

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.12(7)/DERC/2003/

Dated: 6.12.2004

CORAM

Sh. V.K. Sood

Chairman

IN THE MATTER OF : Application for Distribution and Retail supply
Licence filed by BSES Ltd. Mumbai, in NDMC
Area for supply.

IN THE MATTER OF :

M/s BSES Ltd.

(M/s Reliance Energy Limited, as incorporated
after the change of name)

BSES House,

Santa Cruz (East),

Mumbai-400055.

.....Applicant

Present :

Sh. J.P. Chalasani, Director, REL

Sh. Subodh Shah, Director, REL

Sh. Virender Shukla, Sr. Engineer, REL

Sh. Amit Kulshreshta, Sr. Officer, REL

Ms. Archana Raina, Sr. Officer, REL

Sh. R.C. Natarajan, REL

Sh. Amit Kapur, Advocate, REL

Sh. Akshay Nagpal, Advocate, REL

Sh. Dalip Mehra, Advocate, Union of India.

Sh. R.S. Rawat, Under Secretary, MHA

Sh. U.K. Worah, Secretary, NDMC

Sh. S.M. Ali, Director (Comml.), NDMC

Sh. P.K. Jain, Ex. Engineer (Elect.), NDMC
Sh. O.P. Gupta, Ex. Engg. (Elect.), NDMC
Sh. Naresh Verma, Genl. Secy. NDMC Elect. Engg. Assn.
Sh. Sheo Raj Singh, President Elect. Jr. Engineers Assn. NDMC
Sh. Ajay Kumar Tyagi, J.S. NDMC Electrical Jr. Assn.
Er. Bhanwar Singh, Gen. Secy. Palika Graduate Elect. Engg. Assn.
Sh. S.K. Bhasin, NDMC Sr. A.O.
Sh. G.K. Chopra, AAO, NDMC
Sh. N.K. Bansal, EE NDMC
Sh. P.Bhattacharjee, EA & CE (Elect.), DDA
Sh. H.L. Dhawan, Genl. Secy., New Delhi Municipal Workers Union.
Sh. Roshan Lal, President, New Delhi Municipal Workers Union
Sh. Amit Das, Jt. Director (Plg.),DDA
Sh. K.M. Saxena, Asstt. Director (Plg.), DDA
Sh. B.S. Bhati, Genl. Secy. NDMC Workers Assn.
Sh. N.K. Sharma, Garrison Engineer (Utility) Electric Supply Delhi Cantt.
Sh. P.C. Maurya, AEE, GE (O) E/S, Delhi Cantt., Representative of MoD
Sh. H.C. Vinayaka, CE, ITC Maurya Sheraton
Sh. M.P. Aggarwal, Dy. GM (Comml.), DTL
Sh. K.K. Verma, Manager (Reform), DTL
Sh. Rakesh Agarwal, Advocate NDMC

ORDER

(Date of hearing : 27.10.2004)

1. The Applicant M/s BSES Ltd., BSES House, Santa Cruz (East), Mumbai, herein after called Applicant, has made an application before this Commission for grant of distribution licence using its own distribution system in the New Delhi Municipal Council (NDMC) area. The instant application was filed on 18.11.2003 before this Commission under provision of Section 14 of the Electricity Act, 2003.

2. The Applicant had submitted alongwith the aforesaid application, certified copies of Memorandum of Association, Articles of Association, Certificate of Incorporation and Certificate for Commencement of Business. The application was also accompanied with Annual Statements of Accounts of the Applicant for the previous five years.

3. After initial scrutiny of the aforesaid application, it was observed that there were certain deficiencies and same were communicated to the Applicant on 28.11.2003.

4. The Applicant thereafter, took necessary steps to rectify the defects and filed a fresh application after the removal of the deficiency notified to the Applicant on 5.12.2003.

5. In the application, the Applicant has introduced itself as a company incorporated under the provision of the Indian Companies Act, 1956, having its registered office at BSES House, Santa Cruz (East), Mumbai-400055. During the pendency of this application, the Applicant filed an affidavit, wherein, it was informed that the Applicant has changed its name from M/s BSES Limited to M/s Reliance Energy Limited and the instant application may be treated as an application made by M/S Reliance Energy Limited. Hereinafter, for the purpose of this Order the petitioner shall be called 'Applicant', unless the context otherwise means so.

6. The main objects clause of the Applicant company includes engaging in the distribution and retail supply of electricity. The Applicant, is a group of companies of Reliance Group and India's largest integrated private sector power utility engaged in the business of generation, transmission and distribution of electricity with almost seven decades of experience in distribution and retail supply of electricity. The Applicant is a distribution licensee for suburban Mumbai where it meets power requirements of 2.2 million consumers and over the years, have established itself as a premier utility with very high standards of reliability and efficiency.

7. The Applicant has also introduced itself as a profit making and dividend-paying company since inception and over the years has built up a strong financial position. During the financial year 2002-03, it has recorded a turnover of Rs. 2,777 crore and net profit of Rs. 297 crore. The Applicant has also introduced itself as a company having a very low gearing ratio of 0.41, indicating significant flexibility to raise long term resources to meet its growth plans. The Applicant company claims to

have been listed among top 25 listed private sector companies in the country on all major financial parameters.

8. The Applicant submits that it has more than seven decades of experience in distribution of electricity, during which it has built up a very strong in-house expertise in establishing and managing a distribution system. The Applicant along with its affiliates in Delhi and Orissa is the only utility which has experience of managing a distribution system in all the areas where the distribution of electricity has been privatised in this country till date.

9 The Applicant also submits that it has gainfully utilised trained manpower and expertise in the field of power and the Company had commenced its activities in 1966, by undertaking turnkey electrical contracts, thermal, hydro and gas turbine installations and commissioning contracts, transmission line projects etc. It has also been submitted by the Applicant that they had set up their own 500 MW Thermal Power Plant at Dahanu Power Station which was synchronized and made operational during 1995-96. The Applicant has dedicated the 220 KV double circuit transmission line network with three 220/33 KV receiving stations, installed to evacuate power to the distribution area of the company. The Applicant submits that they have sufficient in-house capabilities to demonstrate their expertise in engineering, operation and maintenance of power plants, transmission and distribution system. The Applicant has also submitted that, through international competitive bidding, it has acquired an equity stake of 51% in three of the four Distribution Companies of Orissa and thereby, became partner in the first case of reforms and restructuring of the electricity sector in the country. At present, the three distribution companies in Orissa provide electricity to more than 1.24 million consumers in an area covering about 1,23,000 sq. km with an estimated population of 27 million. The Applicant has also highlighted that in July 2003, it has acquired an equity stake of 51% in two of the three Distribution Companies of Delhi after unbundling and privatisation of the erstwhile Delhi Vidyut Board. The two distribution companies i.e. BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. provide electricity to more than 1.7 million consumers spread across an area of 900 sq. Kms (approx.).

10. In its application, it is submitted that the Applicant are amongst the most admired and the most trusted integrated utility company in the world, delivering reliable and quality product and services to all consumers at a competitive cost, with international standards of consumer care, thereby, creating a superior value for its stakeholders. The Applicant submits that it has the vision to set new benchmarks in standards of corporate performance, governance through pursuit of operational and financial excellence, responsible citizenship and profitable growth.

11. The Applicant while introducing itself in its application has also indicated the various activities of the Company in the field of electricity supply and has highlighted that currently, it is serving about 384 sq. km in the suburban area of Mumbai by supplying power to about 2.23 million consumers with the maximum demand of about 1226 MVA. The Applicant has 2829 Km of HT and 2965 Km of LT mains in the Company's system and over 3653 distribution sub-stations. It has over 600 qualified engineers, specialised in various fields of electricity.

12. The Applicant submits that it has the reputation of being one of the most efficient organizations in the field of transmission and distribution in the country with a system reliability of 99.98 % and T&D losses of about 13% - 14%.

13. The Applicant also operates a state-of-the-art coal based power station at Dahanu near Mumbai. The Generation Division of the Applicant undertakes designing, engineering, erection, installation commissioning of coal/lignite based power projects and combined cycle liquid/gas based projects. The Applicant has the capability and expertise to undertake power projects from concept to commissioning.

14. The Applicant has submitted that it has entered contracting field of civil, electrical and mechanical projects and till date, it has an impressive list of jobs executed and that it has executed projects in India and overseas. The Applicant has submitted a long list of Joint Ventures, Association and Affiliate Companies, which establishes its expertise in the field of electricity supply and distribution across the country.

15. The Applicant along with its introduction, has drawn the attention of the Commission to the genesis of this application for grant of distribution of licence in the NDMC area by highlighting the preamble of Electricity Act, 2003, (herein after called Act). The preamble of the Act which reads as follows :-

"An Act to consolidate the laws relating to generation , transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto."

16. Thereafter, Sections 12 and 14 of the Act have been highlighted which read as follows :-

"Authorised persons to transmit, supply, etc., electricity

No person shall

(a) transmit electricity; or

(b) distribute electricity; or

(c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under Section 14, or is exempt under section 13.

Grant of Licence :

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person-

(a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader,

in any area as may be specified in the licence:

PROVIDED that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

PROVIDED FURTHER that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

PROVIDED also that in case an Appropriate Government

transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

PROVIDED also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation;

PROVIDED also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act;

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, creditworthiness, 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;

PROVIDED also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply;

PROVIDED also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53;

PROVIDED also that a distribution licensee shall not require a licence to undertake trading in electricity.

17. While highlighting the above-mentioned Sections, the Applicant has also mentioned Section 86 (1)(d) of the Act, which enumerates functions of the State Commission and one such function is issuing license to person seeking to act as transmission licensee and distribution licensee and electricity trader with respect to their area within the State. In view of the aforesaid section, the Applicant has made a prayer that the Applicant

may be issued a distribution and retail supply license in the area mentioned in the application.

18. The Applicant, while particularly highlighting 6th Proviso of Section 14, has given an undertaking that since the Applicant has already been into the business of electricity transmission and distribution for a very long time and since it is one of the most reputed companies in the country, the 'additional requirements', as may be prescribed by the Central Government under Section 14 of the Act, with respect to capital adequacy, creditworthiness or code of conduct, shall be complied with as and when such 'additional requirements' are notified by the Appropriate Government.

19. The attention of the Commission was also drawn to Section 15(2) of the Electricity Act, 2003 which requires inter-alia that the Applicant "*shall, within 7 days after making such application, publish a notice of its application with such particulars and in such manner as may be specified.*"

20. Having noted that the application made by the Applicant generally complied with the requisite information that was needed to be filed along with application for grant of distribution and retail supply licence, the Applicant was given directions on, 1.1. 2004, to advertise their application through a public notice within 7 days.

21. It was further directed that their public notice should comply with the requirements mentioned under Section 15 of the Electricity Act, 2003, and DERC, Comprehensive (Conduct of Business) Regulations, 2001. The Applicant was also directed to ensure that copies of draft licence are made available at the address of the local agent of the Applicant along with the maps both for inspection and for sale for a price of not more than Rs.25/- as required under Regulation 29 of DERC, Comprehensive (Conduct of Business) Regulations, 2001. It was also directed that the Applicant should serve the copies of draft license along with the application to the address of the offices of local authorities, particularly, on NDMC, DDA, Delhi Transco Ltd., Government of NCT of Delhi and a copy of the same to be served at Central Government through Secretary (Power) and Joint Secretary (UT) Ministry of Home. It was further directed

with a view to ascertain, as given in Section 15(2)(ii) of the Electricity Act, 2003, that the Applicant should obtain a 'no-objection certificate' from the Ministry of Defence Government of India as required under Section 15 of the Electricity Act, 2003, and provisions of DERC, Comprehensive (Conduct of Business) Regulation, 2001.

22. The Applicant as per the aforementioned directions, gave a public notice in various newspapers of Delhi on January, 6, 2004. The Applicant also submitted an affidavit to this effect along with a copy of letter written to the Ministry of Defence, Government of India, for obtaining a 'No Objection Certificate'. The Applicant also submitted proof of service of notice that the copy of application and draft licence along with the map of the area of supply of NDMC has been served to the various local authorities, utilities, the State Government and to the Union of India.

23. In response to the aforesaid application, this Commission received written objections from various stakeholders. Amongst various stakeholders, the objections raised by PHD Chamber of Commerce and Industry, Joint representation from several Associations submitted through Er. Naresh Verma and Director (Delhi), Ministry of Home Affairs, Government of India, were received after the statutory period of 30 days as mentioned under sub-section 2(i) of Section 15. The response of PHD Chamber of Commerce and Industry and the joint representations submitted by Sh. Verma were not considered due to bar imposed by the Section 15(2)(i) of Electricity Act, 2003. Their concerns, however, have been addressed since similar views have been expressed by other stakeholders. The response of Director (Delhi) Ministry of Home Affairs dated 31.3.2004, was received after the prescribed period as mentioned under Section 15(2)(i). This response was taken into consideration, since this was in response to the specific directions issued by the Commission to the Applicant to serve a copy on the Ministry of Home Affairs and as such the bar under Section 15(2)(i), was considered to have not been attracted in this case.

Objections of stakeholders

24. NDMC in their objections filed on 3.2.2004 have submitted the following objections. It is submitted on behalf of NDMC that this

Commission which was created under Delhi Electricity Reforms Act, 2000, has no jurisdiction over NDMC. Sub-Section (2) of Section 1 of the Delhi Electricity Reforms Act, 2000 provides that this Commission has no application over the NDMC area and even after the Electricity Act, 2003, coming into force, the position has not changed.

25. It is added that the Electricity Act, 2003, which came into force on 10.6.2003, has a clear objective to maintain the sanctity of other enactments of the Parliament i.e. NDMC Act, 1994, herein after called NDMC Act. Section 195 to Section 201 of the NDMC Act, 1994, provides for the domain of the NDMC to supply electricity, including right of fixation of tariff in the NDMC area exclusively. It is submitted that the NDMC Act, 1994, and the Electricity Act, 2003, are both enactments by the Parliament. None of them can be set to be superseding the other. Each of the enactments is independent of the other and have to be followed strictly for all intends and purpose. It is highlighted that NDMC Act, 1994, is the only Parliamentary enactment in the country framed for a Civic Body and it caters to distribution of electricity as well. Further, this Civic Body is controlled by the Central Government, Ministry of Home Affairs. The objectives of this enactment are not to be taken lightly. The aforesaid enactment has been framed keeping in view that both the Houses of Parliament, Rashtrapati Bhawan, Prime Minister's Residential Complex, Supreme Court, High Court, Central Ministries, Defence establishments are all situated in the NDMC area. Besides this, there are diplomatic missions of various countries as well which are situated in the NDMC area.

26. It is submitted that by virtue of the enactment of the Electricity Act, 2003, the Commission cannot perceive that the aforesaid Act supersedes the provision of NDMC Act or that this Commission can issue licence to a third party in the area of NDMC. It is submitted that the Commission does not have jurisdiction over NDMC and, as such, NDMC has been excluded from the applicability of various Regulations framed by this Commission. It is also added that the provisions of Electricity Act, 2003, do not apply on the NDMC.

27. It is further submitted that no person can be granted licence unless and until it fulfils the requirements as given under Section 14 of the Act. Proviso 6 to Section 14 of the Act stipulated for grant of licence, the

Applicant besides fulfilling the conditions as provided for under the Act, has also to comply with the additional requirements including the capital adequacy, creditworthiness and code of conduct. The Applicant has not fulfilled these conditions. It is also added that these additional requirements are to be prescribed by the Central Government and so far no such requirements have been notified. In absence of fulfilment of such statutory requirements, the application requires to be rejected at this stage.

28. It is further added that the NDMC is a licensee for distribution of electricity to consumers in the area in terms of notification issued by the Chief Commissioner, Delhi vide No. B/31-32/Industries dated 6.4.1932. It hardly needs any elaboration that NDMC houses buildings of national importance, attracting security of the highest standard. These buildings require special attention and providing basic civic amenities to such places is the responsibility of NDMC. Since such places of national importance require special attention, the NDMC has been given an independent identity and has been purposely and specifically kept as a separate Civic Body directly under the control of Ministry of Home Affairs, Government of India. The security of network servicing etc., is of paramount importance and this cannot be entrusted to any private organization like the Applicant.

29. It is further added that NDMC area is known for holding national and international functions and there are frequent visits by foreign dignitaries. For reasons of security, this area is often supplied with uninterrupted power supply. In case of parallel power supply by a private operator, there might be some inconsistency with the security needs in the area.

30. It is further added that the distribution system in NDMC area is entirely through underground cables. Given the small area covered by NDMC, the space under the road-berms and right of way are already crowded with large number of services like, HT/LT transmission and distribution cables, communication cables, fibre optic cables, water pipelines, drain pipelines, sewerage, gas pipelines etc. There is, therefore, no room for a parallel network in the area of NDMC. In event of fresh invasive cabling by a private operator, there is a great risk to the existing

services. It is also technically not feasible to lay a parallel distribution system of high tension and low-tension cables in the NDMC area due to space constraints and for reasons of security . Any further addition to the network would only jeopardise other civic amenities and will also involve huge capital investments.

31. It is further added that the existing capital network has been laid as per the IS code up to the desired depth and there is practically no room for a parallel power network in the NDMC area. The NDMC area has its own character and accordingly, a parallel network of overhead system is also not permitted. Therefore, in such a situation, a parallel power supply system is technically not feasible either overhead or underground.

32. It is further added that over the years, NDMC has created huge assets of its own power supply network and various schemes have been executed, or are under progress in consultation with the Central Electricity Authority. The NDMC has already drawn up a plan up to the year 2020 for providing and establishing 220 KV sub-stations to meet all power demands in the area. Inclusion of other private operators will render huge expenditure already incurred as waste and will adversely affect the financial health of the NDMC. Public funds would go waste and this is not in the interest of the general public.

33. It is further added that under Section 11 of NDMC Act, the Council has to perform a number of obligatory functions including electricity supply in the NDMC area. NDMC is the one of the very few Municipalities which has always been financially stable. The revenue surplus of NDMC has enabled it to maintain its area at a visibly higher standard as compared to the rest of the country. The Council has the obligatory function of providing primary and secondary education, it is also catering to dispensaries, working women's hostels, social education centres, vocational training institutes, community centres, etc. All these areas are sustained by the revenue surplus generated by the NDMC from its electricity distribution. In the event of a parallel distribution licensee in the area, it is likely to erode the revenue surplus and, as such, there will be a set back to the social activities due to lack of resources.

34. It is also added that the NDMC has been able to limit the T&D losses to barely 16% which are the lowest in the country, indicator of an efficient and robust distribution system. In such a situation there is no need for a parallel power supply system of a private operator in the NDMC area. The NDMC has expressed their concern that there is no further scope of expansion of network in the NDMC area due to space constraints. It is yet another factor to be considered that any further congestion because of a parallel network of the private operator may cause serious damage to the existing services and may hamper the maintenance and up keep of the network.

35. It is further submitted by the NDMC that there has been a disparity in tariff of electricity supply to BSES vis a vis the NDMC. The matter has already been referred to the Hon'ble High Court of Delhi regarding this variance. It is submitted that due to the lower tariff of electricity supply to BSES, the Applicant may temporarily lower the electricity tariff for supply of power in the NDMC area, just for commercial considerations, with scant regard to other social functions which the NDMC provides to the public. This would lead to an unhealthy situation in the NDMC which is detrimental to the interest of the general public. It is also added that keeping in view the scarcity of land, it might not be feasible to provide land to a private operator for building up of its parallel sub stations, etc. In view of the above, the Applicant should not be awarded with a parallel distribution license.

36. In a rejoinder filed by the NDMC on 1.4.2004 it is added that the respondent Council is a Statutory licensee under the NDMC Act and the terms and conditions of its licence are those laid down in chapter XII of the said Act. The NDMC Act, provides that the licensee shall be governed by the provisions of the Electricity Act, 1910. The Electricity Act, 2003, has subsequently repealed the Electricity Act, 1910, but Section 14 of the Electricity Act, 2003, maintains the status-quo in this regard insofar the respondent Council's status as a deemed license is concerned.

37. It is submitted that under the NDMC Act which is the general law governing the administration and the provision of civic services in NDMC area, the respondent Council remains obliged under law to supply electricity within the said area and remains the sole statutory licensee. It is

added that this Commission does not have the authority to issue a license to the Council. The status of a deemed licensee is enjoyed by the Council under the provisions of the Electricity Act. However, it has also been added that the licence conditions as may be imposed by the Commission under Section 16 of the Act, can only be additional conditions to those, which are already enumerated in chapter XII of the NDMC Act.

38. It is submitted that the applicability of the 6th proviso of Section 14 of Electricity Act, 2003 to the NDMC area needs to be considered in the right perspective. The aforesaid proviso has clearly been intended by the Legislature to cover the situations governed exclusively by Electricity Act, 2003, where the appropriate Commission would be the sole licensing authority in respect of all the distributing licensees operating in any area, with power to deal with contingent situations arising out of the possible operation of multiple licensees within the same area. Thus, if the operations of a licensee were to become unviable as the result of grant of multiple licence in the same area, the Commission would be in a position to allow surrender or transfer any of its licence or part thereof and disposal of its utility. Applying the said provision in a particular circumstance prevailing in the NDMC area would lead to anomalous consequences that could never have been intended by the Legislature. The condition of licence among competing utilities would not be on the same footing as one of the licensee i.e. respondent Council, would not by any means allow the transferring or surrendering of its licence or any part thereof to the other licensee. While the other utility will have the scope of relinquishing the responsibilities and disposal of its utility on the Orders of the Commission. In these terms, it would be inappropriate to consider the Commission to be a licensing authority in respect of the NDMC area.

39. It is further submitted by the NDMC that the Applicant has failed to establish its eligibility to be considered under the 6th proviso of Section 14 of Electricity Act, 2003. The said provision requires that an applicant for a second distribution license in the same area where a distribution license already exists *"shall, without prejudice to the condition or requirements under this Act, comply with additional requirements including the capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government"* The Central Government is yet to prescribe the additional requirements on all the three issues and, as such, the

present application is premature. It is further submitted that the Commission should satisfy itself as to the Applicant's ability to actually implement its license if granted, and in particular the Applicant's ability to discharge its universal supply obligation of a distribution licensee under Section 43 of the Act. The Applicant company already controls two distribution companies in Delhi, and the Commission had the occasion to intervene because of numerous public complaints regarding the quality of its service to its consumers, particularly in regard to billing and commercial operations. It is, therefore, submitted that the Commission should satisfy itself regarding the Applicant's capability.

40. It is further added that the Applicant should submit its network plans in detail so as to satisfy that it will be able to implement the network within a reasonable period of time. The Applicant should also indicate the intended phasing of construction of the proposed network in order to satisfy that the Applicant will not follow a strategy of "cherry picking" profitable commercial and high consumption areas under phased construction of its proposed network.

41. It is further submitted by the NDMC that the Applicant has placed too much reliance on the words in the 6th proviso of Section 14 of the Electricity Act, 2003, that "no such Applicant who complies with all requirements for grant of license shall be refused grant of license on the ground that there already exists a licensee in the same area for the same purpose". It is submitted by the NDMC that the objections raised by them are not out of any narrow concern for its interest as licensee in the NDMC area but these are objections in the capacity of a Municipal Authority which understands the ramifications of a second electricity distribution licensee on the municipal administration, civic services and distinct urban character of the New Delhi Municipal area. It is submitted that the 6th proviso of Section 14 of Electricity Act, merely prohibits the appropriate Commission from refusing license application on the veiled ground that "there already exists a licensee in the same area for the same purpose". The interest of an existing licensee quo licensee are thus admittedly excluded from the consideration by this provision, but this does not follow that an Applicant is entitled to a license in any area as a matter of right, nor is such a license to be issued mechanically on satisfaction of the Applicant's eligibility. There may also be various other valid reasons for

refusing a license such as deleterious consequences for the public interest and that it is the duty of the Commission to satisfy itself the balance of the public interest does favour the grant of such licensee.

42. It is further submitted that it is not denied that there may be other areas where the special constraints and consideration like the ones arising in the NDMC area may not arise and the grant of multiple licenses may be justified in such an area. But in the special case of NDMC area, there is no justification for the same and the balance of public interest clearly lies in rejecting the present license application. The NDMC area has special character for which special legal and administrative arrangements have been made. Keeping in view the distinct character of New Delhi that all these services should be provided in a holistic, coordinated manner having regard to implications in respect of land use and environment, it would cause great harm to the city, if an additional and redundant utility were to be installed at the cost of other necessary services and public amenities. The social cost-benefit of such a redundant utility in the NDMC area would obviously be negative, involving permanent sacrifice of other services as well as inconvenience to public at large.

43. It is further added that it is highly improbable that the Applicant will actually duplicate the respondent utility within a reasonable period of time. The Applicant is unaware of the constraints affecting the actual establishment of its proposed utility and there is every reason to apprehend that the Applicant is merely using its application for “cherry picking” a few commercial areas and would ultimately be unable to fulfil its obligation under Section 43 of the Electricity Act. It is submitted by the NDMC that the development planning of NDMC area is governed by a separate Zonal Plan prepared by the DDA in pursuance of provision of Section 8 of Delhi Development Act, 1957, (DD Act) and the Zonal Plan is subordinate to the Master Plan prepared by the DDA under Section 7 of the said Act. The Master Plan and Zonal Plan are strictly adhered to in a disciplined manner as far as NDMC area is concerned. Both the Zonal and Master Plans take care of the provision for civic services including transportation, network, roads and cycle tracks, pedestrian movement, parking, conservation of monuments, physical infrastructure including water supply, sewerage, draining etc. All these utilities of which electricity

distribution is only one, have to be accommodated within a limited space and if such space is provided for installation of sub-stations, as proposed by the Applicant, it can come only at the cost of all other civic amenities which are not envisaged either in the Zonal or the Master plan. Virtually all the land is Government owned and allotment thereof can only be done by the Land and Development Office, which is under the Ministry of Urban Development and is subject to the Master and Zonal Plan. The respondent Council has drawn up plans for the year 2020 and has specified 80 plots in the NDMC area and so far the L&DO has only been able to allot 10 such plots to the respondent Council. This would substantiate the contention that within the area provided by the Zonal Plan, it is nearly impossible to provide for the Applicants redundant second electricity utility without extensive sacrifice of other civic amenities. It is further submitted that in view of the above, the DDA should be asked to submit its views regarding the proposed license application since it would affect the Master and Zonal Plan prepared by DDA.

44. **NDMC Electrical Junior Engineers' Association** have also placed their objections on record and it is submitted by them that NDMC and the Cantonment Board area has been excluded from the purview of DERC under Section 1 (2) of DERA, 2000 enacted by Delhi Vidhan Sabha. The power has been conferred to NDMC under Section 11 (d) read with Section 195 (1) (a) of the NDMC Act, 1994, which authorises NDMC to acquire, supply and distribute electricity to consumers in NDMC area. NDMC is receiving bulk supply from the Delhi Transco Ltd. which is legally authorized by the Central Govt., under Section 201 of the NDMC Act, to purchase such electricity. As on date, no amendment has been carried out in the aforesaid Sections of the Act, therefore, there is no question of entertaining the application of a parallel distribution license in NDMC area. It is further submitted that under Section 1 (2) of the Electricity Act, 2003, the whole of India has been counted except State of Jammu & Kashmir. Therefore, it seems that the jurisdiction of DERC to NDMC area have been extended without making any constitutional amendment or amendment in the Act. It is contended that DERC has no powers to grant license to the Applicants.

45. It is further submitted that NDMC houses premier institutions of national importance, therefore, it is not in public interest to grant a license

to private operators in the area. It is added that the Applicant has its own commercial priorities and it may not give adequate priority for electricity supply in the NDMC area. It is further added that NDMC has its own infrastructure and network of under ground cables and the area is already over crowded by various networks. There is no scope for establishing a parallel distribution agency within a very limited distribution area of NDMC. It is also added that NDMC has already incurred a huge expenditure on its network and with the addition of a parallel distribution licensee, all such resources would be wasted. It is also added that NDMC uses the profit from the electricity sector to cater to social causes like running of schools, hospitals, dispensaries, old age homes etc.

46. It has also been submitted that NDMC has its own standards of efficiency and reliability and that transmission and distribution losses have been restrained to 16% which is the lowest in the country. In such a situation, there is no need for a parallel distribution system in the area.

47. Objections have also been filed by **New Delhi Municipal Workers' Union**. They have submitted that as per DERA 2000, passed by the State legislature, NDMC area and the Delhi Cantonment area have been kept out the purview of DERC. As per provisions of Section 11 (d) read with Section 195 (1) (a) of NDMC Act 1994, the responsibility of distributing electricity has been given to the NDMC only. As per the NDMC Act, 1994, passed by the Indian Parliament, under Section 200, NDMC has been given authority to determine the tariff of electricity in the NDMC area and even after the Electricity Act 2003, no amendments have been made in the Act of NDMC. Therefore, DERC does not have the jurisdiction to give another license in the NDMC area. DERA 2000 has been saved under Electricity Act 2003 and DERA 2000 excludes NDMC and Cantonment area from the jurisdiction of DERC therefore, DERC does not have the power to grant license to BSES. NDMC has around 42.74 Sq. Kms. of area which houses various national and international institutions and buildings of extreme importance. In such an area, the distribution of electricity should not be handed over to a private operator and this is not beneficial to the nation.

48. It is added that if BSES is given a parallel distribution license for distributing electricity, it will give preference to supply electricity to its own

system and the NDMC network would be adversely affected. If BSES does not give preference to NDMC network in supply of electricity, it will cause great problems. It is also submitted that the entire network in the NDMC area has been done under the ground and presently, there is no scope for expansion or addition in this network. Therefore, a private company should not be allowed to operate in this area. As per the advice of Central Electricity Authority, a lot of investment has been made in installation of 66/33 and 220 kV sub-stations and if a parallel license is given in this area, it will lead to wasteful expenditure. The NDMC has its contribution to social welfare and for this, NDMC subsidises the cost in its own way. If an additional distribution licensee is brought in the NDMC area, it will directly affect the social cause to which NDMC is committed. NDMC has an efficient electricity distribution system and it has the least amount of Transmission and Distribution losses. In such a case there is no need for an additional competition in this area.

49. The **New Delhi Municipal Corporation Vidyut Praday Karamchari Sangh** have raised their concerns by submitting that as per DERA 2000 Section 1 (2), NDMC and Delhi Cantonment area are outside the jurisdiction of the Delhi Electricity Regulatory Commission. As per Section 11 (d) of the NDMC Act 1994, NDMC have been given the responsibility of supplying electricity in the area of NDMC. As per NDMC Rules 1974 Section 200, the Parliament of India has given the powers to NDMC to determine the electricity rates for domestic and non-domestic consumption in this area. It is further submitted that the jurisdiction of the Commission does not extend to the NDMC by virtue of Section 1(2) of the Electricity Act 2003, as contested by the Applicant. The DERA, 2000, which has been passed by the State Legislature of Delhi has expressly excluded NDMC area and Delhi Cantonment area, therefore, DERC does not have jurisdiction over NDMC.

50. It is submitted that NDMC has around 42.74 Sq. Kms. of area which houses various national and international institutions and buildings of extreme importance. In such an area, the distribution of electricity should not be handed over to a private operator. This is not in the benefit of the nation. If BSES is given a parallel distribution license for distributing electricity, it will give preference to supply electricity to its own system and the NDMC network would be adversely affected. If BSES does not give

preference to the NDMC network in supply of electricity, it will cause great problems. Presently, the cable network for supply of electricity in the NDMC area has been done according to Indian standards and there is no scope for further addition of network by a parallel distribution licensee. As per the advice of the Central Electricity Authority, lot of investment has been made in installation of 66/33 and 220 kV sub-stations. If a parallel license is given in this area, it will lead to wasteful expenditure on assets. NDMC has its contribution to social welfare and to this NDMC subsidises the cost in its own way. If an additional distribution licensee is brought in the NDMC area, it will directly affect the social cause to which NDMC is committed. NDMC has an efficient electricity distribution system and it has the least amount of Transmission & Distribution losses. In such a case, there is no need for an additional competition in this area.

51. In their objections filed by the **NDMC Electrical Engineers' Association**, it is submitted that the NDMC is the only municipality in the country which is directly under the control of the Central Government, Ministry of Home Affairs. Further, it is also the only civic body in the country which is engaged in distribution of electricity besides other municipal functions. It is added that Sections 195 to 201 of the NDMC Act provide for the domain of NDMC to supply electricity including the right of fixing the tariff in the area. It is further added that NDMC and the Cantonment area has been specifically excluded under DERA, 2000, and the Commission cannot grant a license to the Applicants under any provision of the Electricity Act, 2003.

52. The objectors have also raised their concern regarding security of the electrical network , network servicing and the congestion of the network in the NDMC area. It is also submitted that in case a parallel license is given to a private concern, it may force the NDMC to become a sick institution. They have raised concern that NDMC has other social responsibilities which are met by the surplus generated from the electricity sector. Further, it is also mentioned that NDMC has created huge infrastructure from public money and with the addition of a parallel network, such investment of public money would go waste and would not be in the general public interest. It is also highlighted that although NDMC receives bulk supply of electricity at Rs. 2.86 paise per unit as compared to BSES Rajdhani Power Ltd. which receives bulk supply at Rs.

1.32 paise per unit, even then the electricity tariff to the consumers in NDMC is 10% lower than the rest of Delhi. In such a situation, another private operator in electricity sector is not welcome. It is also added that the staff engaged in the electricity department shall become surplus and will further cause problems to the NDMC.

53. The **Delhi Transco Ltd.** has also made certain observations with regard to the application for grant of distribution license to the Applicant. It is submitted that the new distribution licensee will presumably be responsible for evacuation of power from Transco's transmission network and for additional bays for such evacuation, additional space and cost would be required.

54. The peak demand of NDMC during summer is around 250 MW which is being met by the existing network of DTL from GT, Park Street, IP Station and Ridge Valley Sub-station of BSES Ltd. It is forecasted in a study of the CEA that by end of 10th Plan, the demand will grow to 328 MW. At present, the DTL is not in a position to provide additional supply points to the Applicant due to space constraints. Till such time it is feasible to draw more power, the Applicant may have to utilise the spare capacity available in the NDMC network for wheeling its power from DTL's transmission network under open access policy. It is also brought to the notice of this Commission that the NDMC area was kept outside the purview of the Transfer Scheme's Rule, related Policy Directions and DERA 2000, and as such the Applicant will not be entitled for any subsidised bulk supply tariff as applicable to other distribution companies in Delhi.

55. Objections have been also filed by the **Palika Graduate Electrical Engineers' Association**. It is submitted by them that NDMC and the Cantonment Board have been excluded from the purview of the DERC as per DERA 2000. Besides this, under Section 200 of NDMC Act, which is an Act of Parliament, NDMC has been empowered to fix its own electricity tariff. It is further added that NDMC received bulk supply of electricity under Section 201 of the NDMC Act and there is no provision in the aforesaid Act which allows DERC to grant distribution license in the NDMC area. It is further added that the Applicant has attempted to extend the jurisdiction of DERC over the NDMC area under Section 1 (2) of Electricity

Act, 2003, when DERA, 2000, has expressly excluded NDMC from the purview of DERC.

56. It is submitted that the NDMC has around 42.74 Sq. Kms. of area which houses various national and international institutions and buildings of extreme importance. In such an area, the distribution of electricity should not be handed over to a private operator. This is not in the benefit of the Nation. If BSES is given a parallel distribution license for distributing electricity, it will give preference to supply electricity to its own system and the NDMC network would be adversely affected. If BSES does not give preference to the NDMC network in supply of electricity, it will cause great problems. Presently, the cable network for supply of electricity in the NDMC area has been done according to Indian standards and there is no scope for further addition of network by a parallel distribution licensee. As per the advice of Central Electricity Authority, a lot of investment has been made in installation of 66/33 and 220 kV sub-stations. If a parallel license is given in this area, it will lead to wasteful expenditure on assets. NDMC has its contribution to social welfare and to this NDMC subsidises the cost in its own way. If an additional distribution licensee is brought in the NDMC area, it will directly affect the social cause to which NDMC is committed. NDMC has an efficient electricity distribution system and it has the least amount of Transmission & Distribution losses. In such a case there is no need for an additional competition in this area.

57. **Delhi State Electricity Workers' Union** in their brief objections have raised concern over the management of electricity department and have suggested that instead of giving a parallel license the management of the electricity department, NDMC should be managed by professionals.

58. The **Government of India, Ministry of Home Affairs** have also filed their objection in response to the application. It is submitted on behalf of the Govt. of India that in accordance with the provisions contained in Section 11 of NDMC Act, 1994, it is one of the obligatory functions of the Council to supply and distribute electricity to consumers residing in the area. Under Sub-section 1 of Section 195 of the said Act, the Council has been charged with the responsibility to develop and maintain an efficient, co-ordinated and economical system of electricity supply for New Delhi.

It is therefore, clear that notwithstanding the fact that it is permissible under 6th proviso of Section 14 of Electricity Act, 2003, to grant a license to two or more persons for distribution of electricity, it continues to be incumbent on the Council to maintain its distribution network in the New Delhi area. In case a parallel distribution license is introduced, the Council can no longer discharge its statutory responsibility to maintain an economical electricity system under its jurisdiction.

59. It is further added that the Central Govt. has so far not prescribed the additional requirements that the Applicant has to comply in order to obtain a license for the distribution of electricity through its own distribution system. Till such time the additional requirements are notified, this application may be kept in abeyance.

60. It is also submitted that in the New Delhi area which is under the jurisdiction of the NDMC, the distribution system for electricity is entirely through underground cables. Given the relatively small size of the area, the space underneath and also the right of way is already over crowded with a large number of services, leaving practically no room for a private network to utilise any additional space. Besides this, creation of a parallel distribution system is likely to cause a grave risk to the existing services in the area. It is further added that the Applicant may indulge in “cherry picking” by distributing electricity only in the profitable part of the area where it enjoys unfair commercial advantage. The issue relating to geographical “cherry picking” is engaging the attention of the Task Force on Power Sector Investment and Reforms which has been assigned the responsibility to review the policy of the Central Govt. for development of a power system based on optimum utilisation of resources.

61. Lastly, **ITC Maurya Sheraton Hotels** has submitted that in the capacity as a bulk consumer, they strongly endorse having more than one agency in the NDMC area which could provide electricity to the consumer. It is submitted that this would improve the existing distribution system and the consumer can insist on better quality, reliability and value for money. It is added that at present NDMC is the only agency engaged in distribution of electricity in that area and no consumer has the right to question their services or the tariff and, as such, makes all the consumers

vulnerable to NDMC. Therefore, they suggest that the Applicant should be granted a distribution license under the relevant provisions of law.

Written replies of the Applicant

62. The Applicant in response to the objections raised by the Stakeholders has submitted written statement giving its side of arguments on the objections raised. Submissions made by the Applicant are as follows:-

63. The Applicant, on the objections raised of NDMC, submits that their application needs to be considered in the light of the provisions of Electricity Act, 2003, which has come into force on 10.6.2003. The provisions of the previous Central Electricity Laws namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, and the Electricity Regulatory Commissions Act, 1998, have been repealed by the Electricity Act, 2003, as provided in Section 185 (1) of the Act. Furthermore, Section 185 (3) of Electricity Act, 2003, specifically provides that the provisions of Delhi Electricity Reform Act, 2000, shall apply only if they are consistent with the provisions of the Act.

64. The Reform Act specifically excluded from its operation the area of NDMC. This was provided in Sub-section 2 of Section (1) of the Reform Act. Accordingly, under the provisions of the Reform Act, the Commission could not have exercised its jurisdiction on the NDMC area. With the enactment of Electricity Act, 2003, the situation has changed. The Electricity Act applies to whole of India except State of Jammu & Kashmir. Therefore, the Electricity Act applies to NDMC as well. Section 82 of the Act provides for the constitution of State Electricity Commission for each State. Section 81 of Electricity Act, 2003, states that the State Electricity Regulatory Commission established by the State Government under Section 17 of the ERC Act or the enactments specified in the Schedule and functioning immediately before the appointed date shall be State Commission for the purpose of this Act. This Commission, therefore, after the enactment of the Electricity Act, 2003, is the State Electricity Regulatory Commission functioning under the Electricity Act, 2003, and has jurisdiction over the entire National Capital Territory of Delhi, including the NDMC area.

65. It is submitted that the term 'State' has been defined in the General Clauses Act, 1897, in Section 2 (58) and with reference to the said provisions read with the Constitution of India will include the entire National Capital Territory of Delhi including the NDMC area.

66. It is submitted that Section 14 of the Electricity Act, makes a departure from the provisions earlier contained in the Central Electricity Laws. Section 3 (2) (e) of the Indian Electricity Act, 1910, provided that grant of license for any purpose shall not in any way hinder or restrict the grant of license to any other person within the same area of supply for a like purpose. Section 20 (9) of the Reform Act, provided "*unless indicated in terms of a license, grant of a license under this Section to a person shall not in any way hinder or restrict the grant of license to another person within the area of supply for a like purpose, licensee shall not claim any exclusivity*". Thus, under the abovementioned provision, the general licensee shall not generally be allowed to claim any exclusivity. Grant of license to another person in the same area of supply was left to the discretion of the license granting authority.

67. In contrast with the above, under the Electricity Act 2003, the grant of license to another person in the same area of supply is mandatory under Section 14 of the Electricity Act subject only to the Applicant meeting the conditions of credit worthiness, capital adequacy and code of conduct etc. as specified in the aforesaid Section. The Legislative intent contained in Section 18 of the Act makes it clear that conditions to be specified while dealing with application for grant of second license in the same area of supply are specifically provided in the aforesaid Section i.e. capital adequacy, credit worthiness and code of conduct. The person complying with the above shall not be refused a license and the present situation applies to the area of NDMC as well. It is further submitted that the Electricity Act is an Act of consolidated laws relating to generation, transmission, distribution trading and use of electricity and more importantly, generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting the interest of the consumers and supply of electricity to all areas as stated in the preamble of the Act. The statement of the preamble holds the key to the Act which is intended to encourage

private sector participation in the Electricity Distribution Sector. It is therefore, submitted that it is not open to NDMC to raise extraneous issues to oppose grant of license to the Applicant.

68. As regards to the issue regarding jurisdiction of the Delhi Electricity Regulatory Commission over the NDMC, the Applicant admits that the Commission had no jurisdiction over the NDMC under the Reform Act. However, w.e.f. 10.6.2003 the Commission can exercise its jurisdiction over NDMC area as well. The New Delhi Municipal Council Act, 1994, provides for various matters concerning the function of NDMC. The NDMC Act provides for functions of NDMC in relation to electric supply as contained in Chapter XII (Sections 195 to 201) and do not in any manner provide for any exclusivity to NDMC. The NDMC Act, does not have any provision relating to the exclusivity of the NDMC for distribution and supply of electricity in the NDMC area. Accordingly, irrespective of whether NDMC as an institution require grant of license from the Commission for undertaking distribution or trading in electricity in the NDMC area, there is no prohibition on the DERC to grant a license to persons other than the NDMC in the aforesaid area.

69. It is added that a reading of the provisions of the NDMC Act do not in any manner suggest that the area falling under the NDMC area are not within the jurisdiction of the Commission for the grant of distribution and trading license. The exclusion of NDMC, if any, from the Regulations framed by the Commission will also make no difference at this stage.

70. It is further added that Section 174 of the Electricity Act, 2003, provides that the Act shall apply notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Electricity Act. The exception to the above is provided in Section 173 namely, to the extent of Consumer Protection Act, 1986, Atomic Energy Act, 1962, and the Railways Act, 1989. The only other exception provided under Section 184 which states with the provision of the Act shall not apply to the Ministry or Departments of Central Government dealing with defence, atomic energy etc. No such exception is provided to NDMC or NDMC area. In absence of the above, the provision of Electricity Act will have a

superseding application to all persons concerned and for all areas throughout India excluding only the State of Jammu & Kashmir.

71. In response to the other objections made by NDMC, the Applicant had submitted that it has given full details of its capacity and competence, including the turnover financial capacity and other particulars. The Applicant has also attached a brief profile of the Company and all the documents so submitted clearly and specifically establishes that the Applicant has the capacity and the competence to undertake distribution and supply of electricity in the NDMC area. It is also added that the Applicant is in a position and shall comply with additional requirements which may at any time be prescribed by the Central Government as per the 6th proviso of Section 14 of Electricity Act, 2003.

72. It is further added that the allegations made by the NDMC with regard to security and safety are baseless. Neither the security nor the safety will in any manner be affected by the Applicant while it is engaged in the distribution and supply of electricity in the NDMC area. It is further added that for the above license, the Applicant shall have its own distribution system and there will be no interference with the existing network of the NDMC. Therefore, it is wrong to suggest that there is going to be any security or safety concern. It is further added that it is an accepted position that distribution licensees, including private distribution licensees, have been distributing and supplying electricity in various other fields which are of equal and if not of greater importance such as Airports, Railway Stations, Diplomatic Areas, High Court, Police Authorities and Governors etc. The objections raised by the NDMC is therefore, baseless.

73. The Applicant while denying the merits of the objectors have submitted that the distribution companies in the other area of supply adjoining to NDMC are being regulated by the Commission. All licensees including the Applicant would be controlled by various codes framed and approved by the Commission from time to time including the Grid Code, Distribution Code and Supply Code etc. and as such there would be no operational issues which cannot be regulated by the Commission and in such a situation, it would be wrong on the part of NDMC to claim that the Applicant can starve the NDMC. It is further submitted by the Applicant that the availability of electricity supply from two sources will in any

manner effect the security or safety or otherwise hamper the holding of functions, conferences, visits by dignitaries etc. It is also wrong and denied that there would be any confusion in the operation and maintenance of power supply. In fact, the availability of power supply from two sources will also be an advantage to the consumer and it will be consistent with the objective of the Act.

74. It is further added that the Applicant company also distributes electricity in Mumbai and Delhi to various hotels and buildings where foreign dignitaries visit and have been able to achieve highest standards of professionalism. It is added by the Applicant that they have been distributing electricity in overly congested sub-urban areas of Mumbai and has substantially long experience in supply of electricity. Hence, the competence of the Applicant in managing such affairs within limited parameters is unquestionable. It is also not correct to assume that laying down a parallel distribution system within NDMC area will in any manner affect civic amenities or otherwise create any hardship as alleged. The matters relating to right of way, digging etc. are matters to be considered in accordance with the applicable laws and are not relevant for the purpose of this application. It is further added that the issues such as effect on financial health of NDMC are not relevant to the issue. It is worthwhile to note that the interest of the consumers is the most relevant aspect and the issues where NDMC should be subjected to competition in the supply of electricity are provided under the Electricity Act. As far as the general public interest is concerned, the introduction of competition could only enhance reliability and uninterrupted power supply to all. The very fact that NDMC is seeking monopoly over the distribution and supply in the NDMC area to cross subsidise other activities is not justified under the Electricity Act and therefore, there should be no hindrance in introducing a second licensee in the same area.

75. While responding to the objections raised by the New Delhi Municipal Workers' Union, NDMC Electrical Junior Engineers' Association, Nai Delhi Palika Vidyut Praday Karamchari Sangh, NDMC Electrical Engineers' Association, Delhi Transco Ltd., Palika Graduate Electrical Engineers' Association (PGEEA) and the Delhi State Electricity Workers' Union, the Applicant has reiterated its submissions as made on the objections on the issues raised by NDMC. The Applicant has further

added that the objections raised by the stakeholders are baseless and neither security nor safety will be compromised only on the account that the Applicant is engaged in distribution and supply of electricity in the NDMC area. It is proposed that the Applicant will have its own distribution system and the NDMC can continue to ensure security to its own network. It is further contended that it is incorrect to state that the security of the network cannot be entrusted to a private party since NDMC network continues to remain with the NDMC. It is also added that the private distribution licensees have been distributing and supplying electricity to various areas of importance such as Airports, Railway Stations and Police Authorities etc. It is added that the distribution companies in the other areas of supply adjoining the NDMC as well as the Applicant himself will be regulated by the Commission. The operation of licensees will be controlled by various codes framed and approved by the Commission from time to time including Grid Code, Distribution Code and Supply Code etc. The operational issues can always be addressed by the Commission from time to time. The Applicant has submitted that the issues raised by the PGEEA are not relevant for consideration of application for grant of a second license. The Applicant denies that the availability of electricity supply from two sources will affect in any manner the security or safety in that area or that it will create any confusion in the operation and maintenance of power supply. The operational and implementation based issues have nothing to do with the grant of a distribution license. The Applicant has been distributing electricity to areas like Mumbai and has substantially long experience in this field. It is further added that it is incorrect to assume that laying down of a parallel distribution system within the NDMC area will in any manner affect civic amenities or create any hardship, as alleged.

76. The Applicant, on the objections raised by Delhi Transco Ltd., submitted that the Delhi Transco Ltd., has only highlighted certain technical limitations which are operational and implementation based issues. These issues can be dealt during the implementation stage and, as such, the Applicant appreciates that these technical issues and other information can be dealt with as and when details are submitted.

77. Before the scheduled hearing of the instant application, the Commission also received communication from the Govt. of NCT of Delhi

wherein it has been stated that the Central Govt. has communicated that they are yet to frame a policy in terms of Section 3 of Electricity Act, 2003, read with 6th proviso of Section 14 of the said Act. It is also added that NDMC area is the seat of Central Govt. and that sensitive institutions and departments of national importance and various diplomatic missions are located in the area. Therefore, it would be desirable that the Commission obtains "No Objection Certificate" from the Central Govt. in terms of Section 15 (2) (ii) of Electricity Act, 2003. It was also informed that the NDMC has passed a resolution on 26.8.2004 whereby it proposes to take up the matter with the Union Government for exempting NDMC from the purview of the Electricity Act, 2003, by inserting suitable provisions in Chapter XII of NDMC Act, 1994, whereby NDMC would be the sole electricity distribution licensee in that area. In view of this, it is submitted that the application at this juncture is pre-mature and should be deferred.

Hearing

78. The matter was listed for hearing for 27th October, 2004.

79. At the very beginning of the hearing, Mr. P.C. Maurya, AEE, GE (O) E/S submitted that he had instructions from the Ministry of Defence to handover a copy of 'No Objection Certificate' issued by the Central Government on the application of Reliance Energy Ltd. for grant of distribution and retail supply license in the NDMC area. Mr. Maurya stated that he has accordingly handed over the copy of the 'No Objection Certificate'. Mr. Maurya was then asked to certify the copy of the 'No Objection Certificate'.

80. Sh. Amit Kapoor, Ld. Counsel, appearing on behalf of the Applicant submitted that he would address the issues in three main folds namely :-

- (i) the establishment of jurisdiction of the Commission over NDMC area;
- (ii) address the merits of the objection raised by the respondents; and
- (iii) will submit the grounds for grant of license to the Applicant.

81. On the issue of jurisdiction, the Ld. Counsel for the Applicant submits that they have made this application under the 6th Proviso of Section 14 of Electricity Act, 2003, wherein it has been brought out that the appropriate

Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, as per the conditions and requirement of the Act. Attention of the Commission is drawn to the objective clause of the aforesaid Act that this Act has been enacted to consolidate the laws relating to generation, transmissions, distribution trading and use of electricity and generally for making measures conducive to development of electricity industry, promoting competition, wherein protecting interest of the consumer and supply of electricity to all areas. On account of the aforesaid provisions the Ld. Counsel submitted that the Applicants have made the instant application for grant of distribution license in the area of NDMC. As far as jurisdiction is concerned, the Ld. Counsel submitted that the Commission has the jurisdiction over the NDMC area by virtue of enactment of the Electricity Act, 2003.

82. Attention is also drawn to sub-section (2) of Section 1 of Electricity Act, 2003, stating that the Electricity Act, is applicable to whole of India except the State of J&K and by virtue of this Section, the Act is applicable to whole of India including the NDMC area. Delhi Electricity Regulatory Commission, the State Commission, which was established under ERC Act 1998, has jurisdiction over the entire territory of Delhi. It is added by the Ld. Counsel that though under the DERA 2000, which was a State Legislation, NDMC was kept outside the purview of this Commission, by enactment of the Electricity Act, 2003, the whole territory of Delhi including the area of NDMC is brought under the purview of the State Commission. Attention is also drawn to the first Proviso of Sub-Section (1) of Section 82 of the Act which provides for constitution of the State Commission in each State and it is submitted that the State Commissions established under ERC Act, 1998, and the enactment specified in the schedule is functioning immediately before the appointed date, shall be the Commission for the purpose of this Act, and the Chairperson, Members, Secretary and other officers shall continue to hold office on the conditions as they were appointed under those Act. It is further added that Section 86 (1)(d) of the said Act, also highlights the functions of the State Commission to issue license seeking to Act as distribution licensee with respect to operation within the State. It is further submitted that after the enactment of Electricity Act, 2003, no territory of Delhi has been excluded from the provisions of the aforesaid Act. It is added by the Ld. Counsel that this Commission became the

State Electricity Regulatory Commission of NCT of Delhi in terms of section 17 of Reform Act. When the Electricity Act came into force, this State Commission became State Commission for the entire NCT of Delhi in terms of Section 82 of the Electricity Act, 2003. Accordingly, with effect from 10th June 2003, this Commission has jurisdiction on the entire State of NCT of Delhi including areas falling under the NDMC.

83. The term 'State' has been defined in the General Clauses Act, 1897, Section 2(58)) as a State specified in the First Schedule to the Constitution and shall include a Union Territory and with reference to the said provisions read with the Schedule 1 of Constitution of India defines Delhi as Union Territory and further specifies the territory of Delhi as "the territory which immediately before the commencement of the Constitution was comprised in the Chief Commissioners Provision of Delhi". These provisions, read with the provisions of Electricity Act, 2003, will therefore, make it imperative that the NDMC area has not been excluded from the area of NCT of Delhi and hence as a natural corollary, the NCT of Delhi shall include area of NDMC. By virtue of the functions and establishment of the Delhi Electricity Regulatory Commission under the Electricity Act, the NDMC will fall within the jurisdiction of the Commission and there is no provision in the said Act to abstain this Commission from exercising such powers.

84. The Ld. Counsel for the Applicant has also drawn the attention to Section 11 (1) (d) of NDMC Act, 1994, and submits that the obligatory functions of the Council as enumerated under the aforesaid Section, only provides for construction or purchase, maintenance, extension, management for supply and distribution of electricity to public which are subject to any other law for the time being in force. Further more, Section 411 of the aforesaid Act, lays an obligation that nothing contained in this Act, shall be construed as authorising the disregard by the Council or Chairperson or any Municipal Officer of any laws for the time being in force. By conjoint reading of these two sections, it is clear that NDMC is also bound by the provisions of the Electricity Act, 2003, and there is nothing in the NDMC Act to suggest exclusivity for the purpose of electricity distribution in the area of NDMC.

85. Section 173 of the Electricity Act, 2003, specify the 3 legislations which survive inconsistency with the Electricity Act, 2003, viz., Consumer Protection Act, 1986, Atomic Energy Act, 1962 and Railways Act, 1989. Other than these 3 legislations in terms of Section 174 and 185(3) of the Electricity Act, 2003, the Act, overrides all other laws including the NDMC Act and the DERA to the extent they are inconsistent with the Electricity Act, 2003. As such Section 175 of the Electricity Act, 2003, cannot be given an interpretation that the Electricity Act, 2003, would not override any other law even if such other law is inconsistent with the Electricity Act, 2003. Such interpretation is unsustainable in light of Section 174, 185(3) and 173 of the Electricity Act, 2003, and the Objects of the Electricity Act, 2003. The only tenable construction, (which does not render any provision redundant) is that Electricity Act, 2003, would be in addition to and not in derogation of any other law only to the extent it is not inconsistent with the Electricity Act, 2003.

86. It is further added by the Counsel that Section 197 of the NDMC Act has only given a status of a deemed licensee as per the Electricity Act, 1910, (now since repealed), and after enactment of the Electricity Act, 2003, it carries the status of a deemed licensee under the provision of Section 14 of the aforesaid Act. Since non-obstante clause of Section 411 of NDMC Act is operative, the provisions of NDMC Act only supplement the provisions of the Electricity Act, 2003, and these provisions cannot override the Electricity Act, 2003.

87. The Ld. Counsel further adds that the subsequent act of the NDMC also goes on to prove that it has accepted the jurisdiction of the Delhi Electricity Regulatory Commission. To highlight this view, it is submitted that the mere fact that the NDMC has accepted the notice and has participated in this hearing, goes to suggest that they have accepted the jurisdiction of the Commission. Further more, the participation of NDMC in formulation of Consumer Grievances Redressal Forums as per the Regulations of the Commission and further appointment of Ombudsman is indicative of the exercise of Commission's jurisdiction over the NDMC area.

88. Shri Rakesh Agarwal, Ld. Counsel, appearing on behalf of the NDMC submitted that they have no argument as to the jurisdiction of this

Commission over the NDMC area. However, he states that the written submissions have already been made and he desired to seek an adjournment of the hearing.

89. Sh. Amit Kapoor, Ld. Counsel, for the Applicant has brought to the attention of the Commission that one of the major objections of the stakeholders with regard to grant of distribution license is that the Central Government is yet to prescribe additional requirements for capital adequacy creditworthiness and code of conduct, as given in 6th Proviso of Section 14 of Electricity Act, 2003. The stakeholders have prayed for withholding of the issue of hearing till such conditions are prescribed. However, the Ld. Counsel submits that he has judgements from the Supreme Court and the Division Bench of the High Court of Andhra Pradesh which would suggest that the Commission may not necessarily wait for such additional requirements to be prescribed by the Central Government and may go ahead with the issue of license.

90. In support of this argument, he submits that the prescription of additional requirements through a Regulation is a delegated legislation under the enactment. If no Regulations have been framed under such delegated legislation by the concerned authority, it should not impede the intent and spirit of the parent legislation. It is suggested that if too much stress is given to the delegated legislation, it may lead to redundancy of the parent Act or it may frustrate the letter and spirit of the Act. Attention is drawn to the 6th Proviso and it is submitted that formulating of Regulation under the said proviso is only the discretion of the Central Government. The additional requirement may or may not be prescribed by the Central Government. It is a settled law that whenever discretion is given to an authority under delegated regulation, such discretionary powers should not stand in the way of provisions the parent legislation.

91. The Ld. Counsel submitted that the Supreme Court in the matter of **UP Electricity Board Vs. City Board Mussoori AIR 1985 SC 883** has held that the absence of Regulation would not vitiate the fixation of Tariff. The material part of the judgement is as follows :-

“The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section

79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on sub. Section (1) of S.46 of the Act which provides that a tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negated the above plea and according to us, rightly. It is true that S.79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But S. 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff shall be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under S. 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

92. Reference is also drawn to the case of **Mysore State Road Transport Corporation V/s Gopinath Gundachar AIR 1968 SC 464**, wherein the Court has held that the Road Transport Corporation was empowered to make regulation for service conditions of its employees, but it was contended that that the Corporation could not have appointed officers until such regulations were made. However, it was decided that appointment of officers must conform to the direction given by State Govt. In absence of such regulation/directions the Corporation may appoint officers for efficient performance of its duties as it thinks fit.

93. Further attention is drawn in the case of *M/S Bharat Kumar versus Government of Andhra Pradesh and Others*, where the Division Bench of the High Court of Andhra Pradesh, while dealing with the issue that whether in the absence of Regulations, the entire process of determination of grid tariff is vitiated, pronounced the following:

“We cannot accept this contention. There is no quarrel with the proposition that framing of Regulations, Bye-Laws or Rules as contemplated by the Act is not a condition precedent for enforcing the main provisions of the Act if they are otherwise capable of being enforced without reference to such subordinate Legislation. If an authority is needed, we may refer to the case of UPSEB Vs. City Board, Mussuori, AIR 1985 SC 883. There is nothing in the language of subsection (2) of Section 26, which obligates the Commission to frame the Regulations before dealing with the tariff determination. We find no force in the contention that the procedure and methodologies laid down for calculating the expected revenue from charges by the licensee could be done only by way of Regulations. Such guidelines or methodologies are primarily meant for the guidance of the licensee. It is not necessary that they should be published in the form of Regulations. The public will in no way be handicapped to file their objections against the tariff proposals submitted by the licensee for the reason that the procedure and methodology is not published before-hand.”

94. In view of these case laws, it is submitted by the Applicant's Ld. Counsel that the petitioner company should not be barred for grant of license merely in the absence of the requirements, which are yet to come as Regulations from the Central Government. It is submitted by the Ld. Counsel that the Applicant may be granted a license with this condition that as and when such additional requirements are prescribed, the Applicant will honour such conditions laid down by the Central Government. The Ld. Counsel also brings in a chart comparing the worthiness of Reliance Energy Ltd. and its present operation across the country. In view of above submissions, the Ld. Counsel also submits that it would not be appropriate to restrict the spirit of the Act and justify monopoly in the hands of the local authority. The petitioner should be accordingly given a license and should not be denied any right of way in establishment of their network.

95. Sh. Rakesh Agarwal, Ld. Counsel, appearing for NDMC drawing the attention to proviso 6 of section 14 of the Electricity Act submits that the words used in this Section are “that the appropriate Commission may grant a license” thereby highlighting the discretionary powers of the Commission either to grant or not to grant a license to two or more

persons within the same area. It is emphasised by the Counsel that the Applicant cannot derive benefit out of proviso 6 of Section 14 of the Act because they don't qualify to be "such Applicants" to whom license cannot be refused because they have not fulfilled the conditions of additional requirements which are yet to be prescribed by the Central Government. It is submitted that license cannot be granted to an Applicant on a future promise to comply with the condition that may be prescribed by the Central Government. It is added by the Ld. Counsel that the NDMC area has a unique topography and consumer mix. The demand in NDMC area is almost static and has already reached a saturation. It will not be fruitful to have another electricity licensee in the area, as it would create unhealthy competition. The consumer will not benefit much with the grant of the license to the Applicant and it would lead to wasteful expenditure on infrastructure. NDMC is placed in a unique situation and there should be a harmonic construction of the NDMC Act and Electricity Act, 2003, so as strike a balance between the two. It is further submitted by the Ld. Counsel that the NDMC has passed a resolution on 26th August, 2004 whereby it proposes to take up the matter with the Government of India for exempting NDMC from the purview of the Electricity Act, 2003, by inserting a suitable amendment in the NDMC Act, 1994. In view of these submissions, it is the Counsel's request that the hearing may be deferred for a future date. The Ld. Counsel also adds that it is his endeavour, on behalf of NDMC, to assist the Commission to the extent possible to resolve the issues placed before the Commission.

96. Sh. Dalip Mehra, Ld. Counsel, for the Union of India representing Ministry of Home Affairs in his limited submission has requested for the deferment of hearing pending the additional requirements being published by the Central Government.

97. Sh. Amit Dass, representing the DDA submits that the land in the NDMC area belongs to L&DO and DDA has not much to say in this issue. However, they have advised that the licensee will have to adhere to the Master and Zonal Plans and due care must be taken while laying down the network.

98. Sh. O.P. Gupta, Executive Engineer, NDMC Electrical Association submits that NDMC is the only municipality in the country which is directly controlled by the Central Government through the Ministry of Home Affairs. He submits that the NDMC area has been excluded from DERA 2000 and it is not advisable to have private operators in the NDMC area keeping in view the high sensitivity of the NDMC area being the seat for Central Government. It is submitted that existence of a private licensee in the jurisdiction of the NDMC will force unhealthy competition and it will force each other to become sick. The NDMC has created a large network with public money and additional investment is not in general public interest. It is submitted that electrical network servicing in NDMC area is of paramount importance and such tasks cannot be entrusted to any private party. It is submitted that the NDMC is a much better company as compared to its counter parts in the country and has the lowest T&D losses and as such, there is no requirement of additional licensees in the NDMC area.

99. Sh. H.L. Dhawan, appearing on behalf of the NDMC Workers Union submitted that NDMC has a work force of around 18000 workers and in case a parallel body is given a license to distribute electricity in the area, it would affect the workers interest as they will have lesser area to operate.

100. Sh. B.S. Bhati, representing the NDMC Electrical Workers Union, also submits the same view. He adds that NDMC is a seat for offices of national and international importance and till this date there is no complaints from any sector as to the services provided by the workers of NDMC. He prays that taking the example of DVB after take over, the employees of erstwhile DVB have suffered the most because of unemployment etc. Since a private company will be operating in this area, it is likely to affect the interest of the workers at large.

101. Sh. Ajay Kumar Tyagi, representing NDMC Jr. Engineers also endorsed similar views and prays that the Applicants may not be granted a distribution license in the NDMC area.

102. Sh. Viniyak, representing ITC Maurya Sheraton, having a chain of hotels in Delhi, submits that it is healthier to have competition and two or more players in the field of electricity should lower price and improve the

efficiency in supply of electricity. He believes that there should be no doubt that the Applicants should be given a license. In this way the NDMC will also improve its functioning and ensure efficiency and good quality service to its consumers. It is also added that ITC is operating two hotels, one in the BSES area and the other in the NDMC area. It is pointed that there is a vast difference in the rates of tariff in the two areas. Therefore, they endorse that the Applicants should be granted a license.

103. After the hearing the Commission has received communication from the NDMC Electrical Engineers' Association and the NDMC Electrical Junior Engineers' Association wherein they have stated that the application made by M/s Sai Site Electrical Power Supply Private Ltd. has been kept in abeyance for want of clarification from the Govt. of NCT of Delhi on multiple distribution license in the same area of supply. They now seek information as to whether clarification has been sought from the Ministry of Power, Govt. of India and the Govt. of NCT of Delhi on the aforesaid issue. In case no clarification has been issued on the aforesaid subject, then under what circumstances was the hearing held in the instant application.

Conclusion

104. The parties have been heard and the written submissions made by the stakeholders have been considered in detail. The various submissions made herein in respect to the application for the grant of distribution license has culminated mainly into the following substantive issues, namely:

1. Whether the DERC has the jurisdiction over the NDMC area and that whether DERC has the limited authority to only give additional condition by virtue of Section 16 of the Electricity Act, 2003?
2. Whether the issue of additional requirements like capital adequacy, code of conduct and credit worthiness are pre-requisites to issue of a license under the sixth proviso of section 14 of the Electricity Act, 2003? Since the Central Government is yet to prescribe the additional requirement under the said proviso, whether the instant application should be kept in abeyance?
3. Whether the Applicant is indulging in "cherry picking" which would lead to losses for the local authority/ license i.e. NDMC?

4. Whether the issue of license to a private entity for NDMC area which houses several Government buildings may lead to problems of security?
 5. NDMC uses its profits from the electricity sector to finance other social sectors like education and health. Should there be a bar on the grant of a parallel distribution license on the grounds that NDMC has apprehensions that their profits may fall consequent upon a second license being granted?
 6. Whether the parallel infrastructure required by the Applicant for laying the distribution lines would demand lot of space and whether such space is available in the NDMC area or not?
 7. The Commission had in another case of M/s Sai Site Electricals Power Pvt Ltd had indicated that the Ministry of Power, Government of India is likely to issue some Policy Directions regarding the area that should be covered by the multiple distribution license. Whether the situation is similar to the present application and whether it would be appropriate to keep the application in abeyance till such time?
 8. NDMC has passed a resolution on 26th Aug., 2004 wherein, it proposes to take up the matter with the Govt. of India for exempting the NDMC from the purview of the Electricity Act, 2003, by inserting a suitable provision in Chapter XII of the NDMC Act, 1994, where NDMC would be the sole electricity distribution licensee under its jurisdiction. Whether such resolution would be binding on the Commission at this stage?
 9. The grant of a second license in the NDMC area would imply that the NDMC can no longer discharge its statutory responsibility to maintain an economical distribution system
105. On the issue of jurisdiction of the Commission over the NDMC area, the Commission is inclined to agree with the submissions made by the Applicant, namely M/s Reliance Energy Limited. To recapitulate some of the arguments made, Section 1(2) of the Electricity Act, 2003 clearly indicates that the Act shall extend to the whole of India except the State of Jammu and Kashmir. The areas which may fall outside the purview of the Act have been enshrined in the Section 184 of the Act and the NDMC area is not included in this. However, those Acts whose provisions shall

apply in the face of Electricity Act, 2003, have also been clearly indicated in Section 173 of the Electricity Act, 2003. These Acts are the Consumer Protection Act, 1986, Atomic Energy Act, 1962 and also the Railways Act, 1989. It is pertinent to note that the NDMC Act, 1994 is not included in this. It would not be out of place to mention that the NDMC themselves during the oral submissions did not object to the jurisdiction of the Commission over the NDMC area as such, but had objections to the grant of a second license to another operator. The NDMC, in fact, as in the case of any other licensee has set up their Consumer Forum under Section 42 (5) of the Act and have also filed their Aggregate Revenue Requirements (ARR) for 2005-06 before the Commission. The Commission had earlier made a reference to the Govt. of NCT of Delhi on the issue of jurisdiction of the Commission over the NDMC area and the Commission had received an unambiguous feedback from the Government clearly stating that the Commission does indeed have jurisdiction over the NDMC area.

106. There are objections from the stakeholders that the “additional requirements” as provided under 6th proviso of Section 14 of Electricity Act, 2003, have not been notified by the Appropriate Government, therefore, this application should be kept in abeyance. In the absence of these Regulations the entire exercise by the Commission would be vitiated in law. It has been submitted that the Applicant can only be granted license once he fulfils the conditions as laid down under the 6th proviso. It has further been submitted that the aforesaid provision in the 6th proviso has been kept so as to ensure that the Applicant is capable of shouldering the responsibility under the Act. It is contended that the compliance to the “additional requirements” shall be a pre-requisite before the appropriate Commission who may grant a license to two or more person for distribution of electricity in the same area of supply.

107. It is difficult to accept this proposition. It is an admitted proposition that the framing of Regulations, bye-laws as conceived by the Act is not a sine-quo-non for implementation of the main provisions of the Act, if the provisions are otherwise capable of being enforced without taking the support of such Regulations, Rules and Bye-laws etc. There is nothing in the language of the aforesaid proviso that makes “additional requirements” as a condition precedent for granting a license to two or more persons. This Commission places reliance on the Supreme Court

case of ***U.P.S.E.B. Vs. City Board, Mussorie, AIR 1985 SC 883*** and ***Myssore Road Corporation Vs. Gopi Nath Gunachar, 1968 (1) SCR 767***.

108. In the case of *U.P.S.E.B. Vs. City Board, Mussorie*, the Apex Court held that though, the provisions of the Act authorizes the Electricity Board to frame Regulations for fixation of tariff, the notification of Regulations is not a condition precedent for fixation of tariff. If the tariff is fixed in the absence of such Regulations, it was held to be valid, since such tariff did not suffer from the vices of arbitrariness.

109. In view of the pronouncement of the Apex Court, in the case law cited above, this Commission is inclined to hold the view that the framing of subordinate legislation cannot withhold the operation of the expressed letters and the spirit of the Parent Act. If there are objects and reasons annexed to the Act, the preamble and the provision of the Act clearly lays down the policy in explicit words and where there are sufficient guidelines in the Act, in such cases, it is difficult to hold that absence of “additional requirements” can suppress the entire statute. It would be pertinent to note that the Central Government is yet to frame the National Electricity Policy and the Tariff Policy under Section 3 of the Electricity Act, 2003. This, however, does not put a bar on the Electricity Regulatory Commissions from issuing tariff orders till such time the Central Government finalises the National Electricity Policy and the Tariff Policy; in fact, the Regulatory Commissions have been processing tariff applications.

110. The question of “cherry picking” insofar as the instant application is concerned is not relevant since the Applicant has made an application for award of a license which covers the entire NDMC area. Further, statutorily, it is not up to the Applicant to choose its customers and in fact it is the other way around. In other words, under the Electricity Act 2003, the utility is under obligation to provide electricity connections in a time-bound manner to whosoever who desires in accordance with the Regulations framed by the Regulatory Commission. The licensee, therefore, cannot decide its customers on its own.

111. Problems of security to Government buildings in case a private operator is given a license in the NDMC area is not a matter which is to be

looked into by this Commission. The task of this Commission is to interpret the provisions of the Act and ensure that rules and regulations in force are followed in letter and spirit. The problem of security is an issue which has to be looked into by the Government and considering the fact that the Ministry of Defence has issued the “No Objection Certificate”, this Commission is of the view that the Government would have examined all these issues in consultation with the authorities concerned.

112. The Commission is alive to the fact that the NDMC subsidises its other activities in social sectors like health and education through profits generated in the electricity sector. The NDMC may continue to carry out its other social activities in accordance with the provisions indicated in Section 51 of the Act. At the same time, however, it would be inappropriate on the part of the NDMC to suggest that the operation of another licensee will decrease their profits, possibly the competition may trigger higher productivity, thereby adversely affecting their other welfare activities. The preamble of the Act states that competition will be one of the guiding factors and to that extent, the spirit of the Act cannot be violated. Keeping in view that open access will not be permitted in the NDMC area (Section 42 of the Electricity Act), the only way to promote competition is by having more than one licensee. The NDMC is under obligation to compete with any other licensee who may operate in that area. It would be prudent to add that even the NDMC Act, 1994 does not give exclusivity to the NDMC in distribution business as Section 199 of the NDMC Act clearly indicates that there could be more than one licensee operating in the NDMC area.

113. Several objections have been raised on the issue of inadequate space available for the parallel distribution network. Requirement of space is a dynamic concept and amongst others, is a function of the technology adopted. Technology keeps growing and gadgets become smaller and smaller in size. It is inevitable that the NDMC themselves will have to lay more infrastructure in the years to come because of increase in load. Nevertheless, the Commission, is bound by the provisions of the Electricity Act, 2003, and takes note of the fact that while the procedures to be followed for grant of license are given in Section 14 of the Act, there are separate provisions laid down for opening up of streets, etc. for licensees to carry out their work. This is given in Sections 67-69 of the

Electricity Act, 2003. It is the Commission's duty to examine an application made under Section 14 of the Act and it would be the task of the licensee to take up the matter with the local bodies in accordance with the Sections 67-69 of the Act. Till such time the Government makes rules for this purpose, the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910, and rules made there-under shall have effect. The Applicant would thus have to take up the issue with the local body for carrying out their work and the local body is free to examine the matter, on merits.

114. The Commission would like to state that the case of M/s Sai Site Electrical Power Limited is completely distinct from that of this instant application in question. In case of M/s Sai, it was a clear case of “cherry picking” since they had applied for a license for a small portion of the NDPL area. Moreover, this Commission had made a reference to the Govt. of NCT of Delhi as far as this application of M/s Sai was concerned since it considered that it would have an impact on the Aggregate Technical and Commercial losses (AT&C) which have been enumerated by the State Government in their Policy Directions issued in May 2002. It would be noteworthy to see that the application of M/s Reliance Energy is for the entire NDMC area and more importantly, the NDMC area is not included in AT&C profile enumerated in the Policy Directions of the State Government.

115. The Commission has also taken note of the fact that the NDMC has passed a resolution on 26.8.2004 wherein it proposes to taken up the matter with the Government of India for exempting the NDMC from the provisions of the Electricity Act, 2003 by inserting suitable provisions in chapter XII of the NDMC Act, 1994. The Commission, however, is constrained to be guided by the statutes in force.

116. The Electricity Act, 2003, is very clear in its preamble which states that the primary focus of the Act is consolidation of all existing laws on electricity matters, promotion of competition, protecting interest of consumers, rationalisation of tariff, ensuring transparent policies regarding subsidies etc. It is only competition which will guarantee that the lowest possible tariff is charged from the consumers besides ensuring that there is

good quality supply. To argue that the grant of a second license would lead to a less economical system may not, therefore, be tenable.

117. The NDMC have in their submissions have expressed apprehension that since they are surrounded by the BSES, there is a potential danger that the BSES may give less preference to the NDMC network. Also mentioned was that the BSES is receiving power at a cheaper rate than the NDMC which is receiving supply at the bulk supply tariff rate. Taking the latter issue first, it is to be noted that bulk supply tariff from Transco to BSES companies is regulated by the Policy Directions and the DISCOMs can distribute powers to its consumers falling within the jurisdiction and their area as per their license. The Policy Directions are not applicable for NDMC. The Electricity Act 2003 has provisions wherein such disputes can be referred to the Commission, if the situation so arises. The fact of the matter is that the basic objectives of the Act cannot be put to rest on account of such objections. The Commission would like to take a similar view on the first objection as well ie. the NDMC being surrounded by the BSES network.

118. In view of the above arguments, the Commission is of the view that the application of M/s Reliance Energy is tenable and the Commission, therefore, accords "in-principle" approval to their application. It may, however, be added that the license document is an elaborate piece of work and the same is under critical scrutiny. The Commission shall issue the Distribution and Retail Supply license to the Applicant on such terms and conditions under relevant provisions of law, as considered appropriate and just.

119. Ordered accordingly.

Sd/-
(V. K. Sood)
Chairman