.2009 and Regulation 8.7 of the General Conditions is trying to ensure that supply in the Petitioner's area can be carried out using the existing network of BEST to provide a quick changeover of connection to the petitioner and also to optimize on the capital expenditure required for providing such connection"*. On the basis of these submissions, TPC has refuted the allegations made by the Petitioner regarding violation of legal provisions by TPC, or that TPC is not allowing the Petitioner to exercise choice over the distribution licensee it wishes to choose or that TPC is not fulfilling its duties as a distribution licensee. TPC has denied that it is cherry picking amongst consumers. TPC has denied that it is overlooking its universal service obligations. TPC has also stated that in Case No. 50 of 2009 TPC had moved a petition before the Commission stating therein that it will be able to supply power to those existing consumers of RInfra-D who wish to receive power from TPC-D. For effecting supply, the TPC-D would use the existing distribution system of RInfra-D. In the said Case No. 50 of 2009 TPC-D had entered into discussions with RInfra-D to work out a protocol to ensure smooth change over of consumers and supply of power through open access arrangements between both of them. This culminated into an interim arrangement vide the Commission's Order dated 15-10-2009. TPC has stated in its reply that the case of Shri. Shetty could be covered under similar arrangement between TPC and BEST.

8. TPC in its reply has also alleged that the stand taken by BEST relying upon Section 42(3) is anti-competitive. TPC has also stated that capital expenditure incurred by parallel distribution licensees within the same area of supply will result in unnecessary burdening of the consumer. However, it has been stated that *"the contention of BEST that Tata Power cannot lay its distribution network in the BEST area of supply is misconceived. Tata Power is authorized under the general terms of its licence to set up distribution network in the BEST area also"*. At paragraph 12 of its reply TPC states that *"In the event that the Hon'ble*

*Commission feels otherwise and requires Tata Power to create parallel distribution network for supply of power to the Petitioner, Tata Power is ready and willing to create such infrastructure”.*

9. TPC has denied that it has violated Regulation 3.2 or Regulation 12 of the SOP Regulations. In this regard, TPC has stated that *“..the connection to the Petitioner’s premises has to be established by TPC within a period of one year as provided in the Standards of Performance regulations since it involves installation of sub-stations. Therefore, the prescribed time period for providing such connection has clearly not expired.”* It has been stated that thus it is unreasonable for the Petitioner to expect that supply of electricity to its premises can be effected within a period of thirty days as the nearest infrastructure of TPC for providing supply to the Petitioner is the 22kV sub-station about 500 meters away from the Petitioner’s premises and effecting supply to the Petitioner would require TPC to put up a 440 Volt sub-station alongwith other ancillary equipment and wires. TPC has also stated that *“Tata Power did not refuse to provide supply of electricity to the Petitioner as is sought to be projected by the Petitioner”.*

10. In its reply, relying on the Commission’s Order dated 15.6.2009 Case No. 113 of 2009, TPC has categorically stated that *“Tata Power has tried to adhere to the order of Hon’ble Commission in its letter and spirit to ensure prudent and economical investment in the development of distribution network where required. Tata Power has also explored the possibility of using the BEST network for supply of electricity to the Petitioner in compliance with the order of the Hon’ble Commission”.*

11. In the para-wise reply at paragraph 7, TPC states *“However, it is reiterated that Tata Power is ready and willing to take necessary steps to set up its own distribution network for supply of electricity to the Petitioner”.*

12. Shri. Ponrathnam filed his intervention application on 20-11-2009 stating therein that consumers of electricity should not be discriminated against as sought to be done by TPC and that the EA 2003 is a statute to inter alia promote competition. M/s. Neelkamal Realtors and Builders Pvt Ltd, Bansi Mall Management Co Pvt Ltd, and Pantaloon Retail India Ltd., also filed a joint intervention application raising their grievance against BEST for not co-operating with TPC to allow choice to consumers to switch over to TPC. Shri. Rakshpal Abrol, also filed his intervention application tracing out the historical background of BEST’s and TPC’s licenses and essentially stating therein that TPC was entitled to lay its distribution system in BEST’s area of supply.

13. BEST filed its reply on 16-12-2009. It is stated therein that the Petition is misconceived and not maintainable for lack of jurisdiction of the Commission under Section 86 of the EA 2003 to entertain a dispute by a consumer against a distribution licensee. Significantly, what has been stated in the reply by BEST is that no person whose premises are situated within the area of supply of BEST could avail electricity supply, either through open access or otherwise, from a generating company or another distribution licensee, other than BEST. In other words, BEST’s stand is that the Petitioner cannot have the choice of shifting over to TPC by using BEST’s distribution system. In this regard, BEST has relied on the following provision of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005:-

*“19. Exemption*

*Nothing contained in these Regulations shall apply to a local authority engaged in the business of distribution of electricity before the appointed date.”*

14. The other stand of BEST in its reply is that the distribution system or network of TPC cannot be laid or extended within the area of supply of BEST without agreement or permission of BEST. In this regard, BEST has relied upon the following passages of the Hon'ble Supreme Court's Judgment dated 8-7-2008 (2008) 10 SCC 321 (*Tata Power Co. Ltd vs. Reliance Energy Ltd & Ors*):-

*“47. A separate restriction was incorporated in the licence to the extent that TPC would not supply energy for lighting purpose except by agreement with the Bombay Electric Supply and Tramways Company Limited”.*

*“74. ....it has also been stipulated that Tata Power would not supply energy for lighting purposes referred to in Sub-clause II except by agreement with Bombay Electric Supply and Tramways Company Limited”.*

15. Shri. Shetty filed his rejoinder on 20-1-2010 reiterating the submissions made in his petition.

16. Subsequently, five other consumers of BEST filed their petitions before the Commission raising similar grievances as that raised by Shri Guruprasad C. Shetty in his aforesaid petition. These consumers/representatives are Metro Entertainment (Bom) Pvt Ltd (Case No. 81 of 2009; Automatic Electric Ltd (Case No. 83 of 2009); Minerva Premises Co-operative Socy Ltd (Case No. 84 of 2009); Ms/ Aldowict Engineering Co., (Case No. 85 of 2009); and Smt. Anila Gupta(Case No. 86 of 2009). Metro Entertainment (Bom) Pvt Ltd., is in HT II category. The rest of the consumers are in the LT category. Some of these Petitioners have subsequently, filed affidavits to amend their Petitions. Significantly, the prayer contained in the Petitions seeking cancellation of licence of TPC has been deleted and now the prayers are restricted to *“direct TPC to provide electricity supply to the Petitioner under the provisions of Section 43(1) of the Electricity Act, 2003, either on BEST network or by extending its own network, as may be necessary”*. TPC has also filed substantially similar replies to the other petitions. In all these replies, TPC states that the nearest infrastructure of TPC for providing supply to the Petitioner is the 22 KV sub-station which is at a distance (ranging between 350 mtrs to 1000 mtrs in each case) away from the Petitioner's premises. To provide supply of electricity from such sub-station to the Petitioner, TPC is required to put up a 440 Volt sub-station along with the other ancilliary equipment and wires, and that there would be substantial cost of such infrastructure. It is submitted by TPC that common legal issues arise in the present petitions as in Case No. 60 of 2009. TPC has craved leave to refer to and rely upon the reply and pleadings in Case No. 60 of 2009 in response to the present petitions. TPC states that it had been restrained from expanding its distribution network on account of the litigation pending between TPC and RInfra Ltd. The matter was finally decided by the Supreme Court in TPC v/s REL [(2008) 10 SCC 321] where it was held that under the terms and conditions of license held by TPC, it is entitled to effect retail supply directly to consumers, whose maximum demand is less than 1000 kVA in its licensed area of supply. Immediately after the above Supreme Court judgement, TPC filed a network roll-out plan before the Commission to expand its distribution network aimed at serving the interest of its consumers (both existing and



prospective) under the regulatory supervision and guidance of Commission. TPC states that it can supply power to consumers on ad-hoc basis as and when any application is received for electricity connection from the consumers. TPC has submitted that unplanned approach to reach few consumers will cause undue cost burden on the consumers. Accordingly, it is proposing to implement a detailed roll-out plan for its distribution network having regard to the requirement of ensuring a co-ordinated and economic development of its network, the capital expenditure involved for setting up such network, and the consequential cost implications in terms of impact on the tariff on existing consumers or charges for providing supply to be recovered from new consumers. This network roll-out plan will be under the regulatory supervision and guidance of the Commission.

17. Since all petitions raise similar issues with submissions being materially the same and somewhat identical prayers, all the petitions were clubbed together and a common hearing was held on 21-1-2010. Shri. Venkatesh Dhond, Advocate and Shri. Birendra Saraf, Advocate appearing for the Petitioners mainly contended that they were not interested in the inter se dispute if any between BEST and TPC and all that they wanted was directions by the Commission to TPC to give supply to the Petitioners within the time frame mentioned in Section 43(1) of the EA 2003. They also sought to place an interpretation of Section 42(3) to mean the words “(not being a local authority engaged in the business of distribution of electricity before the appointed date)” should be read immediately after the words “Where any person,” and not after the words “whose premises are situated within the area of supply of a distribution licensee,”. They also tried to explain that this interpretation would mean that BEST is restricted from requiring supply of electricity from a generating company or any licensee other than TPC (or any other distribution licensee) and is restricted from requiring TPC (or any other distribution licensee) from wheeling such electricity.

18. Representatives of Automatic Electric, Minerva, Aldowict made similar submissions. Representative of Smt. Anila Gupta appeared on her behalf and submitted that TPC’s tariff was almost half of that of BEST. He also submitted that the Commission could in its discretion refer the present case to the Competition Commission.

19. Consumer representatives authorized by the Commission to represent the interests of consumers in the proceedings before the Commission also appeared. Dr. Patil representing Thane Belapur Industries Association submitted that there was no need to refer the matter to the Competition Commission as the EA 2003 contains Section 60 that gives the power to this Commission to issue directions for curbing anti-competitive practices. Shri Sandeep Ohri, submitted that Hon’ble Supreme Court’s Judgment dated 8-7-2008 aptly provides for switch-over of consumers. He also submitted that BEST does not fall under section 2(41) of the EA 2003 as it is not a “local authority”. He submitted that all licensees are statutorily required to provide open access. BEST being a licensee, has to provide open access. NOC, as required by TPC, is fundamentally incorrect. Shri Ponrathnam submitted that all consumers should be treated equally. The monopoly if any is required to be broken by the EA 2003. Shri Rakshpal Abrol submitted the historical background of BEST from 1970’s. He submitted that electricity is an essential commodity and cannot be denied by TPC. Representatives appearing for some Intervenors (Pantaloons Retail, Nilkamal realtors), submitted that these were large scale electricity users and they should be in a position to pay the excess cost of the network roll out charges of TPC.



20. Shri. Sitesh Mukherjee, Advocate appearing for TPC and Shri. Harinder Toor, Advocate appearing for BEST reiterated the submissions as made in their respective petitions. Counsel appearing for TPC submitted that he does not wish to press the issue on technicality as to whether the Commission had the jurisdiction to entertain the present petitions or not as the same entailed issues of far reaching implications and also as ultimately public interest was involved in the present matters. Counsel appearing for BEST continued to oppose the matter on the basis that the Commission had no jurisdiction and that the consumer grievance redressal forums were the appropriate forums to decide the issues involved in the present petitions. Counsel for TPC submitted that Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to The Tata Power Company Limited) Regulations, 2008 had superceded the Licences of TPC and hence nothing in the erstwhile Licences of TPC could prevent TPC from laying its distribution system in BEST area of supply to give supply to consumers. Counsel appearing for BEST emphatically urged that BEST had a monopoly in its area of supply and TPC could neither lay down its distribution system in the area of supply of BEST nor could use BEST's distribution system to give supply to consumers.

21. Having heard the parties and after considering the materials available on record, the Commission's decisions and findings are as follows:

(1) On the objection on jurisdiction of the Commission to entertain the present petitions, the Commission is of the view that these are not disputes within the meaning of Section 86(1)(f) of the EA 2003. In fact the present petitions have been filed by consumers raising a grievance for non-supply of electricity in violation of the provisions of Section 43 of the EA 2003. The Commission is of the view that the Commission has the jurisdiction to go into these issues where Section 43 laying down the duty of distribution licenses to supply on request, has been invoked and the Commission has been called upon to enforce the provision thereof. Accordingly, objections on maintainability are hereby rejected.

(2) As regards the prayer to direct TPC to provide electricity supply to the Petitioners and make such supply available as early as possible. In view of the admissions made by TPC in its reply there is no need to issue directions on this account to TPC with respect to specific cases of requisition for electricity supply. The Commission has made the above findings based on the following admissions made by TPC:-

- (i) Tata Power is authorized under the general terms of its licence to set up distribution network in the BEST area also.
- (ii) Tata Power is ready and willing to create such parallel distribution infrastructure.
- (iii) Tata Power did not refuse to provide supply of electricity to the Petitioner as is sought to be projected by the Petitioner
- (iv) Tata Power is ready and willing to take necessary steps to set up its own distribution network for supply of electricity to the Petitioner.

Hence, TPC is duty bound and has the obligation to supply to any and all consumers in its licensed area of supply including the consumers who wish to change from BEST to TPC.

(3) As regards reliance on the Commission's Order dated 15.6.2009 in Case No. 113 of 2009, it is better to put the same in the correct perspective by identifying the directions contained therein and the recommendations therein. The direction was "*TPC-D will have to meet its licence obligations in its entire licence area, and cannot pick and choose the Wards wherein it will supply electricity.*" Whereas, the recommendation was "*Moreover, incurring heavy capital expenditure for the network roll-out is not the only option available to TPC-D in its efforts to supply electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by TPC-D, so that the cost is optimised.*"

The Commission in its aforesaid Order dated 15.6.2009 had also stated "*Hence, incurrence of capex cannot be a condition for meeting the Licensee's obligations to all the consumers. In fact, the capital costs should be incurred only when there is no better optimal solution.*"

The above recommendation of the Commission does not dilute TPC's statutory duty under Section 42(1) of the Act to develop and maintain an efficient, co-ordinated and economical distribution system in its area of supply and to supply electricity in accordance with the provisions contained in the Act. TPC will therefore need to make arrangements towards fulfilling its statutory duty on a continuous basis. Shri. Shetty has stated that TPC already has its own distribution network within BEST's area of supply. This has not been disputed by TPC. The question is only to extend it to connect it to the premises of the Petitioners. Being in distribution business, it is for TPC to find economical solutions for spreading its distribution system in its area of supply.

(4) The Commission had notified the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to The Tata Power Company Limited) Regulations, 2008, which *inter alia* provides as under:-

*"(2) Save and except to the conditions herein, these Regulations shall supercede the previous Licence, clearance or approval granted to The Tata Power Company Limited under the laws repealed by the Electricity Act, 2003."*

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

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

#### *"3. Interpretation*

*These Specific Conditions with respect to TPC and the General Conditions of Licence as notified by the Commission shall be deemed to be the conditions of licence of TPC and shall govern its operations of distribution and retail supply of electricity in the area specified herein."*

The sixth proviso to Section 14 of the EA 2003 reads 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 requirements under this Act, comply with the additional requirements (including the capital adequacy, credit-worthiness, or 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:”*

In view of the above TPC has to operate in terms of its latest license conditions which enjoin it to lay its distribution system or network within its entire area of supply.

(5) With respect to the requisition of supply by the petitioners, TPC has stated that *“..the connection to the Petitioner’s premises has to be established by TPC within a period of one year as provided in the Standards of Performance regulations since it involves installation of sub-stations. Therefore, the prescribed time period for providing such connection has clearly not expired.”* It has been stated that thus it is unreasonable for the Petitioner to expect that supply of electricity to its premises can be effected within a period of thirty days as the nearest infrastructure of TPC for providing supply to the Petitioner is the 22kV sub-station about 350 mtrs to 1000 mtrs in each case away from the Petitioner’s premises and effecting supply to the Petitioner would require TPC to put up a 440 Volt sub-station alongwith other ancillary equipment and wires. TPC has also stated that *“Tata Power did not refuse to provide supply of electricity to the Petitioner as is sought to be projected by the Petitioner”*.

In view of the above there is no requirement to issue a direction in regard to the petitioners’ claim of compensation under Regulations 3.2 and 12 of the SOP regulations. However, TPC is bound by Regulation 4.7 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 in terms of the timelines as mentioned in the said Regulation. Time has started ticking from the date of receipt of applications by TPC from the petitioners who have requisitioned for electricity supply. TPC will have to adhere to the timelines specified in the regulations.

In light of the above, the present petitions stand disposed of. No order as to costs.

Sd/-  
(V. L. Sonavane)  
Member

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(K. N. Khawarey)  
Secretary, MERC