

**HARYANA ELECTRICITY REGULATORY COMMISSION  
SCO 180, SECTOR 5, PANCHKULA – 134 109, HARYANA**

**APPLICATION No. HERC/App/L/DRS-1**

**DATE OF HEARING: 04.04.2006 and 14.06.2006**

**DATE OF ORDER: 18.08.2006**

**IN THE MATTER OF:**

**Application for Grant of licence for distribution of Electricity in the State of Haryana under Section 14 of Electricity Act, 2003 by M/s. DLF Estate Developers Limited (DEDL).**

**Present :**

1. **Lt. Col. (Retd.) Raghbir Singh, Chairman, HERC**
2. **Sh. T.R. Dhaka, Member, HERC**
3. **Sh. T.S. Tawatia, Member, HERC**

**On behalf of Applicants :**

1. Sh. K.K. Bhattacharya, E.D., DEDL
2. Lt. Col. J.S. Soharu, DGM (E), DEDL
3. Sh. Arun Kumar Bhagat, G.M. (Finance), DEDL
4. Sh. Vijaypal, Advocate for DLF
5. Ms. Loveleen Bounthiyal, Advocate for DLF (Dhir & Dhir Associates)
6. Sh. Sanjay Sharma, AM, DLF
7. Sh. V.K. Chopra, Advocate for DLF (Dhir & Dhir Associates)

**On behalf of Incumbent Distribution Licensee (DHBVNL) :**

1. Sh. Vijayendra Kumar, IAS, MD, DHBVNL
2. Sh. M.K. Sharma, Director (Operation), DHBVNL
3. Sh. V.K. Johar, CE/Comml, DHBVNL
4. Sh. R.C. Sapra, CE, Op/Delhi, DHBVNL
5. Sh. D.S. Yadav, SE/Operation, DHBVNL, Gurgaon
6. Sh. B.S. Boora, SE/RA, DHBVNL, Hisar
7. Sh. V.K. Jain, SE, DHBVNL
8. Sh. V.K. Singla, SE/RA, DHBVNL
9. Sh. V.K. Seth, XEN/SO, DHBVNL, Hisar

**On behalf of Transmission Licensee (HVPNL):**

1. Sh. P.K. Das, IAS, MD, HVPNL
2. Sh. A.S. Chugh, Director/P, HVPNL
3. Sh. S.K. Singal, Director/Tech., HVPNL
4. Sh. P.S. Bhatia, CE/P&C, HVPNL
5. Sh. S.K. Aggarwal, CAO, HVPNL
6. Sh. T.K. Dhingra, SE/Plg., HVPNL
7. Sh. S.K. Gupta, SE/CPM, HVPNL
8. Sh. C.K. Sahagwani, XEN/SO, HVPNL
9. Sh. Rahgbir Saran, Dy. Secretary, HVPNL
10. Sh. Rajiv Gupta, Xen/Tariff, HVPNL
11. Sh. B.K. Ashta, AEE/SO, HVPNL

**On behalf of Residents, Residents' Welfare Associations of the area and general public:**

1. Sh. R.S. Rathee, President, QERWA
2. Dr. R.N. Wahi, Vice-President, Phase II, DLF, QERWA
3. Sh. Sudhir Kapoor, Secretary General, DLF City, RWA
4. Sh. Sandeep Virmani, General Secretary, DLF, QERWA
5. Sh. MadanLal Yadav, Vice-President, DLF-III, QERWA
6. Sh. Ashok Joshi, Secretary, RWA, Suncity
7. Sh. Abhey Poonia, President, RWA, Suncity
8. Sh. H.N. Chopra, Council Member, RWA
9. Sh. D.B. Anand, Resident, DLF, Phase-I, Gurgaon
10. Sh. P.N. Piplani, DLF-I, Gurgaon
11. Sh. S.P. Uppal, Phase IV
12. Sh. Vinod Sharma, Advocate
13. Sh. Vivek Sehgal, Assistant Manager, Enercam India Limited, Chandigarh
14. Sh. S.R. Prasad, Member Energy Panel, Faridabad Industry Association
15. Sh. M.L. Bajaj, ISGEC, Yamunanagar
16. Representative of Parshadamal MukandiLal, Ricesheller
17. Sh. Vinod Bhardwaj
18. Sh. Anoop Jain

**ORDER**

1. M/s. DLF Estate Developers Limited (DEDL), Shopping Mall, Arjun Marg, DLF City, Phase - 1, Gurgaon, filed an application dated 28.03.2005 under Section 14 of Electricity Act 2003 for grant of licence for distribution of electricity in DLF City, Gurgaon, which was received in the office of the Commission on 31.03.2005. The application was submitted without requisite fee and had a

number of deficiencies. As such, the applicant was directed vide Memo. No. 1162/HERC dated 22.7.2005 to remit a sum of Rs. 1 lac as processing fee for grant of above cited licence and to resubmit the application in the desired form after removal of deficiencies listed therein. M/s DLF Estate Developers Limited deposited the requisite fee vide letter dated 8.8.2005 and re-submitted the application for grant of licence for distribution of electricity vide their letter dated 24.8.2005.

2. The detailed scrutiny of the application was done and the observations in this regard & additional information/clarification required were communicated to the applicant vide letter dated 10.11.2005. M/s DLF Estate Developers Limited vide letter dated 29.11.2005 supplied only one copy of the reply, as such, they were directed vide letter dated 20.12.2005 to supply six additional copies of the reply, under affidavit, as per the Conduct of Business Regulations of the Commission. M/s DLF Estate Developers Limited, vide letter dated 22.12.2005 filed the reply in proper format, to the Commission's letter dated 10.11.2005.
3. The intimation regarding admission of the application for grant of licence for distribution of electricity was given to the applicant and the Application Number for the licence was intimated vide letter dated 6.1.2006. The applicant was also directed to publish a notice in press and take further action as stipulated in the HERC (Transmission and Distribution Licensing) Regulations, 2004 (No. HERC/09/2004). The applicant, vide his letter dated 16.1.2006 supplied to the Commission the news-paper clippings depicting the notice published in the two newspapers viz. Times of India and Navbharat Times dated 11.1.2006.
4. The applicant was directed on telephone by Director (Technical) HERC to supply a copy of the complete application for grant of licence to DHBVNL, Hisar and obtain acknowledgment from them. The applicant was also directed to supply four additional copies of the application to the Commission so that the same could be supplied to persons asking for these. The applicant conveyed vide letter dated 7.2.2006 that Director/Operations, DHBVNL had confirmed the receipt of copy of the application for grant of licence, in his office, on 30.1.2006. Meanwhile, Mr. Y.S. Antil, a law student of Delhi University and resident of

New Delhi requested the Commission to supply a copy of the application for grant of licence and the same was supplied vide letter dated 10.2.2006. As per the notice published by the applicant in newspapers dated 11.1.2006, any person objecting to the application for licence could send his objections so as to reach the office of the Commission within 30 days of publication of the notice. The notice period to file the objections expired on 9.2.2006 but no objection from any quarter was received.

5. As per Section 14 of the Regulation No. HERC/09/2004 on Transmission and Distribution Licencing, the Commission is required to give notice of hearing to the applicant and the persons who file the objections. Under the circumstances existing at that time when the Commission had not received any objections from any person or organization, the Commission decided to conduct the hearing after publishing again in press, a notice of hearing, thereby giving another opportunity to the persons willing to file the objections against grant of licence to the applicant for Distribution of Electricity in the area specified therein. As per the provisions of the above said Regulations, publication of the notice in the press by the Commission, thereby giving another opportunity to persons/organizations nations to file the objections, was not mandatory and by doing so, the period of 90 days (stipulated for grant of licence) was going to be over by the time the hearing could be conducted. Even then, this course was adopted by the Commission for the sake of transparency and fair play, so that the objections, if any, from any quarter, to the grant of licence for Distribution of Electricity could be obtained and considered.
6. The notice of hearing was published in the Press by the Commission on 23.2.2006. Through this notice, the objections were invited from public so as to reach the office of the Commission by 22.3.2006. The public was also informed about the date of hearing i.e. 4.4.2006. A copy of the above notice was supplied to MD, DHBVNL on 24.2.2006 and a set of documents containing application of M/s DEDL for grant of distribution licence was collected by a Junior Engineer of office of HVPNL on 20.3.2006. The objections were received from DHBVNL within stipulated time limit as per the press note.. However, the HVPNL

requested the Commission on 24.3.2006 i.e. after expiry of stipulated time limit for filing the objections, to extend the time limit upto 31.03.06 to file their objections. The Commission considered the request of HVPNL and extended the time limit upto 31.03.06 as requested by them. The Communication regarding extension in time limit to file objections upto 31.03.06 was given to HVPNL, telephonically on 27.3.2006 and through letter dated 28.3.2006. The HVPNL did not submit their objections in Commission's office within stipulated period i.e. 31.03.06 upto 5.00 P.M. The objections of HVPNL were received in the office of the Commission late by three days i.e. on 3.4.2006, but still the same was considered. In all 15 objections/suggestions were received. Apart from objections received from MD, DHBVNL and MD, HVPNL, most of the objections/suggestions were received from the residents and Resident Welfare Associations of the area proposed to be supplied by the applicant for distribution licence. The objections/suggestions received by the Commission with reference to the Public Notice dated 23.2.2006 are given below.

**7. The DHBVNL vide filing dated 20.3.2006 stated that :**

With reference to application of M/s DLF Estate Developers Ltd. Gurgaon to Hon'ble Commission, a copy of which was also supplied by M/s DLF Estate Developers Ltd. Gurgaon to DHBVNL vide their letter of dated February 6, 2006. The following objections are raised with the request for considering the same before taking any action in granting the distribution licence to the firm.

As per notification of Hon'ble Commission dated 28.12.2004, a person applying for grant of a licence for distribution of electricity through his own distribution system, within the same area of supply of an existing distribution licensee shall; in addition to the provisions of regulation 3 & 4, submit proof of compliance with such additional requirements including capital adequacy, credit worthiness or code of conduct, as may be prescribed by the Central Government U/S 14 of the Act. The proposed area of supply shall be in conformity with the National Electricity Policy.

The applicant for grant of distribution licence should own distribution system for distribution of electricity. The firm M/s DLF Estate Developers Ltd. Gurgaon, does not own any distribution system. The statement of the firm, pretending to own the distribution system is misconceived and misrepresentation of facts. The distribution system is owned by DHBVNL. M/s DLF Universal Ltd. as a private colonizer had obtained licence from Town & Country Planning Department Haryana to develop area around old Gurgaon. M/s DLF Universal Ltd developed the area specified in the licence in five phases. Electrical layout plans for phases I, II, III & IV put forth by M/s DLF were sanctioned by the erstwhile HSEB as per the following details:-

The residential sector DLF Phase I Sector 25 Gurgaon had been developed in the year 1985. A deposit estimate for providing LD system was sanctioned by the Chief Engineer Zone II, HSEB, Delhi vide estimate No. D-9/89-90, amounting to Rs.14647700/-. The scheme was for 3856 Nos. of different sizes of plots ranging from 50 Sq. mts to 855 Sq. mts. having load projection from 0.5 KW to 8 KW per plot with diversity factor of 25%. The total sanctioned load for the scheme was 6247 KW including 1510 KW load for common services. This work was executed by erstwhile HSEB as a deposit work.

The revised electrification scheme for DLF Ph-II was sanctioned by Chief Engineer Zone-II HSEB, Delhi vide memo no. Ch.30/WO/CE/GGN/88-89 dated 7.6.88 and technical estimate was sanctioned vide No. D-13/92-93 for 3371 Nos. of different sizes of plots ranging from 125.1 Sq. mts to 855 Sq. mts having load projection from 2 KW to 10.75 KW per plot with diversity factor of 25%. The total sanctioned load for the scheme was 4025.85 KW including 802.10 KW load for common services. This work was executed by erstwhile HSEB as a deposit work.

The electrification scheme for DLF Phase III was sanctioned by the Chief Engineer Zone II Delhi vide memo No. Ch-13/WO-E-57/GGN-89-90 and vide estimate No. D-12/92-93 for 1415 Nos. of different sizes of plot ranging from 80 sq. mts. to 855 sq. mts. having load projection from 0.5 KW to 8 KW per plot

with diversity factor of 25%. The total sanctioned load for the scheme was 4037.88 KW including 721.62 KW for common services.

The electrification scheme for DLF Phase IV was sanctioned by the Chief Engineer Zone-II Delhi vide memo No. Ch-13/WO-E-57/GGN-89-90 and vide estimate No. D-12/92-93 for 1415 Nos. of different sizes of plots ranging from 50 sq. mts. to 419 sq. mts. having load projection from 0.8 KW to 7 KW per plot with diversity factor of 25%. The total sanctioned load for the scheme was 1886 KW including 492 KW for common services.

While submitting the electrification layout plan for various phases the average load projection mentioned by M/s DLF Universal Ltd. was about 5 KW with demand factor of 25% considering that simultaneous load of each house will be about 1.25 KW. The grossly inadequate electrification system was laid to meet the load requirement. The electrification plans were approved subject to certain conditions and one of the condition was to deposit the O&M (Operation & Maintenance) charges @ 5% of the cost of sanctioned scheme per annum for 5 years.

It is pertinent to mention here that as per letter from the Deputy Secretary/Tech., HSEB, Panchkula vide memo No. 61/Bd-2/Panchkula/99/HUDA dated 16.8.1998 the company shall pay to HSEB an early operation and maintenance charge at the rate of 5% of the present day replacement cost of electrification of colony for a period of five years. In case minimum 25% houses are not constructed and occupied within five years, the above charges would be continued for further period till the above level of occupancy is reached.

The applicant was required to install internal electricity distribution infrastructure as per the peak load requirement of the colony shall remain the responsibility of the colonizer, for which the colonizer, will be required to get the Electricity Distribution Services Load as per the latest norms issued by the Distribution Company i.e. DHBVNL or actual load requirement of the scheme area, whichever is higher, so that the system stands for 100% occupancy of the plots, which is yet to be carried out by M/s DLF Universal Limited inspite of repeated meetings with DHBVNL Management and District Authorities.

M/s DLF Universal Ltd. is a colonizer and not the owner of the area for which the licence is being sought. M/s DLF Universal Limited is not honouring the terms and conditions of sanctioned electrification scheme and not laid the electrification system to stand for 100% occupancy of the area being developed as a colonizer.

Thus, M/s DLF Universal Ltd. does not own any distribution system, but by misleading the facts is seeking the licence in the capacity of owner, which is not correct. M/s DLF Universal Ltd., as a colonizer, had charged the amount from the applicants as part of the cost of land and has spent some amount to build the electrical system as per approval of erstwhile HSEB. The existing distribution system is connected to HSEB/DHBNL system and is owned by DHBNL and is distributing supply to DHBNL consumers. As per Indian Electricity Rules 1956, (Rule 27), the service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the licensee, by whom it is to be maintained.

M/s DLF Estate Developers Ltd. Gurgaon has not invested any capital in the development of any infrastructure for distribution of electricity in the small area, applied for by them for distribution of licence. Moreover, expenditure on a part of infrastructure was done by M/s DLF Universal Ltd., after charging the same from the plot holders as a colonizer and not by M/s DLF Estate Developers Ltd. Gurgaon who are the applicant for the licence. M/s DLF Universal Ltd. is a holding company and M/s DLF Estate Developers Ltd. Gurgaon a subsidiary company, who does not have any fixed asset. As per balance sheet of the firm, it has a mere capital of only Rs.5.01 lacs. Therefore, M/s DLF Estate Developers Ltd. Gurgaon cannot provide service obligation as per section 43 of the Act. Thus capital adequacy of the firm is not worth.

M/s DLF Universal Ltd. & so its subsidiary M/s DLF Estate Developers Ltd. Gurgaon has failed to lay adequate electrical system and a large part of internal development in Phase I to V is still to be completed by the firm. This has already been intimated to Hon'ble Commission vide S.E./RA, DHBNL, Hisar office memo No. Ch.21/SE/RA/254 dated 13.01.2006 in a writ petition filed by

Residents Welfare Association of Qutab Enclave Gurgaon against M/s DLF Estate Developers Ltd. Gurgaon & others. Thus, the firm is not worthy of credit. M/s DLF Universal Ltd. & its subsidiary M/s DLF Estate Estate Developers Ltd. Gurgaon has entered into litigation with DHBVNL as well as Residents Welfare Association for various services. As such the ability & conduct of the firm is questionable.

As per clause 5.4.7 of National Electricity Policy, minimum area for licensee must be:

- a) A revenue district
- b) A municipal council for a smaller urban area or
- c) A municipal corporation for a larger urban area.

As per the application of M/s DLF Estate Developers Ltd. Gurgaon, none of the above areas is covered. Only a small pocket of Gurgaon has been chosen by the firm to meet their business requirement without any competition. Thus the proposed area of supply is not in conformity with the National Electricity Policy. As per the spirit of the Electricity Act 2003, Commission may grant distribution licence to two or more persons for distribution of electricity, to promote competition, so as to provide better services to the consumer. In the instant case, by granting licence to the firm, in a small pocket of Gurgaon, no competition will be provided. Further, as per Haryana Electricity Reform (Transfer Scheme) issued vide Haryana Govt. Gaz. (Extra) July 1, 1999, the Dakshin Zone (Zone-II), consists of besides others, complete Gurgaon Distt. also. Granting licence for distribution of electricity in a small pocket of Gurgaon to M/s DLF Estate Developers Ltd. will tantamount to revocation of the Haryana Govt. Gazette. Thus parallel/second/primary licence for this small carved out pocket may not be granted please.

From the above facts, it is clear that the firm M/s DLF Estate Developers Ltd. Gurgaon does not qualify for grant of licence by the Hon'ble Commission please. The above facts may be considered before taking any action in this regard please. DHBVNL will also like to be heard in person please.

**8. HVPNL vide filing dated 31.3.2006 stated that :**

The Objector most respectfully submits as hereunder:

- 1.) Conceptually, in case the application of applicant for grant of distribution licence is considered, the following three scenarios are possible:
  - i) Only retail supply is open to competition.
  - ii) Parallel distribution and retail supply licence is given.
  - iii) Exclusion of existing licence and grant of distribution and retail supply licence to the applicant in the proposed area.
- 2.) The applicant seems to be seeking the licence under option no.2
- 3) As regards development of power infrastructure in the proposed area, it is submitted that:
  - i) The infrastructure has been developed by the present licensee and its predecessor.
  - ii) A part of it has been met by subventions/contribution of funds/assets by the applicant.
  - iii) The liability or obligation of the applicant to partially fund the asset expansion towards its contractual and statutory responsibilities as given in the licence issued by the Town & Country Planning Department.
  - iv) Such assets were taken into the system and the books of the licensee, with clear understanding on both sides that the transfer of assets is irrevocable and permanent. Thus, the assumption of the applicant that it owns the distribution assets in its proposed service area is not factually correct.
- 4) The DHBVN is in an eminently suitable position to discharge the obligation of universal supply in the proposed area at reasonable cost. It has inherited long-term contractual availability of power to the extent of 1976 MW (49% of total capacity i.e. 4033 MW) and has, through the HPGCL, initiated fresh measures to create further generation capacity. As such, in the face of capability, generation assets contracted and in the pipeline, and the prominent universal network presence in the proposed place area, DHBVNL is definitely more capable to discharge distribution and retail supply functions in the proposed area.

- 5) According to the National Electricity Policy (Clause 5.4.7), for grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a municipal council for a small urban area or a municipal corporation for a larger urban area is to be considered as the minimum area. The optimal service area size and the National Electricity Policy provisions not being met in the instant application.
- 6) The existing licensee operates in a larger area, covering difficult business challenges and discharges universal supply obligation. Allowing the applicant a select island of unreasonable size will lead to “cherry picking” and will adversely affect the present licensee’s efforts to sustain supply in its entire service area.
- 7) The applicant has no concrete power supply arrangement at present, nor has any credible intrastate transmission connectivity to wheel in power. Thus, it is clearly deficient in its capacity to distribute and supply power.
- 8) Lack of a clearly established supply source has the potential of putting the supply in the proposed area in jeopardy. Also, as the costs of future sources are not even indicated, the bench marking of the likely retail tariff by the applicant against the tariff of the present licensee cannot be done. It is quite reasonable to infer that the likely tariff of the consumer will be higher and the supply will be unreliable, compared to that of present licensee.
- 9) Section 14 of the Electricity Act, 2003 provides that the appropriate Commission may grant licence to two or more persons for distribution of electricity through their own distribution system within the same area provided that the applicant for grant of licence shall comply with the additional requirements as may be prescribed by the Central Government. The Section 86(h) provides that the State Commission shall specify State Grid Code consistent with the Grid Code specified under clause (h) of subsection (1) of Section 79. The State Grid Code and connectivity conditions shall be required to be notified by the Hon’ble Commission before the present application can be considered. And consideration of these issues has to be done independent, and not in the context of present application.

- 10) The applicant has neither indicated the source of power, nor provided the interconnection points and as such, the transmission strengthening involved, if any, cannot be calculated and commented upon. At present, the 66 KV substations and 66 KV transmission network catering to the requirement of existing distribution licensee i.e. DHBVNL belong to HVPNL and are fully loaded for the requirements of the present distribution licensee.
- 11) The overdrawls / underdrawls at interconnection point shall be required to be accounted for, under Section 32(2)(c) where SLDC is responsible to keep accounts of the quantity of electricity transmitted through the State Grid. Hypothetically, when two distribution licensees shall supply power in the same area, the energy accounting shall be by way of scheduling and unscheduled interchange. As on date, the rate of unscheduled interchange within the State is yet to be notified and bills of unscheduled interchange will not be possible to be raised until the Intra-State ABT is notified and Unscheduled Interchange rates are decided by the Hon'ble Commission.
- 12) Section 39(2) (b) assigns responsibility to STU to discharge all functions of planning and coordination relating to intra-state transmission system with licensees or any other person notified by State Government in this behalf. The applicant has indicated under Sr. No. 19 of the application that they have not made any arrangements with any transmission or distribution licensee for supply/evacuation of power, which is a major disqualifying factor in the present application.
- 13) Clause 5.3.2 of the National Electricity Policy provides that STUs should ensure that all stakeholders are aware of the status of generation and transmission projects and STU should undertake network expansion after identifying requirement in consultation with stakeholders and take up execution after due regulatory approvals. No details are available in the application to comply with the above provisions.

It is felt that the application for a new distribution and retail supply licence is premature now, as several systemic legal and procedural bottlenecks are yet to be addressed by the Commission. Secondly, as indicated above, the

capabilities of present applicant to discharge the responsibilities of a distribution and retail supply licence are far from established.

In view of this, the present application in its present form should be rejected, being devoid of merit and detrimental to growth of power sector in the state and being contrary to the interest of consumers in the proposed areas and areas beyond that.

9. Apart from the objections received from the existing distribution and transmission licensee, 12 suggestions/objections were received from the residents and Resident Welfare Associations of the area concerned i.e. DLF City, Gurgaon, whereas two suggestions were received from organizations which did not belong to the area for which distribution licence has been applied. The abstract of comments/suggestions/requests received by the Commission from the public are as under :

**I. DLF Qutab Enclave Residents Welfare Association (regd.), DLF Qutab Enclave Phase-I, Gurgaon through Mr. R.S Rathi, President and Mr. Sandeep Virmani, General Secretary stated that :**

- 1.) DHBVNL has failed miserably to ensure adequate supply of electricity, maintain and upgrade electricity distribution system despite collecting crores of rupees in revenue from DLF Qutab Enclave. This has caused immense misery, inconvenience to the residents/consumers.
- 2) Our Association welcomes deregulation, competition, competitive pricing and privatization. The benefits of this have been seen in the sectors like Telecom and Airlines. As a result of competition from low cost Airlines, the railway fare for upper class and AC travel has been reduced and railway has promised improvement in service. Thus competition has benefited the consumers.
- 3) Our Association is opposed to creation of new monopolies and hope that HERC would consider granting licence to M/s DEDL provided they fulfill following pre-conditions :
  - i) DEDL will upgrade the distribution system to meet the peak demand for next 5 years.

- ii) The consumers will not be charged more than maximum tariff being levied by DHBVNL.
- iii) In future also the rates charged by DEDL will not be higher than the rates charged by DHBVNL.
- iv) DEDL will regularly submit to HERC the accounts of amount collected and spent.
- v) DEDL will not demand huge deposits and other charges from consumers.
- vi) DEDL will not force the consumers to change the electricity meters.
- vii) DEDL will not link supply of electricity to other charges claimed by it.
- viii) DEDL will distribute electricity to whole and not part of DLFQE phase I to V.
- ix) DEDL will operate round the clock complaint cell with adequate personnel, equipment and spares.
- x) DEDL will keep record of complaints their causes and time taken to restore the supply.
- xi) Whether DEDL intends to provide back up during power failure.
- xii) The above conditions be incorporated in licence.

**II. DLF City Residents' Welfare Association (regd.), DLF City-I, Gurgaon through Mr. Sudhir Kapoor, Secretary General stated in its filing that :**

- 1.) DLF City Residents Welfare Association is registered association with over 5500 resident members and represent the largest cross section of residents in DLF City.
- 2) DEDL have by and large delivered services within the agreed rate of maintenance charges and in the ambit of our agreement with them.
- 3) Our experience with current service provider i.e. DHBVNL has been dismal. There is little or no accountability in DHBVNL e.g.
  - i) Despite recovering highest tariff, DHBVNL is guilty of pathetic supply and sub standard customer service.
  - ii) The clearance to setup three additional 66 KV sub stations has been delayed for over 2 years now.

- iii) There is no consumer grievance redressal system in DHBVNL.
  - iv) DHBVNL has illegally granted commercial connections to residential houses.
  - v) Bills are not delivered in time and residents are thus forced to pay late payment charges.
  - vi) Above deficiencies have been brought to the attention of the appropriate authorities periodically.
- 4) In view of above DEDL, by default has been forced by residents to maintain the distribution system.
  - 5) Deregulation as part of reforms is essential and competition needs to be encouraged to enable improved services as another sectors.
  - 6) We support reforms and change in the service provider / distribution licensee.

**III. Qutab Plaza Condominium Association, DLF City Phase –I, Gurgaon stated that :**

- 1) The Qutab Plaza Commercial complex in DLF City, Phase I comprising 140 offices and 204 shops in DLF City, Phase I is being served by DHBVNL for supply of electricity to each office and shop.
- 2) The service being provided by DHBVNL to shop owners and office owners is quite dismal and their approach is not consumer friendly.
- 3) Whenever we approach DHBVNL for resolving power problems their approach is bureaucratic and we are told that the problems have to be dealt by DLF.
- 4) We are constrained to approach DLF (DEDL) who extend all possible help in resolving the problems with their manpower and spares at no cost to us.
- 5) Some complexes/condominiums are being provided Bulk supply at 11 KV. These complexes maintain the infrastructure of sub-station, distribution, metering and billing to customers under guidance of DEDL. The feedback from such complexes has been good.
- 6) Our Association is of the view that if DEDL is granted licence for distribution of electricity in DLF City, customers would be by and large

satisfied and the distribution network with in DLF City will be better maintained.

**IV) Lion P.N. Piplani, District Governor, A-56/10, DLF City, Phase-I, Gurgaon**

- 1) I am living at DLF for the last 14 years. Because of prevailing electricity problems each day of my stay has been virtually hell.
- 2) Low Voltage, fluctuation in supply, breakdown of electricity together with power cuts without any prior notice, rising bills and all other connected problems have been the order of the day.
- 3) We understand that DLF Estate Developers have applied for licence for distribution of electricity in the DLF City.
- 4) M/s DLF have earned healthy names and admiration of residents for the wonderful services rendered by them.
- 5) If the licence is provided to them for distribution of power, the life of every resident would definitely undergo a very happy satisfying change.
- 6) I on my own behalf, my family and host of friends would most emphatically request you to please grant the licence to DLF and earn the gratitude of one and all.

**V. Silver Oaks Condominium Association (Regd.), Silver Oaks Apartment,DLF City, Phase –I, Gurgaon**

- 1) Silver Oaks Condominium Association (Regd.), Gurgaon is the Association under the Haryana Apartment Ownership Act 1983 and comprises 749 Apartments, 150 EWS, with shops and underground parking areas.
- 2) The majority of residents are staunch believer of privatization of services including electricity. This belief is mainly due to our experience regarding services being managed by Public Sector or by the Government.
- 3) The DHBVNL the current licensee caters to needs of our residents whereas in some other condominium complexes bulk supply connection at 11KV has been given by DHBVNL directly to Condominium Associations. In these

Associations the sub-station, distribution lines, provision of meters, billing in such complexes is currently being undertaken by the concerned condominiums under direct power management of DEDL. To the best of our knowledge all such complexes are satisfied with this arrangement including Tariffs being levied in accordance with prevailing HERC stipulations / power cost sharing basis for 100% power backup.

- 4) If this system is extended to entire DLF City for power distribution by DEDL as a licensee we feel that all the consumers of DLF City and Silver Oaks would be satisfied and immensely benefited.
- 5) Our experience with DHBVNL as service provider / distribution licensee is dismal. There is no consumer complaint redressal system in place. They are not equipped with spares, manpower etc. to handle breakdowns in their own incoming lines feeding our complexes.
- 6) We have been constrained to seek the help of DEDL on regular basis to mitigate our problems. Our experience with DEDL who extend all possible help free of any cost to us is extremely satisfactory. There is urgent need to change the existing licensee i.e. DHBVNL and we support the application of DEDL in this regard.

#### **VI People's Action, N-18, Market, Greater Kailash-1, New Delhi**

- 1) Commission has invited objections to the proposed plan to hand over generation/ transmission of power to M/s DLF in Gurgaon for a captive area.
- 2) Allowing the same corporate to generate transmit and distribute power will lead to functional monopolies with little or no re-course to any systematic corrections as may be required from time to time in protection of consumer rights.
- 3) Introducing a private player into the realm of public utilities is usually beset with serious issues of consumer rights unless accompanied with a powerful regulatory authority i.e. not subject to pressure of politics.

- 4) The only known way to improve sectoral efficiencies and indeed protect consumer rights is by means of competition. Without that in place any attempt to institute a private player into this sector is unthinkable, unacceptable. Therefore, the HERC must confirm that the policy of open access is categorically adhered to in principle and in practice by the State.
- 5) We recommend that :
  - a) The private player may be allowed operations only as a second operator and consumer must have the choice of staying with HSEB or choosing DLF.
  - b) Since the 2 nos. service provider system is also susceptible to corruption, the fool-proof system in favour of consumer protection would be introduction of a 3<sup>rd</sup> private sector provider to operate in the same area. Without this the protection of consumers will not be considered complete.
- 6) The service standards and tariff setting must involve local resident bodies through an official committee subservient to the HERC at the local level.
- 7) We recommend three levels of public consultation : the second is to publish the objections and third must be a public conference on the subject before terms are finalized.

**VII. RESIDENTS OF DLF CITY- I, GURGAON- MR. J.S. BHALLA, E-14/11; MR. D.B. ANAND, B-8/12; MR. S.P. MALHOTRA, E-12/4; MR. D.MAJUMBDAR, E-13/5.**

- 1) The power position in DLF city has become precarious. The frequent and long hours of power cuts, outages and tremendous fluctuations of voltage and other such factors have become a routine.
- 2) The system was put into operation in the year 1998. The system was to be taken over and maintained by DHBVNL which was not done. As a result, DLF had no choice but to supply the manpower and material to maintain the electrical system.
- 3) There is an urgent requirement of up gradation of the system.

- 4) As per version of DLF they are continuing to manage the system as a goodwill gesture to the residents who are actually the consumers of DHBVNL.
- 5) We have been informed that the cost of up gradation is estimated at Rs.5 crores which DLF is not prepared to spend at this juncture. Whereas, DHBVNL is collecting Rs.60 crores annually as revenue but not spending a penny on operation, maintenance, breakdown and augmentation.
- 6) There seems to be a dual responsibility and utter confusion with both DLF and DHBVNL blaming each other.
- 7) Since DLF has applied for grant of licence for distribution of electricity in DLF City area, we being the senior citizens of DLF city would like to inform the Commission that the licence be granted to DLF since they are already maintaining the entire system.
- 8) Since the residents are not happy with the maintenance of electrical system by DHBVNL it will be right step to grant distribution licence to DLF who are already maintaining the colony in a well organized manner.

**VIII. RESIDENTS' WELFARE ASSOCIATION, U-BLOCK, DLF CITY, PHASE III, GURGAON THROUGH MR. J.C. KAPOOR, GENERAL SECRETARY**

- 1) At present the supply of electricity and its maintenance is in two hands i.e. DHBVNL and DEDL this dual system is causing many difficulties to the residents.
- 2) Keeping in view our experience with DEDL we think DEDL will be able to discharge its obligations of the licensee to the complete satisfaction of the residents.

**IX. MR. V.K. SACHDEVA, IRS, PRESIDENT, A-BLOCK, EXTENSION COMMITTEE, DLF CITY, PHASE I, GURGAON**

- 1) After my retirement as Chief Commissioner of Income Tax, New Delhi I decided to settle down in DLF City.

- 2) After moving to DLF in 1999 we found that the situation of electricity was worse than Delhi and is rapidly getting worse from year to year.
- 3) Our experience with DHBVNL so far has been highly dismal as they have never kept their promises and have totally ignored the genuine needs and protests of the residents making life more and more difficult for all of us.
- 4) We have held a couple of meetings of the residents and are of the committed view that in the age of privatization of essential services it will be absolutely worthwhile to expedite the grant of licence for distribution of electricity in DLF to DEDL.
- 5) We are sure DEDL will do their best for the benefit of residents as they have their own image and reputation to guard if they want to remain in their business.

**X. DLF QUTAB ENCLAVE RESIDENTS WELFARE ASSOCIATION (REGD.), GURGAON (MR. S.P. UPPAL, VICE-PRESIDENT, DR. YUVRAJ SAMBHY, ASSISTANT GENERAL SECRETARY, MR. I.M. SHARMA, EXE. COMMITTEE MEMBER AND MR. A.K. JAISWAL, EXE. COMMITTEE MEMBER )**

- 1) The power position in DLF city has become precarious.
- 2) A system was to be taken over and maintained by DHBVNL which was not done.
- 3) DLF has been continuing to manage the system as a goodwill gesture to the residents.
- 4) The DHBVNL carries out the billing and collects the revenue of Rs. 60 crores from DLF city alone but is not spending a penny on operation, maintenance and augmentation.
- 5) The Association has already requested the Commission that directive be issued to only one authority who would be responsible for fulfillment of provisions of section 42 of Electricity Act, 2003.
- 6) It will be in the larger interests of the residents of DLF if the licence is granted to them since they are already maintaining the entire system.

- 7) We the representatives of Phase IV, on behalf of residents, request the Commission that distribution licence should be granted to DLF as DHBVNL has miserably failed to maintain the system.

**XI. RESIDENTS OF DLF CITY, PHASE II, GURGAON THROUGH MR. H.N BERRY, MR. D.D. CHOPRA AND OTHERS**

- 1) DHBVNL has failed miserably in discharging its obligations as a service provider to the consumers in respect of billing, proper supply at designated voltage, attending to complaints etc.
- 2) Our complaints are attended by DEDL who are maintaining the system.
- 3) There is an urgent need to streamline the system and fix accountability. Since DEDL have come forward for undertaking this responsibility as a distribution licensee we strongly support their application.

**XII. DLF CITY TRADERS ASSOCIATION, DLF CITY, PHASE I, GURGAON THROUGH MR. RAJINDER SHARMA, PRESIDENT**

- 1) Our Association members are being served by DHBVNL for supply of electricity.
- 2) We have learnt that an application for grant of licence for distribution of electricity of DEDL is coming up for your kind consideration.
- 3) The service provided by DHBVNL to shop owners is quite dismal and there is no consumer friendly approach.
- 4) Whenever we take our problems with DHBVNL we are told to approach DLF who extend all possible help.
- 5) Our Association is of the view that if DEDL is granted licence for distribution of electricity in DLF city, the customers would be by and large satisfied.

**XIII. SOME RESIDENTS OF DLF CITY VIZ. MS. SARITA ANAND, MR. JANAK ANAND, MR. K.K. SAIGAL AND OTHERS**

- 1) DHBVNL has miserably failed not only to ensure adequate supply of electricity but also to maintain and upgrade the electrical distribution system.

- 2) Frequent and long hours of power cuts even at slightest wind and drizzle have become routine. Transformers get over-heated, jumpers and conductors melt and switch gear trip due to overloading. There is inefficiency in operation and inordinate delay in fault location.
- 3) We are told by DLF that a system was to be taken over by DHBVNL which was not done. As a result, DLF had no choice but to supply the manpower and material to maintain the electrical system.
- 4) As per Electricity Act, 2003 it is the responsibility of licensee to operate, maintain, repair and upgrade the system.
- 5) There seems dual responsibility and utter confusion with both DLF and DHBVNL blaming each other and both disowning the responsibility.

Since DLF has applied for grant of licence in DLF City and the application is under examination by the Commission, the same may be considered favourably. It will be in the larger interest of residents of DLF if the licence is granted to DLF this will give lot of relief to the residents who have to travel long distance to visit DHBVNL office for day to day problems.

10. The hearing of the case was held on 4.4.2006. During the course of hearing the DHBVNL, HVPNL made their presentations on the basis of filings submitted to the Commission. Similarly the presentations were made by the residents and Resident Welfare Associations of the area. The representative of the applicant in its presentation replied to the objections raised by the objectors mainly DHBVNL and HVPNL. The MD, HVPNL requested the Commission to grant another opportunity to submit supplementary filing in continuation to the HVPNL's initial filing dated 31.03.2006. The MD, DHBVNL was unable to furnish information to certain observations made by the Commission and the advocate of M/s DEDL was unable to furnish clarification to the issue of type of licence raised by HVPNL. As such, they also requested the Commission for more time to respond to various queries. At that stage, during hearing, the Hon'ble Member Sh. T.R. Dhaka desired that another hearing be conducted by

the Commission after receipt of the above cited supplementary filings from M/s DEDL, MD, HVPNL and MD, DHBVNL. The Commission acceded to the request of MD, HVPNL, MD, DHBVNL and M/s DEDL and they were permitted to submit their supplementary filings by 17.4.2006, which were received vide their references dated 13.4.2006, 17.4.2006 and 14.4.2006 respectively. A copy of the filing of M/s DEDL was supplied to HVPN and DHBVN on 19.4.2006. Similarly copies of filing of HVPN and DHBVN were supplied to M/s DEDL.

**11. DHBVNL vide filing dated 17.4.2006 stated that :**

With reference to application of M/s DLF Estate Developers Ltd. Gurgaon for grant of licence for distribution of electricity under section 14 of Electricity Act 2003, and in continuation to the public hearing on 4.4.2006, the reply of supplementary information with the request for considering the same before taking any action in granting licence to the firm is as follows please.

- 1) With regard to Para 2 of the letter of Hon'ble Commission, it is submitted that the strengthening & upgradation of sub transmission & distribution network in Gurgaon City was got carried out under part-1 of NCR-1 scheme as per following details:
  - a) Amount sanctioned Rs.1463.80 lacs
  - b) Amount utilized Rs.1172.00 lacs
  - c) Scope of scheme: Rehabilitation of 11 KV feeder in Gurgaon city as per Annexure-1. No work has been carried out in Gurgaon city financed by PFC, NABARD, REC & other financial institutions.
- 2) With regard to Para 3, the licensee submits that the electrical assets of DLF area have not so far been accounted for in the books of DHBVNL as the electrical infrastructure laid by the private colonizer is inadequate and incapable of meeting the load requirement of the area being developed. Though these have been developed by the property development licensee,

ownership of these are not that of the property developer but of the distribution licensee who is to maintain it later on.

- 3) With regard to Para 4, the details of load sanctioned for the area for which the licence has been applied are as follows:

Sr. No.	Phase No.	Estimate No.	Sanctioned load of scheme in KW
1	DLF Ph-1	D-9/89-90	6247
2	DLF Ph-II	D-13/92-93	4025
3	DLF Ph-III	D-14/89-90	4759
4	DLF Ph-IV	D-12/92-93	1886
5	DLF Ph-V		No scheme sanctioned but 8 no. bulk supply connections having load 11.83 MW were sanctioned/released.

The date when 25% occupancy was achieved in each area are as follows:

Sr. No.	Phase No.	Years of 25% occupancy
1	DLF Ph-1	2000-01
2	DLF Ph-II	2001-02
3	DLF Ph-III	2001-02
4	DLF Ph-IV	2002-03
5	DLF Ph-V	

Electrical load at the time of attainment of 25% occupancy & expected load with full occupancy is as follow:

Sr. No.	Phase No.	Load at the time of attainment of 25% occupancy in MCO	Expected load with full occupancy in MW
1	DLF Ph-1	10.50	42.00
2	DLF Ph-II	11.00	44.00
3	DLF Ph-III	12.60	50.40
4	DLF Ph-IV	2.40	9.60
5	DLF Ph-V		

While submitting the lay out plan for various phase, the average load projection for each house mentioned by M/s DLF Universal Ltd was about 5 KW with D.F. of 25% considering that simultaneous maximum demand of each house is 1.25 KW. Thus the electrification system laid out was grossly inadequate to meet the load requirement of

the area. The electrification plans were approved subject to the certain conditions and one of the condition was to deposit O&M charges @ 5% cost of the sanctioned estimate per annum for five years.

As per Deputy Secretary Technical HSEB Panchkula Memo No. 51/BD2/PKL/88/HUDA dated 16.8.1988, memo No. 79 BD-2/PKL/88 HUDA dated 27.3.89 and Memo No. 181/BD-21/PKL/90/HUDA dated 15.5.1991, O&M charges will be recovered from the colonizers @ 5% per annum. These charges will be discontinued as and when 90% of the houses/plots in sector colonies/sectors are provided with connections by erstwhile HSEB now DHBVNL. The detail of O&M charges deposited by M/s DLF Universal Ltd. are as per Annex-II.

It is obligatory on the part of M/s DLF Universal Ltd as a private colonizer/licensee to provide internal, electrical infrastructure capable of meeting to the full occupancy power load requirement. Therefore, the laying of inadequate existing electrical network as per load projection cannot be looked at in isolation of the licence obtained from Director Town & Country Planning Department Haryana according to which it is mandatory on the part of the colonizer to provide adequate electrical infrastructure and other services for the area being developed.

During the course of presentation made by attorney of M/s DLF Developers Ltd. Gurgaon on dated 4.4.2006, it was not clear even to the applicant firm whether they require exclusive licence for distribution of supply in the area mentioned in the application or they are applying for parallel distribution licence in the area. After the clarification, regarding the same is received from the applicant, DHBVNL reserves its right to submit its further objections in this regard.

The fact that M/s DLF Estate Developers Ltd., Gurgaon has not clearly specified what kind of licence it requires has been clearly established during public hearing on 4.4.2006, as per admission of DLF counsel. Thus, the application is non specific & vague and, to that extent, incomplete. Thus the application of the firm requires to be summarily rejected.

Further, during the course of presentation made by DLF Qutab Enclave, Resident Welfare Association Gurgaon, it was informed that already DLF is charging an exorbitant rate of Rs.5.50 from residents of DLF Qutab Enclave Phase-V. The

Commission is requested to order an enquiry against M/s DLF in re-selling of electricity without obtaining a valid licence by DLF from the Hon'ble Commission. Further, it was presented that the transmission & distribution losses of 35% are being assumed by DLF, which are the acknowledged losses in the State of Haryana. As the actual distribution losses on these feeders are about 15-16%. M/s DLF is already violating the tariff order of Hon'ble Commission which again requires enquiry and action by the Hon'ble Commission.

The timing and methodology to be followed for granting distribution licence is important where it can be fairly claimed that though the Act does not restrict the number of distribution and retail supply licensee in a given service area, yet it is difficult & uneconomical to envisage large number of distribution licensee to operate in that specific area, each with own distribution network. On this count also, the present application of M/s DLF Estate Developers Ltd. Gurgaon requires to be cancelled please.

**12. HVPNL vide filing dated 13.4.2006 stated that :**

This is in continuation to the Public Hearing on 4.4.2006 and directions given by the Hon'ble Commission during the hearing.

The objector most-respectfully submits as under:

- i) The fact that the applicant has not clearly specified what kind of licence it seeks has been established during the hearing dated 4.4.2006 as per admission of the applicant's counsel. Thus, it is clear that the application is non-specific and vague and, to that extent, incomplete. Therefore, the application, in its present form, did not deserve a regular hearing on merit and requires to be summarily rejected.
- ii) It has also been established by the intervener-deponent that the claim of the applicant of owning a distribution network in its proposed service area is far from the truth. The fact is that the parent company of the present applicant had made internal developments in its licenced areas as per the stipulations in their licences issued by the Town and Country Plg. Deptt., Haryana. Such internal developments include roads, water supply, sewerage and electricity infrastructure. Though these are developed by a property development

licensee, ownership of these are not that of the licensee. Rather these are vested in the concerned authorities and utilities of the State. Thus, the claim of the applicant about owning a distribution network in the proposed service area, being contrary to the facts and to the legal provisions, the present intervener-deponent has substantially established the inadequacy in the present licence application to discharge the proposed licensee functions. The issue of determination of ownership of distribution assets in the proposed service area is an issue which does not fall in domain of the Hon'ble Commission, as it involves interpretation of licence conditions given by the Town and Country Planning Deptt. Of the State Govt. Therefore, it is strongly contented that the Commission kindly summon a representative of the Town and Country Deptt. to clarify the facts and the legal position in the matter.

- iii) As already brought out in the course of hearing dated 4.4.2006, the present process of Commission entertaining this application has the impact of modifying the licence conditions of the present licensee, the DHBVN. Therefore, it is contented that before the present application is entertained, the Commission may follow the process as mandated under Section 18 of the Act.
- iv) It is further submitted that the HERC, being the appropriate Commission for the State of Haryana under the provisions of the Electricity Act 2003, is mandated to allow competition in the power sector. However, what is of importance is the timing and methodology to be followed in such cases. It can be fairly claimed that though the Act does not restrict the number of distribution and retail supply licensees in a given service area, yet in all probability it will be difficult and uneconomical to envisage large number of distribution licensees to operate in an area, with their own parallel distribution networks. Though hypothetically it can be claimed that each subsequent applicant can be entertained, yet in all practicality, we are not likely to see multiple distribution licensees operating in an area. Therefore, it is important and imperative to adopt a methodology which ensures

transparency, fairness and level playing field to all potential applicants to apply for distribution licence in a particular proposed service area. Therefore, it is submitted that on this count also, the present application be rejected. If the Commission intends to introduce competition and private sector participation in a given area, then it should notify its policy in this regard and invite applications from all interested firms. This will help bring in the best firms to the State and will also, through a process of bidding of various distribution licensee performance parameters, ensure the best deal for the consumers of that area.

The issue raised during the hearing and in the submission including the present filing are critical to a balanced growth of the power sector of the State. The present intervener-deponent feels that the applicant's supplementary submissions should be made available to it, as well as to others because the supplementary submissions, by virtue further clarifications therein, may change the focus of the original application. Therefore, it is submitted that the supplementary submission of the applicant in the nature of a modification of the original application, should be subject to the procedure of public notice and invitation of objections as followed in case of an original application for licence. Also, the intervener and present licensee be given opportunity to present their point of view in a hearing after such procedure of notice and objection invitation is completed.

**13. DEDL vide filing dated 14.4.2006 stated that:**

The application hereby craves leave of this Hon'ble Commission to submit its written submissions to the objections filed by DHBVNL and HVPNL to the present application of the Applicant:

- 1) That the applicant has filed the instant application before this Hon'ble Commission in August 2005 seeking grant of a licence for distribution of electricity under Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') in the proposed area more specifically described therein.

- 2) That the present application was admitted by the Hon'ble Commission and the same was intimated to the Applicant vide letter dated 6.1.2006 whereby the Applicant was also directed to publish a notice in accordance with the HERC (Transmission and Distribution Licensing) Regulations, 2004 (hereinafter referred to as 'Regulations').
- 3) That in accordance thereof and in terms of Regulation 10 of the Regulations, the Applicant published a Public Notice in Form-3 in the Times of India and Navbharat Times on 11.1.2006 stating that the Applicant has applied to this Hon'ble Commission for a grant of licence for distribution of electricity and further inviting objections to the Application within 30 days from the date of publication of the Notice.
- 4) That the Applicant also made available a copy of the Application along with enclosures thereto at its office as well as to the office of this Hon'ble Commission for inspection by the interested parties. However, the Applicant neither received any objection at its office nor any intimation from this Hon'ble Commission regarding any objections received thereto within the period of thirty days specified in the Notice.
- 5) That thereafter this Hon'ble Commission published another Notice on 23.2.2006 in the Hindustan Times whereby it stated that the hearing of the Application filed by the Applicant was fixed for 4<sup>th</sup> April 2006. However, vide the said notice, this Hon'ble Commission also invited further objections to the application filed by the Applicant and provided that the same should reach the office of the Commission by 22.3.2006.
- 6) That in pursuance thereof Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'DHBVNL') filed its objections to the application of the applicant on 17.3.2006. Thereafter, Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as 'HVPNL') also filed its objections on 31.3.2006, much beyond the last date prescribed by this Hon'ble Commission, which objections were received by the Applicant only on 3.4.2006, i.e. one day prior to the date of hearing fixed by this Hon'ble Commission.

7) That it is most respectfully submitted that the objections submitted by the DHBVNL and HVPNL are barred by time and cannot be considered at this belated stage. Section 15 of the Act, which provides for the procedure for grant of licence, clearly bars entertaining of objections received after the expiration of thirty days from the date of publication of the notice as aforesaid. The relevant provision of Section 15, Electricity Act, 2003 is being reproduced herein below for facility of reference:

**“S. 15. Procedure for Grant of Licence:-**

*(2) Any person who has made an application for grant of a licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted-*

*(i) until the objections, if any, received by the Appropriate Commission in response to the publication of the application have been considered. Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of publication of the notice as aforesaid”.*

Therefore where the statute clearly and specifically restricts the scope of enlargement of time, the Hon’ble Commission cannot allow further time for filing objections.

It is relevant to mention here that the language of Regulations 13 and 14 of the Regulations also suggest the intent of the legislature that the objections, if any, to the application for grant of licence must be filed within 30 days from the date of the publication of the notice by the applicant only and not thereafter.

Thereafter the Commission should proceed to hear the application of the applicant and in terms of Regulation 14 (2), the Commission is empowered only to give a notice of the inquiry or hearing to persons who have already filed the objections within the period of 30 days

from the date of publication of notice by the applicant, which period in the present case expired way back on 10.2.2006.

- 8) That the intention of the legislature in prescribing a period for receipt of objections in the statute is to expedite the process of grant of licence to the applicant which is apparent from the provision in Regulation 16 which is reproduced herein below for facility of reference:

**“16. Rejection of application for grant of licence**

*The Commission, as far as practicable, within ninety days of receipt of an application for grant of a licence may reject an application for reasons to be recorded in writing. However, no such application shall be rejected without giving an opportunity to the applicant of being heard by the Commission”.*

- 9) That in view of the aforesaid, the Applicant respectfully submits that the objections filed by DHBVNL and HVPNL are barred by time and therefore liable to be rejected on this ground alone.
- 10) That it is further submitted that the objection filed by the HVPNL cannot be taken on record since the same has not been signed by the appropriate authority. The Board of Directors have authorized the Managing Director, HVPNL, vide board resolution dated 28.12.2005, to approve the documents and information to be filed before this Hon’ble Commission. However, the objections have been signed by the S.E./C & PM Shri T.K. Dhingra on behalf of the MD, HVPNL. It is submitted that the powers delegated to the MD, HVPNL vide board resolution cannot further be delegated without the approval of the board. Thus the objections filed by HVPNL are to be rejected on this ground alone.
- 11) That during the time of hearing the DHBVNL and HVPNL have orally elaborated upon the objections set out in their statement and to which the applicant had submitted its oral arguments. As per directions of this Hon’ble Commission the applicant is filing herewith its written submissions on affidavit.
- 12) That, among other objections raised by the DHBVNL and HVPNL, at the time of hearing the primary objection raised was that the applicant had not specified in its application as to the kind of licence being sought by the applicant. In this

regard it is submitted that having due regard to the facts and circumstances under which the application for licence had been filed by the applicant, the applicant seeks a licence for distribution of electricity in the proposed area to the exclusion of the existing licensee DHBVNL since the applicant has been carrying out the functions of the existing licensee at its own cost and expenses and the present distribution system was laid out by the applicant and has also been constantly maintained and upgraded by the applicant at its own costs and account.

13) That, without prejudice to the aforesaid submissions, the applicant seeks to reply to the objections filed by DHBVNL and HVPNL on merits as below:-

That the DHBVNL, HVPNL and the Consumers/RWAs have raised the following main objections against the application for grant of licence for distribution of electricity filed by the Applicant:

- i) That the applicant does not own the distribution system for which licence is being sought;
- ii) That the applicant has not invested any capital in the development of any infrastructure for distribution of electricity in the area described by them in their application for licence.
- iii) That the applicant has failed to lay adequate electrical system in Phase I to IV; and
- iv) That the area proposed in the application for distribution of electricity is neither a revenue district, municipal area or a municipal council or that the entire proposed area is smaller than the municipal area of Gurgaon and amounts to cherry picking.
- v) That the applicant has no power supply arrangements at present therefore it is incapable of supplying power;
- vi) That the applicant does not have a clearly established supply source of power and is thus likely to put the supply in the proposed area in jeopardy;
- vii) That the applicant does not have any credible intra state connectivity to wheel in power;

- viii) That it is reasonable to infer that the likely tariff of the consumer will be higher and the supply will be unreliable compared to that of the present licensee;
  - ix) That in view of certain issues to be resolved by the Hon'ble Commission the present application is premature;
- 14) That a detailed reply of the applicant to the aforesaid objections raised by all the parties are as follows:

**(a) Distribution System not owned by the Applicant**

It is denied that the applicant does not own any distribution system or that the distribution system is owned by DHBVNL. The proposed area is owned by DLF and the licence to develop the area and setting up a residential colony therein was granted to DLF by the Town and Country Planning Department of the Govt. of Haryana on the terms provided therein which included, inter alia, making arrangement for the electric connection from HSEB and to maintain and upkeep the area.

The applicant further submits that at the time when the applicant developed the proposed area, the Indian Electricity Act, 1910 was in force in terms whereof the development and maintenance of the distribution system was largely the responsibility of the licensee, i.e. erstwhile HSEB at that time.

The applicant had obtained the approval of the erstwhile HSEB for electrical layout, designs for the entire electrification scheme of the proposed area in accordance with the procedure existing at that time and based on the norms set out by the erstwhile HSEB for the allotted load for each plot. Phases I & II of the proposed area were sanctioned by the erstwhile HSEB vide the various Memos and letters mentioned by DHBVNL in its objections and the applicant had in accordance thereof paid the requisite amounts claimed by erstwhile HSEB for execution of the works for the same.

The development and electrification of Phases III, IV and V was also funded by the applicant itself out of its funds and the layout and design for the same were also in accordance with the norms specified by erstwhile HSEB vide the circulars issued by it in this regard at that time and which norms were applicable to all

colonizers including HUDA. From the aforesaid submissions and upon own admission of the DHBVNL, the undisputed position in this regard is that while the entire distribution system was developed at the cost of DLF, which costed approximately Rs.25 crores, the design and the layout of the entire system was strictly in accordance with the schemes and plans sanctioned by the erstwhile HSEB. It further admitted by DHBVNL that the Operation and Maintenance charges were paid by the applicant for the specified area @ 5% per annum for the initial five years.

It is also pertinent to mention here that that the aforesaid charges paid by the applicant were over and above the expenses incurred by the applicant towards the laying of the distribution infrastructure and in addition to the supervision charges @ 24% of the total estimated cost and inspection charges @ 1.5%.

It is further submitted that once the entire electrical distribution system of the specified area was energized the same was to be taken over from the applicant by the Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as 'HVPNL') and thereafter it was the duty and obligation of the HVPNL to operate and maintain the system.

It is also relevant to mention here that when the 66KV Sub-station with 2x16 MVA 66/11 KV transformers at 'Q' block in the DLF city was proposed to be erected by the applicant, the HVPNL and the applicant has entered into an Agreement dated 11<sup>th</sup> March 1999 wherein it was agreed between the parties that the construction of the substation would be carried out by the applicant as per the approved designs/standards of HVPNL and on the transfer of the completed works to HVPNL, the operation and maintenance of the substation would be carried out by the HVPNL at its own cost.

Though the HVPNL took over the Sub station as aforesaid, DHBVNL failed to carry out its obligations and till date have not taken over the electrical distribution system which is an admitted fact. They have refused to take over the same on one pretext or the other.

It is relevant to mention here that the applicant has, for the convenience of its residents and as a matter of goodwill, has been conducting all the functions and

services of a distribution licensee in the proposed area at its own cost and expenses while the revenues for the same are being collected by the DHBVNL. Even though it is the responsibility of the existing licensee under the Act, to maintain and upgrade the distribution system, the applicant has been forced by the inaction on part of DHBVNL to spend approximately Rs.1.2 crores per annum for the past decade on the maintenance and upkeep of the existing system and has also upgraded the system to a capacity of 41100 KVA as against the initial sanctioned capacity of 20550 KVA. The upgradation undertaken by the applicant is indicated in enclosed detail. In view of the aforesaid, it is incorrect on part of DHBVNL and HVPNL to submit that the infra structure in the proposed area has been developed by the existing licensee or that the applicant does not own the distribution system and the assets were created and taken into the system and the books of the present licensee while the conduct of DHBVNL has been contrary to their submissions. It would not be incorrect to state here that the existing distribution licensee has miserably failed to perform its statutory duties enumerated under Section 42 of the Act and thus has no locus standi to challenge the present application of the applicant.

It is vehemently denied that DHBVNL is in a suitable position to discharge the obligation of universal supply in the proposed area at a reasonable cost and it is submitted that the HVPNL has no locus standi to comment on either the capability of the DHBVNL nor the alleged incapability of the applicant to discharge the functions of a distribution licensee.

It is however submitted that the existing licensee has so far shirked all its responsibility either to take over or maintain the system. At this stage the applicant craves leave of this Hon'ble Commission to invite reference to the various representations made by the several residential welfare associations functioning within the proposed area for the welfare of the residents as also by individual residents who appeared before the Commission in person wherein they strongly voiced their grievances against the callous attitude of the existing licensee.

As a matter of fact, the Faridabad Industrial Association and the Confederation of Indian Industry also appeared before the Commission and corroborated the stand of the RWAs and the individual residents and have supported the application of the Applicant.

(b) **Non-investment of capital in the development of infrastructure/Lack of Capital Adequacy**

It is denied that the applicant has not invested any capital in the development of any infrastructure for distribution of electricity in the area described by them in their application for licence. It is admitted by DHBVNL in the objections filed by them that the work of electrification was executed by HSEB as a deposit work in case of Phases I & II and a deposit of 5% p.a. of the cost of sanctioned scheme as O&M charges for a period of five years. Reference is invited to the various estimates for electrification of the various phases/parts of the proposed area.

It is further denied that the expenditure on a part of infrastructure by the applicant was done after charging the same from the plot holders. It is submitted in this regard that in addition to the price of the plot, the plot holders are required to make a payment of a nominal amount towards External Development Charges (EDC) and internal development charges (IDC) towards laying down of sewer lines, roads, storm sewers etc., at the time of purchase of the plot and apart from the said charges, no other charges are recovered by the applicant from its plot owners. The entire expenses of other maintenance and development of the specified area is met by the applicant out of its own sources.

Regarding the Capital Adequacy requirement of the applicant it is submitted that the applicant is a 100% subsidiary of the reputed DLF Universal Ltd. and which subsidiary was formed primarily as a service company to facilitate its parent company, DLF Universal Ltd. in providing services to the residents of the proposed area. As on 31.3.2006, the net worth of DLF Universal Ltd. is Rs.38393 lacs and the net worth of the applicant company is Rs.178 lacs. Since the sole function of the applicant is to provide development and maintenance services to the proposed area its capital base stands as stated in the application. However as and when required for the purpose of meeting the capital adequacy

norms in terms of the applicable rules and regulations, the applicant shall be backed and assisted by DLF Universal Ltd. In this regard the parent company of the applicant, DLF Universal Ltd., has committed to fund the cost of the project by way of equity/loan to the extent of Rs.25 crores. The Letter of Commitment issued by DLF Universal Ltd. to this effect is also enclosed.

It is further relevant to state here that in terms of Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Credit worthiness and Code of Conduct) Rules, 2005, the requirement of capital adequacy is to be met by a licensee after this Hon'ble Commission decides to issue the licence to the applicant.

According to Rule 3 of the aforesaid Rules, the Commission is required to decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area. It is after this decision by the Hon'ble Commission that the applicant is required to satisfy the Commission as to its capital adequacy that it shall be in a position to make available resources for such investment on the basis of its net worth and generation of internal resources of its business in the preceding three years after excluding its other committed investments.

It is thus erroneous on part of DHBVNL to suggest at this stage that the applicant does not fulfill the requirement of capital adequacy.

(c) **Inadequate Electrical System in Phases I to IV**

It is denied that the applicant has failed to lay adequate electrical system in Phase I to IV. Reference is invited to the contents of sub-para (a) herein above and it is reiterated that the entire design and layout of the electrical distribution existing at the specified area has been sanctioned by the HSEB and the execution of work was strictly in accordance with the load norms prevailing at that time and notifications/circular issued by HSEB in this regard and approved by them.

It is also submitted that the writ petition and other litigation involving the applicant as mentioned by DHBVNL and the contents thereof have no bearing whatsoever to the issue of grant of licence or the present application and

reference to the same is misplaced and misconceived. The same shall be decided by the appropriate courts/authorities on merits.

It is therefore incorrect to say that the ability and conduct of the firm is questionable. It is rather the conduct of the DHBVNL/HVPSNL that has been questionable and unsatisfactory and the residents of the applicant have expressed the innumerable difficulties faced by them before this Hon'ble Commission due to the conduct of the existing licensee.

(d) **Proposed area of supply is not in conformity to the National Electricity Policy**

It is denied that grant of licence for distribution of electricity in a small pocket of Gurgaon to the applicant shall tantamount to revocation of the Haryana Govt. Gazette or that the proposed area of supply is not in conformity to the National Electricity Policy.

In this regard it is relevant to reproduce herein the relevant part of the National Electricity Policy:

*“5.4.7 One of the key provisions of the Act on competition in distribution is the concept of multiple licensees in the same area of supply through their independent distribution systems. State Governments have full flexibility in carving out distribution zones while restructuring the Government utilities. For grant of second and subsequent distribution licence within the area of an incumbent licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in Article 243Q of the Constitution of India (74<sup>th</sup> Amendment) may be considered as the minimum area. The Government of India would notify within three months, the requirements for compliance by applicant for second and subsequent distribution licence as envisaged in Section 14 of the Act. With a view to provide benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of Section 43 of the Electricity Act, 2003. The SERCs are required to regulate the tariff including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that*

*second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers”.*

It is clear from the aforesaid that the concept of “minimum area” applies to cases where a parallel licence within the area of an incumbent licensee is sought. However, the said provision does not apply to the present case since the applicant is not seeking a parallel licence. The applicant in the present application is seeking a licence to distribute electricity in the proposed area to the exclusion of the existing licensee since it is the applicant who has developed the entire distribution network and infrastructure and has also been performing the functions of a distribution licensee.

However, without prejudice to the aforesaid, it is further submitted by the applicant that the proposed area is much more than the municipal area of Gurgaon as is evident from the maps annexed to the application. It is submitted that the municipal area of Gurgaon is about 406 hectares whereas the proposed area for which the licence is sought is approximately 947 hectares.

It is further submitted that the rationale behind prescribing a minimum area vide the National Electricity Policy is to prevent cherry picking by the licensees of such profitable commercial and high consumption areas where licensee could expect to earn more revenue. However, the same is not the case of DHBVNL. The approximate break up of area and the types of users in the proposed area is being provided herein:

<b>Domestic Area:</b>	<b>92%</b>
<b>Commercial Area:</b>	<b>6%</b>
<b>Rural Area:</b>	<b>2%</b>
<b>Industrial Area:</b>	<b>NIL</b>

**The breakup of plots in domestic area is as under:**

Economically Weaker Section:	20%
Low Income Group:	25%
Others:	55%

Thus it is evident from the aforesaid that the proposed area is a mixed user area having domestic, commercial as well as rural users and by the proposed licence the applicant intends to provide equal services to all these users.

(e) **Applicant has no power supply arrangement**

It is incorrect to state at this stage that the applicant has no concrete power supply arrangement or any concrete intra state transmission connectivity thus rendering the applicant incapable of supplying power.

It is submitted that the format prescribed in the Regulations for making an application for grant of a licence for distribution or the language of regulations or the relevant provisions of the Electricity Act 2003 do not suggest power purchase arrangement to be a pre-condition for grant of licence.

It is rather a premature contention on part of the HVPNL to expect the applicant to have already procured a power purchase agreement without having a licence for distribution of electricity. This is an operational and implementation based issue, which can be dealt with during the implementation stage. However, the applicant has furnished the MoU executed by it with PTC along with its application for grant of licence and shall make appropriate arrangements for purchase of power if this Hon'ble Commission decides to grant a licence to it.

(f) **Applicant does not have a clearly established supply source of power**

It is incorrect to state at this stage that the applicant does not have a clearly established supply source of power and is thus likely to put the supply in the proposed area in jeopardy.

In reply to this contention the contents of the reply in (e) hereinabove is reiterated. It is further submitted that the applicant is entitled to its share of electricity from the power pool available to the state of Haryana, wherein the electricity is sourced by the state to meet the electricity requirements of the state from its own resources (such as the thermal/hydro power stations at Faridabad, Panipat etc.) as well as other power generation resources (such as BBMB, NHPC, NTPC). The said pool is available to all the districts of the state and since the proposed area is also a part of the state of Haryana, it is entitled to its share in the power pool and shall be entitled to claim the same on the appointed date.

(g) **Applicant does not have any credible intra state connectivity to wheel in power**

It is incorrect and rather a far-fetched argument on part of the HVPNL to suggest that the grant of licence for distribution of electricity is linked with the intra state connectivity. It is submitted in this regard that it is the responsibility of state transmission utilities to discharge all the functions of planning and co-ordination relating to intra-state transmission system with, inter alia, the licensee.

It is also submitted that the extent of connectivity or any additions to the transmission facilities shall be determined from time to time and the applicant undertakes to comply with as and when the same are laid down by the state transmission utility/grid code.

(h) **The likely tariff of the consumer will be higher**

The contention of the HVPNL that the likely tariff of the consumer will be higher and the supply will be unreliable compared to that of the present licensee is merely based on conjectures and surmises. It is most respectfully submitted that both the Electricity Act and the Regulations provide adequate safeguards in the hands of the Commission to regulate the tariff as well as the conduct of the licensee. The remedies are also provided in case of any deviation by the licensee in the form of revocation or suspension of licence.

It is further submitted that the determination of tariff is entirely within the powers of the Commission and thus the contention of the objectors are completely baseless and devoid of merit.

(i) **The present application is premature**

It is denied that in view of certain provisions mentioned by the HVPNL, the present application of the applicant is pre mature.

It is submitted that the reference to sections 86 (h), 79 (1), (h), 32 (2) (c), 39 (2) (b) and Clause 5.3.2 is entirely misplaced.

In this regard it is stated that Sections 86 (h) and 79 (1) (h) of the Act provide one of the various functions of the central and state regulatory Commissions. It is most respectfully submitted that each and every function of a Commission is independent of each other and the performance of one function is not linked with

the performance of other functions of the Commission. In this case, the function of a central/state regulatory Commission to grant a licence for distribution of electricity to persons seeking to act as such is not linked with its other function to specify the Grid Code/State Grid Code.

Further, Sections 32 (2) (c) and 39 (2) (b) each provide for one of the many functions of a state load dispatch centers and state transmission utilities to monitor grid operations and discharge functions relating to planning and co-ordination relating to intra-state transmission system respectively. It is submitted that both the provisions are transmission activities and are not related to the function of the appropriate Commission to grant a licence for distribution.

Even if for the sake of argument it is assumed that the said functions do relate to grant of distribution licence, it is submitted that a decision on the same is a prerogative of the Commission and the same is to be worked out post grant of licence and not at this stage since they are just modalities to be considered by this Hon'ble Commission as and when it decides to grant the licence to the applicant.

It is further stated that at the hearing, the MD of HVPNL had raised an objection with regard to the mode of hearing an application for grant of a distribution licence stating that the Commission is required to take a prima facie view as to whether competition is required to be allowed in an area and then invite bids from interested parties regarding the same. A parallel was drawn with the cases of privatization of the electricity sectors in Delhi and Orissa. In this regard it is most respectfully submitted that the contention of HVPNL is entirely misplaced and misconceived. Had the intention of the legislature been to empower the Commission to take a prima facie view regarding introduction of competition in an area, it would have been expressly spelt out in the Act or the Regulation along with the procedure required to be followed by the Commission. However, the procedure already provided under the Act and the Regulations neither indicates such an intention of the legislature nor grants any such power to the Commission to form a prima facie opinion regarding competition and to invite bids in pursuance thereof. Any deviation by the Commission from the procedure

explicitly provided under the Act and the Regulations would amount to the Commission acting in excess of its jurisdiction.

It is further submitted that the parallel sought to be drawn by HVPNL with the method adopted by Delhi and Orissa while introducing competition in their respective electricity sectors is entirely misplaced and misconceived. It is submitted in this regard that the above-cited instance and the procedure adopted therein related to privatization of electricity in the state, which is the prerogative of the government and not the state regulatory commission. It is also important to clarify here that in the cited instances, the government had invited prospective bids for acquisition of stakes in the respective electricity boards of the states and the state regulatory commissions had played a separate role in the entire process. It is further submitted that the issues involved in privatization or reorganization of the electricity sector are entirely different from the issue involved in the grant of a distribution licence. This Commission is empowered by the Act and the regulations to decide the present application of the applicant in the manner clearly set out in the Act and the Regulations.

- 15) That in view of the aforesaid submissions and the relevant facts and circumstances of the case it is prayed that this Hon'ble Commission may graciously be pleased to dismiss the objections of DHBVNL and HVPNL and grant the licence for distribution of electricity to the applicant.
- 16) Since the hearing held on 4.4.2006 remained inconclusive, the Public Notice for next date of hearing, to be held on 14.6.2006 was published in press on 10.5.2006. Through this notice the MD, HVPN and MD, DHBVN were given another opportunity to file their comments/objections, if any, in respect of above cited filing dated 14.4.2006 of M/s DEDL. They were directed to send their objections, so as to reach the office of the Commission before 5.00 P.M. on 5.6.2006. By the stipulated time and date only two objections/suggestions were received viz. from DHBVNL and DLF Qutab Enclave Residents Welfare Association. The next hearing of the case was scheduled for 14.6.2006.

**15. DHBVNL, in reply to filing of DEDL dated 14.4.2006, stated vide filing dated 2.6.2006 that :**

With reference to Notice for hearing on application for distribution licence appearing in Hindustan Times dated 11.5.2006 and with reference to HERC office Memo No. HERC/96 dated 19.4.2006 wherein a copy of filing of M/s DLF Estate Developer Ltd. Gurgaon dated 14.4.2006 has been forwarded to DHBVNL. The para-wise comments/objections in respect of the filing of M/s DLF Estate Developers Ltd. Gurgaon dated 14.4.2006 before Hon'ble Commission on application for distribution licence are as follows. It is requested that the same be considered before taking any action in granting licence to the firm please.

- 1) The contents of the para needs no comments being a matter of record.
- 2) The contents of the para needs no comments being a matter of record.
- 3) The contents of the para needs no comments being a matter of record.
- 4) The contents of the para needs no comments being a matter of record.
- 5) The contents of the para needs no comments being a matter of record.
- 6) The contents of the para needs no comments being a matter of record.
- 7) The DHBVNL had filed its objections before the Hon'ble Commission well in time and the objections raised by HVPNL have already been accepted by the Hon'ble Commission for consideration during public hearing at Panchkula on dated 4.4.2006.
- 8) The contents of the para needs no comments being a matter of record.
- 9) The contents of this para are not correct as the objections were filed by DHBVNL before the Hon'ble Commission in time as per orders of the Hon'ble Commission.
- 10) The contents of this para relates to HVPNL only.
- 11) The contents of the para needs no comments being a matter of record.
- 12) The electrical infrastructure is still inadequate to meet with the ultimate power demand of the area being developed by M/s DLF Universal Limited as a private colonizer, which is obligatory on the part of M/s DLF Universal Limited as a licensee, obtained from Director Town &

Country Planning Haryana to provide the services including electrical system to meet with the ultimate power load demand of the area being developed.

- 13) a) It is reiterated that M/s DLF Estate Developers Ltd. Gurgaon do not own any distribution system for which licence is being sought. The distribution system is owned by DHBVNL. As a private colonizer/licensee, it is obligatory on the part of M/s DLF Universal Ltd. to provide internal electrical infrastructure capable to meet with the full occupancy power load requirement. It is further submitted that as per licence, the external electrification work is also required to be completed by the applicant as per load requirement of the area. Electrical assets of DLF area has not so far been accounted for in the books of DHBVNL as the inadequate electrical infrastructure has been laid by the private colonizer, which is not capable to meet with the load requirement of the area. The statement of the firm, pretending to own the distribution system is misconceived and misrepresentation of facts. M/s DLF Universal Ltd. is a colonizer and not the owner of the area for which the licence is being sought, but by misleading the facts is seeking the licence in the capacity of owner, which is not correct. M/s DLF Universal Ltd. as a colonizer had charged the amount from the applicants as part of the cost of land and has spent some amount to build the electrical system as per approval of erstwhile HSEB. The existing distribution system is connected to HSEB/DHBVNL system and is owned by DHBVNL and is distributing supply to DHBVNL consumers. As per Indian Electricity Rules 1956 (Rule 27), the service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the licensee, by whom it is to be maintained. DHBVNL is discharging its obligation of universal supply in the proposed area at a reasonable tariff approved by the Hon'ble Commission. During the course of presentation, made by DLF Qutab Enclave Residents Welfare Association Gurgaon, it was informed that already DLF is charging an exorbitant rate of Rs.5.50 per

unit from residents of DLF Qutab Enclave Phase-V. Thus M/s DLF is already violating the tariff order of Hon'ble Commission.

- b) It is reiterated that the firm has not invested any capital in the development of any infrastructure for distribution of electricity in the area described by them in their application for licence. As submitted in (a) above, M/s DLF has charged the amount from plot holders and the work of electrification was executed by HSEB as a deposit work which is obligatory as a licensee.

The expenditure on a part of infrastructure by M/s DLF was done after charging the same from the plot holders as development charges as a part of their business being private colonizer.

M/s DLF Universal Ltd. is a holding company and M/s DLF Estate Developers Ltd. Gurgaon a subsidiary company, which has a mere capital of only 5.01 lacs. Thus capital adequacy of the applicant company is not worth.

- c) The electrical infrastructure laid in Phase I to IV is inadequate and insufficient. The applicant was required to install electricity distribution infrastructure as per the peak load requirement of the colony shall remain the responsibility of the colonizer, for which the colonizer, will be required to get the Electricity Distribution Services Load as per the latest norms issued by the Distribution company i.e. DHBVNL or actual load requirement of the scheme area, whichever is higher, so that the system stands for 100% occupancy of the plots, which is yet to be carried out by M/s DLF, inspite of repeated meetings with DHBVNL Management & District Authorities.
- d) It is reiterated that the area proposed in the application by the firm for distribution of electricity is neither a revenue district, municipal area or a municipal council. It does not matter whether the picked area proposed by the firm is smaller or bigger than the area defined under the law. The area has been picked up by the firm to meet their business requirement. Rationale behind prescribing the above area is to introduce competition

so as to provide better service to the consumer and not the business. The private colonizer is seeking business behind obtaining the distribution licence as the area is dominated by high consumption consumers with lesser line losses.

The area is not a mixed user area, which would have been in case of a revenue district/municipal committee or a municipal corporation.

- e) The firm has no generation capacity and has not made any arrangement for generation/purchase of electricity and is thus incapable of supplying power.
  - f) It is reiterated that the firm does not have any established source of power supply and is thus likely to put the consumers/proposed area in jeopardy, as no such facts have been decided by the firm. There is no power pool as such as described by the firm and there is no such entitlement. The intention of the firm is hypothetical only.
  - g) The firm does not have any credible intra state connectivity to wheel in power in the proposed area as no such fact has been supplied by the firm. The contention of the firm is only imaginary.
  - h) The explanation to the contention of DHBVNL that likely tariff of the firm shall be higher for the consumers has been replied by the firm in very casual manner without giving any calculations, facts and figures, cost of service to be provided to different category of consumers and without any comparison with the existing tariff of DHBVNL and hence cannot be relied upon.
  - i) The firm is not clear even to the extent whether it has applied for a parallel licence or an exclusive licence for distribution of electricity.
14. It is once again submitted that the applicant does not own any distribution system. The submission of M/s DLF Estate Developer Ltd. Gurgaon, pretending to own distribution system is mis-representation of facts. In fact, M/s DLF Estate Developer Ltd. Gurgaon has obtained licence from Town & Country Planning Department Haryana to develop some area

around old Gurgaon. It is further submitted that as per licence, the external electrification work is required to be completed by the applicant as per load requirement of the area but while submitting the electrification lay out plan, the load projections were not as per the actual load requirement of the effluent class of society for which the area being developed. There is a lot of difference in the actual power load demand of the said area and load projection, mentioned in the electrification lay and plan submitted by the applicant. However the electrification system was laid according to the load demand as projected by the Applicant, which proved to be grossly inadequate resulting to overloading and poor supply position in the area as the actual total power load demand of the DLF Phase I, II, III & IV is in order of 140 MW against total load projected in the electrification layout plan as 16.197 MW.

It is also submitted that in view of the erstwhile HSEB letter No. 51/BD-2/Panchkula/88/HUDA dated 16.8.1988, if a grid S/Station is to be erected to meet the requirement of power load, it will be done at the cost of colonizer free of cost. However, with reference to letter No. DLF/VP(C)203/8/95 dated 25.10.95 and DLF/VP(C)203/19/95 dated 13.12.95 of the Applicant addressed to the Chairman, HSEB, their request for setting up 3 Nos. 66/11 KV S/Station at that time was considered and approved vide erstwhile HSEB letter No. Ch.18/406/K-100 dated 9.1.1996, but it is relevant to mention here that 2 Nos. 66/11 KV Grid Substations out of 3 as mentioned above have not been constructed as yet by the Applicant at 'F' Block and 'U' Block of the said area. M/s DLF Universal Limited is to lay the electrical infrastructure including providing of grid sub stations of required voltage level as per the ultimate load requirement of area being developed as a private colonizer.

The timing and methodology for granting distribution licence is important where it can be fairly claimed that though the Act does not restrict the number of distribution and retail supply licensee to operate in a

specified/adjacent area, each with own distribution network, the practicability of operation is also to be taken care of as the boundaries in such cases, cannot be well defined being in close vicinity and will knit.

15. The content of this para is prayer which is in correct.

It is therefore prayed that the written submission filed by M/s DLF Estate Developers Ltd. Gurgaon dated 14.4.2006 may please be dismissed.

**16. DHBVNL, in continuation to their reply dated 2.6.2006, sent with reference to the filing of DEDL dated 14.4.2006, submitted another filing dated 10.6.2006. The DHBVNL stated that :**

In view of Haryana Electricity Reforms (Transfer Scheme) issued vide Haryana Govt. Gaz. (Extra) July 1, 1999, DHBVNL has been granted distribution licence by the Hon'ble Commission for Dakshin Zone (Zone II) consisting of Bhiwani, Faridabad, Gurgaon, Hissar, Fatehabad, Mohindergarh, Rewari & Sirsa districts of Haryana. The specifically carved out area of Gurgaon city is a part & parcel of Gurgaon district, where DHBVNL is meeting its universal obligation of distribution of electricity. The Hon'ble Commission has never raised any objection regarding the licence of this area for distribution of electricity. Thus granting of exclusive distribution licence to the firm M/s DLF Estate Developers Ltd., Gurgaon will tantamount to revocation of the gazette of Govt. of Haryana & hence on this account the request application of M/s DLF for grating licence in a particular area of Gurgaon city is not a fit case for even hearing and should be outwardly rejected.

**17. DLF Qutab Enclave Residents Welfare Association, Gurgaon vide their filing dated 1.6.2006 made a submission, the salient points of the same are as under :**

- i) Neither DHBVNL nor DLF group is interested in upgrading the system.
- ii) With reference to circular of DLF City Residents Welfare Association, the DLFQERWA further stated that the DLF group is holding the community to ransom by stating that they will upgrade the system only if they get the licence.

- iii) DLF group is defaulting on various obligations. Our apprehension is that if DEDL is given a licence , it will go back on its commitments and also indulge in profiteering.
- iv) Instead of giving priority to the issue of granting licence to DEDL, the Commission should enquire how high-tension feeder lines to DLF, Ansal, Unitech colonies, through green belts were laid very close to each other. The consequence of this is that if there is fault in one of the colonies the power supply to all three colonies is shut down in order to carry out the repairs .
- v) The Commission should order enquiry into all the irregularities committed by DLF group and DHBVNL with regard to electricity supply leading to untold hardship caused to the residents over last twenty years.
- vi) In case the Hon'ble Commission grants a licence to DEDL, and thereafter DEDL does not honour its commitments, as DLF has been doing all these years, the Hon'ble Commission will be liable for all the consequences.

18. The hearing of the case was held on 14.6.2006. The representatives of DLF Qutab Enclave Residents Welfare Association, DHBVNL, HVPNL, and M/s DEDL made presentation before the Commission and presented their view point.

With reference to the filing submitted by the DLF Qutab Enclave Residents Welfare Association, the Commission observed that a number of letters were written by this RWA apart of the filing made with reference to the Public Notice issued by the Commission, in respect of application of M/s DEDL for grant of licence for distribution of electricity. Huge variation and inconsistency has been noticed in various filings made by this RWA.

It was noted that with reference to another petition before the Commission (Case no. HERC/PRO-9 of 2005), the QERWA in filing dated 28.9.2005 stated that :

- i) The DHBVNL does not take any responsibility to upgrade, run, and maintain the system though they collect revenue of approximately 60 crores annually from DLF City.

- ii) DLF has no choice but to supply man power and material to maintain the electrical system.
- iii) To overcome the problem on long term basis DLF has applied for grant of distribution licence.
- iv) The order be issued to only one agency to perform the duties of distribution licensee.

Subsequently in the Association's Filing dated 14.3.2006 submitted with reference to the Public Notice published by the Commission in press, the Association stated that :

DHBVNL has failed miserably to ensure adequate supply of electricity, maintain and upgrade electrical distribution system. We hope HERC would consider granting licence to M/s DEDL provided they fulfill some preconditions like they will upgrade the electrical distribution system, the consumers will not be charged tariff more than the maximum tariff of DHBVN etc.

Commission received a letter dated 3.4.2006 from the Association which concluded with comments that :

HERC could consider granting licence to M/s DEDL provided as a precondition they will upgrade the electrical distribution system to meet the peak demand for the next five years as per actual load for 100% occupancy, and then operate the system for a year before being permitted to distribute electricity and collect revenue.

Commission received another letter dated 13.4.2006 from the Association which concluded with remarks :

We would like to make our position unambiguously clear. Our main concern is that residents should get adequate and good quality of electricity at a reasonable, competitive rates. Our top priority is the up-gradation of electricity distribution system.

For the last several years DHBVNL is not maintaining/upgrading the electrical system. We request to settle the matter in which residents do not suffer inspite of making the payments.

We leave the question of issue of licence for distribution of electricity to your best judgement.

The Commission observed that comments made by DLF Qutab Enclave Residents Welfare Association, Gurgaon vide their filing dated 1.6.2006 were not in consonance with their stand taken in previous four submissions before the Commission. The Commission viewed this irresponsible attitude of the Qutab Enclave Residents welfare Association, very seriously. The Commission also disapproved the language used by the Association in its statement, "In case the Hon'ble Commission grants a licence to DEDL, and thereafter DEDL does not honour its commitments, as DLF has been doing all these years, the Hon'ble Commission will be liable for all the consequences."

The feelings of the Commission were strongly brought to the notice of the representative of the Association who came to attend the hearing dated 14.6.2006 and were told to conduct properly in addressing the matters to the Commission.

During Public Hearing the representative of M/s DEDL gave reference to their filing dated 14.4.2006 in which they had stated that having due regard to the facts and circumstances under which the application for licence had been filed by the applicant, the applicant seeks a licence for distribution of electricity in the proposed area to the exclusion of the existing licensee DHBVNL since the applicant has been carrying out the functions of the existing licensee at its own cost and expenses and the present distribution system was laid out by the applicant and has also been constantly maintained and upgraded by the applicant at its own costs and account. However, during Public Hearing the representative of M/s DEDL stated that since the distribution system in the proposed area was laid and subsequently augmented by them, the same has not been taken over by the DHBVNL and maintenance of the system is also being done by M/s DEDL, as such they will be using this system as a distribution licensee. They have no objection even if DHBVNL is allowed to make supply of electricity in the area under reference by creating its own infrastructure. Thus a parallel licence for distribution of electricity was also acceptable to them .

The Commission directed the M/s DEDL to make a written filing in this regard to the Commission within a week.

**19. DLF Estate Developers Limited vide filing received on dated 21.6.2006 stated that :**

The Applicant hereby craves leave of this Hon'ble Commission to submit its additional written submissions as directed by this Hon'ble Commission in the hearing held on 14.6.2006:

- 1) That the applicant has filed the instant application before this Hon'ble Commission in August, 2005 seeking grant of a licence for distribution of electricity under Section 14 of the Electricity Act, 2003 (hereinafter referred to as '**the 'Act'**') in the proposed area more specifically described therein.
- 2) That the present application was admitted by the Hon'ble Commission and in accordance with the provisions of the Regulations, the applicant complied with the procedures provided in the Act and the Regulations pertaining to the grant of a licence .
- 3) That in pursuance thereof, this Hon'ble Commission held a hearing on the present application on 4.4.2006 and subsequently on 14.6.2006 wherein the objections against the applications of the Applicant by the present licensee, Dakshin Haryana Bijli Vitran Nigam Ltd. (**DHBVNL**), along with the state transmission authority, Haryana Vidyut Prasaran Nigam Ltd (**HVPNL**), the residential welfare associations of the proposed area and the replies of the applicant thereto were entertained. During the course of arguments this Hon'ble Commission has raised a question as to the kind of licence that the applicant has sought in its application and directed the applicant to specify in writing the kind of licence sought by the applicant.
- 4) That in regard to the aforesaid, the applicant seeks indulgence of this Hon'ble Commission to rely upon and adopt the contents of the written submissions

filed by it on 14.4.2006 and the same are not repeated herein for the sake of brevity.

5) Further, the applicant craves leave of this Hon'ble Commission to submit as below: -

a) The application for grant of licence to distribute electricity and the procedure thereof is governed by provisions of Sections 14,15 and 16 of the Act and the Haryana Electricity Regulatory Commission (Transmission and Distribution Licensing) Regulations, 2004 (hereinafter referred to as the "Regulations"). Regulation 3 provides that an application for grant of licence shall be made in Form-2 prescribed therein. However, neither the Act nor the regulations require the applicant to specify the kind of licence that is sought by it. It is entirely upon the discretion of the concerned Regulatory Commission to adjudicate upon the application of the applicant and in the facts and circumstances of the case decide the type of licence to be granted to the applicant. The Hon'ble Commission is not bound by the rules of procedure as have been prescribed in the Civil Procedure Code and the Commission has the power to devise its own mechanism. The only requirement being compliance with the principles of natural justice and the technical law would not debar any relief if available to the applicant. Apart there-from, the lesser relief is always inherent in the bigger relief and the same need not ever be specified or spelt out. There is further no embargo on the Hon'ble Commission to exercise its discretion in this regard and apply its own assessment so as to determine the nature of the licence. In fact, the entire discretion has been vested with the Hon'ble Commission in this regard and the licensee cannot usurp the prerogative of the Hon'ble Commission.

b) It is relevant to mention here that among other objections raised by the DHBVNL and HVPNL at the hearing held on 4.4.2006 the primary objection raised was that the applicant had not specified in its application as to the kind of licence being sought by the applicant.

- c) In this regard, it is submitted that the applicant had, in Para 12 of its Written Submissions dated 14.4.2006 submitted that *“having due regard to the facts and circumstances under which the application for the licence had been filed by the applicant, the applicant seeks a licence for distribution of electricity in the proposed area to the exclusion of the existing licensee DHBVNL since the applicant has been carrying out the functions of the existing licensee at its own cost and expenses and the present distribution system was laid out by the applicant and has also been constantly maintained and upgraded by the applicant at its own costs and account”*.

As is evident from the aforesaid, the intention of the applicant is to exclude the current licensee i.e. DHBVNL from the use of the distribution network laid by the applicant which is also being maintained by the applicant at its own cost and expense since the same has admittedly not been taken over by DHBVNL. The applicant does not intend to avoid or restrict competition as envisaged under the Act. The applicant has no objection to the existing licensee competing with the applicant by distributing electricity in the proposed area by laying its own system. As per the provisions of the Act a licence may be granted to two or more persons through their own distribution system within the same area.

- d) The above said intention of the applicant is further reinforced by the submission made by the applicant in the Prayer clause, which is Para 15 of the Written Submissions dated 14.4.2006. The same is being reproduced herein below:

*“That in view of the aforesaid submissions and the relevant facts and circumstances of the case it is prayed that this Hon’ble Commission may graciously be pleased to dismiss the objections of DHBVNL and HVPNL and grant the licence for distribution of electricity to the applicant.”*

It is clear from the language of the applicant that in keeping with the spirit of the Act, the applicant has left the decision on the nature of the licence to the discretion of this Hon'ble Commission.

- e) However, the applicant craves leave of this Hon'ble Commission to submit that the applicant has installed the distribution network and has been upgrading and maintaining the same at its own cost and expenses. DHBVNL, on the other hand, has not only refused to take over the network on one pretext or the other, but has also refused to discharge its duties as a licensee despite collecting revenue from the residents of the proposed area. It is thus deriving benefit of the network by collecting revenue from the residents without having to maintain and augment the same, inspite the fact that the applicant had deposited O&M charges as per sanctioned estimate to CE(Op) HSEB, Delhi as per the norms of erstwhile HSEB. After collecting the O&M charges the system should have been taken over by the HSEB/DHBVNL as they are billing and collecting the revenue (approx. Rs. 5 crore per month) towards electricity charges from the DLF city.

The Resident Welfare Associations have even represented as such before this Hon'ble Commission because the action of the existing licensee for not maintaining the system is causing great inconvenience and confusion to the residents.

However, in view of the directions of this Hon'ble Commission the applicant craves leave of this Hon'ble Commission to amend Para 15 of the Written Submission dated 14.4.2006 by substituting it with Para 15 as below:

“15. That in view of the aforesaid submissions and the relevant facts and circumstances of the case it is prayed that this Hon'ble Commission may graciously be pleased to:

- (i) dismiss the objections of DHBVNL and HVPNL; and till such time that the application of the applicant is pending, keeping in

view of the inconveniences being faced by the residents, direct the licensee to discharge its duties as a licensee in the proposed area in terms of the Licence granted to it; and

- (ii) grant a licence for distribution of electricity to the applicant of such nature as this Hon'ble Commission may deem fit in the facts and circumstances of the case; or
- (iii) in the event that this Hon'ble Commission is constrained to issue the licence to the applicant then direct the present licensee DHBVNL to discharge its duties as a licensee in terms of the licence granted to it viz, operation, maintenance and upgradation of the distribution network in order to put an end to the inconveniences and confusion being caused to the consumers .
- (iv) pass any other order this Hon'ble Commission may deem fit in the facts and circumstances of the case.”

- 6) That it is further respectfully submitted by the applicant that the Act provides that the applicant for grant of licence in the same area shall, without prejudice to the other requirements under the Act comply with the additional requirements relating to capital adequacy, credit worthiness or code of conduct as 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 areas for the same purpose.

The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, creditworthiness and code of conduct) Rules 2005, notified vide G.S.R. 188 (E) dated 23<sup>rd</sup> March 2005, published in the Gazette of India prescribe the requirements of capital adequacy and credit worthiness etc. and also prescribe the disqualifications that the Commission has only to keep in mind while refusing to grant the licence .

Thus if all the requirements under the Act along with all the additional requirements are met by an applicant which is the case of the applicant herein, then in the interest of the equity, natural justice and fair play, a distribution licence , in all fairness may be granted to the applicant.

- 7) That the applicant further craves leave of this Hon'ble Commission to invite its attention to the parawise comments to the Written Submissions of the applicant filed by DHBVNL on 2.6.2006 wherein DHBVNL has submitted that *“As per Indian Electricity Rules 1956 (Rule 27) the service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the licensee by whom it is to be maintained.*

It is submitted in this regard that Rule 27 is neither relevant nor applicable to the present applicant since it refers to the Model Conditions of supply, which may be adopted by a licensee to regulate his relations with the persons who are or intend to be its consumers. It is clarified that the Applicant does not fall within the definition of “consumer” as defined under the Act and “service line” as referred to by the DHBVNL has been defined under the Act to mean an electric supply line through which electricity is supplied to a consumer.

- 8) It is most humbly submitted before this Hon'ble Commission that in the facts and circumstances of the case as mentioned in the Application and the written submissions dated 14.4.2006 of the applicant and the above submissions and as per the provisions of law as laid down in the Act and the Regulations, the applicant is entitled to a distribution licence which if not granted to the applicant will cause grave and avoidable hardship, inconvenience and harassment to the consumers of the area, 45% of whom belong to the economically weaker section (20%) and lower income group (25%). However in the event that this Hon'ble Commission is constrained not to issue the licence to the applicant then it should direct the present licensee DHBVNL to discharge its duties as a licensee in terms of the licence

granted to it viz operation, maintenance and up gradation of the distribution network in order to put an end to the inconveniences and confusion being caused to the consumers.

**9) PRAYER**

In view of the aforesaid submissions and the relevant facts and circumstances of the case it is prayed that this Hon'ble Commission may graciously be pleased to:

- a) dismiss the objections of DHBVNL and HVPNL; and till such time that the application of the applicant is pending, keeping in view of the inconveniences being faced by the residents, direct the licensee to discharge its duties as a licensee in the proposed area in terms of the licence granted to it; and
- b) grant a licence for distribution of electricity to the applicant of such nature as this Hon'ble Commission may deem fit in the facts and circumstances of the case; or
- c) in the event that this Hon'ble Commission is constrained not to issue the licence to the applicant then direct the present licensee DHBVNL to discharge its duties as a licensee in terms of the licence granted to it viz operation, maintenance and upgradation of the distribution network in order to put an end to the inconveniences and confusion being caused to the consumers.
- d) pass any other order this Hon'ble Commission may deem fit in the facts and circumstances of the case.”

**COMMISSION'S VIEW AND ORDER :**

1. For the scrutiny of the first application of its kind, in the State of Haryana, regarding grant of licence to a private company for distribution of electricity, the Commission kept in mind the following provisions and guiding principles of the Electricity Act, 2003 and the National Electricity Policy :

- i) The Section 14 of the Act states, “The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person –
  - (a) to transmit .....
  - (b) to distribute electricity as a distribution licensee;
  - (c) to undertake trading .....
 in any area as may be specified in the licence:”
  
- ii) The proviso six of the Section 14 of the Act further states, “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 other conditions or requirements under this Act, comply with the additional requirements (relating to 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:”
  
- iii) The Section 15 (6) of the Act states, “Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application, -
  - a. issue a licence subject to the provisions of the Act and rules and regulations made thereunder ; or
  - b. reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:  
 Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.”
  
- iv) The National Electricity Policy (NEP), has laid great stress on the issue of encouraging competition and participation of private sector in the power sector.

The Section 1.6 of NEP states, “Electricity Act, 2003 provides as enabling framework for accelerated and more efficient development of power sector. The Act seeks to encourage competition with appropriate regulatory intervention. Competition is expected to yield efficiency gains and in turn result in availability of quality supply of electricity to consumers at competitive rates.”

v) The Section 5.4.4 of NEP states, “..... Private sector participation in distribution needs to be encouraged for achieving the requisite reduction in transmission and distribution losses and improving the quality of service to the consumers.”

vi) The Section 5.8.1 states, “ To meet the objective of rapid economic growth and ‘Power for all’ including house hold electrification, it is estimated that an investment of the order of Rs. 9,00,000 crores at 2002–03 price level would be required to finance generation, transmission, sub transmission, distribution and rural electrification projects.....”

Considering the magnitude of the expansion of the sector required, a sizeable part of the investments will also need to be brought in from the private sector. The Act creates a conducive environment for investments in all segments of the industry, both for public sector and private sector, by removing barrier to entry in different segments. Section 63 of the Act provides for participation of the suppliers on competitive basis in different segments which will further encourage private sector investment.....”

2. After going through the record and hearing the applicant and the objectors viz. DHBVNL, the incumbent distribution licensee; the HVPNL, the transmission licensee; the residents and the Resident Welfare Association of the area and other organizations, the Commission, keeping in view the provisions of the Act, the regulations, the National Electricity Policy and Rules framed by the Ministry of Power, Government of India, observes as under, on the issues raised regarding grant of licence to M/s DEDL, the subsidiary company of M/s DLF Universal Ltd., for distribution of electricity :

- i) Apart from the objections received from the existing distribution and transmission licensee, 12 suggestions/objections were received from the residents and Resident Welfare Associations of the area concerned i.e. DLF City, Gurgaon, whereas two suggestions were received from organizations which did not belong to the area for which distribution licence has been applied. The perusal of the objections/suggestions received from the residents and Resident Welfare Associations of the area reveals that each one of them pleaded for grant of licence to M/s DEDL. However, one RWA suggested imposing certain pre-conditions for grant of licence such as restricting the tariff and other charges to the level of the incumbent licensee and early augmentation and proper maintenance of the electrical system. The abstract of the final recommendation of these parties is as under :

<b>ABSTRACT OF OBJECTIONS</b>		
<b>S.No.</b>	<b>Objector</b>	<b>Recommendations/ Suggestions/Request of residents and RWAs of DLF City on the proposal of grant of distribution licence to M/s DEDL</b>
I	DLF QUTAB ENCLAVE RESIDENTS WELFARE ASSOCIATION (REGD.), GURGAON- MR. R.S RATHI, PRESIDENT AND MR. SANDEEP VIRMANI, GENERAL SECRETARY	DHBVNL has failed miserably to ensure adequate supply of electricity, maintain and upgrade electricity distribution system despite collecting crores of rupees in revenue. Our Association welcomes deregulation, competition, competitive pricing and privatization. We hope that HERC would consider granting licence to M/s DEDL provided they fulfill some pre-conditions.
II	DLF CITY RESIDENTS' WELFARE ASSOCIATION (REGD.), GURGAON	We support reforms and change in the distribution licensee.
III	QUTAB PLAZA CONDOMINIUM ASSOCIATION	Our Association is of the view that if DEDL is granted licence for distribution of electricity in DLF City, customers would be, by and large satisfied and the distribution network with DLF City will be better maintained.
IV	LION P.N. PIPLANI, DISTRICT GOVERNOR, A-56/10, DLF CITY, PHASE-I, GURGAON	I on my own behalf and my family and host of friends would most emphatically request you to please grant the licence to DLF and earn the gratitude of one and all.
V	SILVER OAKS CONDOMINIUM ASSOCIATION (REGD.), GURGAON	There is urgent need to change the existing licensee i.e. DHBVNL and we support the application of DEDL in this regard.
VI	OBJECTIONS OF RESIDENTS OF DLF CITY, PHASE I, GURGAON - MR. J.S. BHATIA, E-14/11; MR. D.B. ANAND, B-8/12; MR. S.P. MALHOTRA, E-12/4; MR. D.MAJUMBDAR, E-13/5	Since the residents are not happy with the maintenance of electrical system by DHBVNL it will be right step to grant distribution licence to DLF
VII	RESIDENTS' WELFARE ASSOCIATION, U-BLOCK DLF CITY, PHASE III, GURGAON (MR. J.C. KAPOOR, GENERAL SECRETARY)	Keeping in view our experience with DEDL we think DEDL will be able to discharge its obligations of the licensee to the complete satisfaction of the residents.

VIII	MR. V.K. SACHDEVA, IRS, CHIEF COMMISSIONER INCOME TAX (RETD.) PRESIDENT, A-BLOCK, EXTENSION COMMITTEE, DLF CITY, PHASE I, GURGAON	We are of the committed view that in the age of privatization of essential services it will be absolutely worthwhile to expedite the grant of licence for distribution of electricity in DLF to DEDL.
IX	DLF QUTAB ENCLAVE RESIDENTS WELFARE ASSOCIATION (REGD.), GURGAON -MR. S.P. UPPAL, VICE-PRESIDENT, DR. YUVRAJ SAMBHY, ASSISTANT GENERAL SECRETARY, MR. I.M. SHARMA, EXE. COMMITTEE MEMBER AND MR. A.K. JAISWAL, EXECUTIVE COMMITTEE MEMBER	We the representatives of Phase IV on behalf of residents request the Commission that distribution licence should be granted to DLF as DHBVNL has miserably failed to maintain the system
X	RESIDENTS OF DLF CITY, PHASE II, GURGAON	There is an urgent need to streamline the system and fix accountability. Since DEDL have come forward for undertaking this responsibility as a distribution licensee we strongly support their application
XI	DLF CITY TRADERS ASSOCIATION, DLF CITY, PHASE I, GURGAON (MR. RAJINDER SHARMA), PRESIDENT	Our Association is of the view that if DEDL is granted licence for distribution of electricity in DLF city, the customers would be by and large satisfied.
XII	SOME RESIDENTS OF DLF CITY VIZ. MS. SARITA ANAND, MR. JANAK ANAND, MR. K.K. SAIGAL, MR. SATYAPAL SOOD ETC.	Since DLF has applied for grant of licence in DLF City and the application is under examination by the Commission, the same may be considered favourably. It will be in the larger interest of residents of DLF if the licence is granted to DLF this will give lot of relief to the residents.

	<b>Recommendations/ suggestions of organizations which do not belong to area for which distribution licence has been applied</b>	
I	FARIDABAD INDUSTRIES ASSOCIATION THROUGH Sh. S.R. PRASAD, MEMBER ENERGY PANEL	DHBVN has failed in every aspect of distribution, incurred losses to both consumers and State. The DHBVN has accepted in ARR for 2006-07 that their theft losses are high and recovery is low. We reinforce the request for grant of distribution licence to private parties.
II	PEOPLE'S ACTION, N-18, MARKET, GREATER KAILASH-1, NEW DELHI	Commission has invited objections to the proposed plan to hand over generation/ transmission of power to M/s DLF in Gurgaon for a captive area. The private player may be allowed operations only as a second operator and consumer must have the choice of staying with HSEB or choosing DLF. Since the 2 nos. service provider system is also susceptible to corruption, the fool proof system in favour of consumer protection would be introduction of a 3 <sup>rd</sup> private sector provider to operate in the same area. Without this the protection of consumers will not be considered complete. The service standards and tariff setting must involve local resident bodies through an official committee subservient to the HERC at the local level. We recommend three levels of public consultation : the second may publish the objections you have received and third must be a public conference on the subject before terms are finalized.

- ii) The DHBVNL, the incumbent distribution licensee and the HVPNL its holding company and the transmission licensee opposed the application of M/s DEDL for grant of licence for distribution of electricity in DLF City, Gurgaon. The main points of objection alongwith Commission's view are as under :

a) **Ownership of existing distribution system :**

The DHBVNL, vide filing dated 20.3.2006, stated that the applicant for grant of distribution licence should own distribution system for distribution of electricity. The firm M/s DLF Estate Developers Ltd. Gurgaon, does not own any distribution system. The statement of the firm, pretending to own the distribution system is misconceived and that the electrical system existing in DLF City is owned by DHBVNL. The HVPNL vide filing dated 31.3.2006 supported the submission of the DHBVNL and stated that the infrastructure has been developed by the present licensee and its predecessor. The HVPNL further asserted that the assets were taken into the system and the books of the licensee, with clear understanding on both sides that the transfer of assets is irrevocable and permanent. Thus, the assumption of the applicant that it owns the distribution assets in its proposed service area is not factually correct.

M/s DEDL, in their presentation before the Commission, in Public Hearing held on 4.4.2006, contested the claim of the incumbent licensee regarding their ownership of the existing infrastructure and taking the same into books of the DHBVNL. The DHBVNL, with reference to a clarification sought by the Commission during Public Hearing, submitted a filing dated 17.4.2006 stating that, “the electrical assets of DLF area have not so far been accounted for in the books of DHBVNL as the electrical infrastructure laid by the private colonizer is inadequate and incapable of meeting the load requirement of the area being developed. Though these have been developed by the property development licensee, ownership of these is not that of the property developer but of the distribution licensee who is to maintain it later on.”

The above filing of DHBVNL proves that DHBVNL and HVPNL had made a false statement in their earlier filings regarding development, ownership and taking into books of the electrical infrastructure in the area for which the licence has been applied. It is also made clear from the filing of DHBVNL dated 20.3.2006 and 17.4.2006 that the electrical infrastructure was initially got

developed by M/s DLF Universal Ltd. the holding company of the applicant, as a deposit work, from the predecessor of the present licensee i.e. HSEB, and till date it has not been taken over by the DHBVN. All the augmentation of this system, to approximately twice the original capacity has also been done by M/s DEDL or its holding company i.e. DLF Universal Ltd. The electrical system since inception is not being maintained by DHBVNL and the responsibility of its maintenance has been forced on M/s DEDL being the developer of the area.

**The Indian Electricity Rules, 1956 [Rule 27, Annexure VI, Note of clause 5 (a)] states that – ‘The service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the licensee by whom it is to be maintained.’**

**We are of the view, that as per the above provision of the Indian Electricity Rules, the electrical system of the area, though created by the developer, was to remain with DHBVN, had it been maintained by it. However, the DHBVNL has not maintained the system since its inception. Now after the enactment of EA, 2003 any person can be a distribution licensee, which was not previously permitted under repealed Acts. Taking advantage of this legal provision, the developer of the area, in order to solve the problem of the residents, has applied to the Commission for grant of licence for distribution of electricity in the area developed by them, through its 100% owned company i.e. DEDL. As such, the electrical system, got created by the developer for the consumers of the area, can now be allowed to be used by its subsidiary company (the prospective licensee), for the benefit of the consumers. It will provide the consumers of the area an opportunity of availing the services of the prospective licensee, who has been providing them various services satisfactorily, including electrical maintenance, despite the fact that this responsibility lies with DHBVNL.**

**Keeping in view the peculiarity of the case the we decide that the electrical system will remain with the applicant company (the prospective licensee) as a custodian, who as per the scope of the distribution licence, if granted to it,**

**will use the system for providing service to the electricity consumers of the area, and maintain and augment the system as per requirement. In case the distribution licence is not granted, to M/s DEDL, irrespective of the fact that the distribution system of the area was not created by the DHBVNL or its predecessor, it will remain with DHBVNL, the incumbent licensee, as a custodian of the system. The DHBVNL will use the system for providing service to the electricity consumers of the area, maintain and strengthen the system as per requirement.**

**b) Distribution System created by charging amount to the cost of land**

The incumbent licensee has further raised the issue that the applicant is seeking the licensee in the capacity of owner, which is not correct as the colonizer had charged the amount from the applicants as part of the cost of land.

However, M/s DEDL have stated in this regard, “it is denied that the expenditure on a part of infrastructure by the applicant was done after charging the same from the plot holders. It is submitted in this regard that in addition to the price of the plot, the plot holders are required to make a payment of a nominal amount towards External Development Charges (EDC) and internal development charges (IDC) towards laying of sewer lines, roads, storm sewers etc., at the time of purchase of the plot and apart from the said charges, no other charges are recovered by the applicant from its plot owners. The entire expenses of other maintenance and development of the specified area are met by the applicant out of its own sources.”

**The record shows that all the strengthening of the electrical system of the area to approximately twice the original capacity has been done by M/s DLF Universal Ltd., the holding company or M/s DEDL, the applicant for grant of licence. It has not been brought to the notice of the Commission either by residents/Resident Welfare Associations of the area or supplemented with documentary evidences by the DHBVNL, that apart**

**from the initial development charges taken from the applicants for various services, they were required to pay any additional charges to the developer for creation or augmentation of the electrical infrastructure. As such, we do not accept the contention of the incumbent licensee that the existing electrical infrastructure has been created at the cost of the residents of the area.**

**c) System provided in the area not taken over because of inadequacy :**

The record submitted by the DHBVNL shows that the electrical layout plans of the area and deposit estimates of electrification were sanctioned by the competent authority i.e. the Chief Engineer concerned of HSEB, the predecessor organization of DHBVNL. The norms of load assessment of each dwelling unit, adopted for the purpose of preparation of deposit estimates, were the latest approved norms of the HSEB prevalent at that time. The contention of the licensee to expect compliance by the developer, of any norms which were adopted by the licensee at a later date, is not justified. **In view of the above facts we do not accept the argument of inadequacy of the distribution system, stated by the DHBVNL, for not taking over the system.**

**d) Operation and Maintenance (O & M) charges**

The electrical infrastructure was got created by developer company of the area from HSEB as deposit work, by paying to HSEB the approved estimated cost of the works. The record also shows that the developer company, apart from making payment of the estimated cost of the electrical infrastructure also paid the operation & maintenance (O & M) charges to the distribution licensee, for maintaining the electrical system of the area for first 5 year. These charges were paid @ 5% of the estimated cost per year, thus 25% of the total estimated cost of distribution system was paid to the distribution licensee by the developer of the area to ensure maintenance of the system by the licensee. The O & M charges were recovered by the licensee as per the prevalent commercial circulars. The basis of recovery of O & M charges is that initially the load is

not developed, consequently, cost of operation and maintenance of the system is proportionately high vis-a-vis the revenue from sale of electricity. The recovery of O & M charges was to be stopped in case 25 % occupancy of the area was achieved i.e. if the load had grown to 25 % of the estimated value. The record shows that the load growth in the area took place at much faster rate.

The DHBVN further raised a point in public hearing that the developer had not deposited the full amount of O & M charges. As stated by DHBVN the developer of the area deposited about Rs. 1.233 crores as O & M charges for 5 years against the calculated amount of about Rs.1.405 crores for different Phases of the area. Thus according to licensee's calculations, about 90 % of the amount of total O& M charges for first five years, as calculated by the licensee were paid by the developer. The huge amount of Rs.1.233 crores towards O & M charges remained deposited with the DHBVN for about 15 years, but the licensee did not spend any amount on maintenance, thereby causing great hardship to the consumers and forcing the developer of the area to incur expenditure for providing men and material for maintaining the system and attending to the break downs and interruptions in the supply. If calculations are made with the rate of interest prevalent at that time the amount of O & M charges, deposited by the developer with the licensee, must have grown by now to many times the amount initially deposited. Moreover the licensee was unable to provide any evidence to the effect that they took up the matter with the developer of the area to pay the small balance amount of O & M charges. The data supplied by DHBVN further shows that even in respect of such a phase of the DLF City, for which full amount of O & M charges was deposited by the developer, the maintenance was not undertaken by the licensee.

**We are of the considered view that as soon as the O & M charges for 5 years, were recovered from the developer of the area, way back in during the year 1989-90 to 1992-93, the system was required to be taken over immediately and maintained by the HSEB or subsequently by the DHBVN. Any minor discrepancy in amount of O & M charges could have**

been settled during that period. However, the DHBVNL kept on releasing new connections and collecting revenue from the consumers of the area, at the approved tariff which also includes the expenses for Operation & Maintenance of the system allowed by the Commission, but had not been maintaining the electrical system thereby causing great hardship to the consumers for such a long period.

e) **Minimum area for distribution licence :**

The distribution and transmission licensees have pointed out that the area of supply for second distribution licence for which application has been filed is not covered in the options of area as mentioned in the National Electricity Policy (NEP).

The clause 5.4.7 of the National Electricity Policy states, “..... For grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in Article 243 (Q) of the Constitution of India (74<sup>th</sup> Amendment) may be considered as the minimum area. ....”

Since at present, whole of the area of southern Haryana for distribution of electricity is catered by DHBVNL, the second licensee will be feeding the area within the area of incumbent licensee. The area for which the application for grant of distribution licence has been filed is outside the area falling under jurisdiction of Municipal Council, Gurgaon.

**Thus, we, in accordance with the spirit of the above provision of NEP decide that in the instant case the area for which licence is requested should at least be equivalent to the area under jurisdiction of the Municipal Council, Gurgaon. The total area of DLF City Phase I to V, for which licence has been applied is much larger than the area covered under the jurisdiction of Municipal Council, Gurgaon, as such, we decide that the application of M/s DEDL for grant of licence for distribution of electricity fulfills the requirements of minimum area as per NEP.**

f) **Capital Adequacy and Creditworthiness**

DHBVNL has stated that as per the balance sheet of the firm, M/s DLF Estate Developers Ltd. has a capital of Rs.5.01 lacs only as such capital adequacy of the firm is not worth. The issue of capital adequacy was also raised by the Commission with the applicant, as per the provisions of the Government of India, Ministry of Power, Notification dated 23<sup>rd</sup> March, 2005 on 'Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005', and its clarification in this regard was obtained during course of processing of the application for grant of licence.

The applicant company has submitted that as on 31.3.2006, its net worth is Rs.178 lacs and the net worth of its holding company i.e. DLF Universal Ltd. is Rs.38,393 lacs. Since the sole function of the applicant is to provide development and maintenance services to the proposed area its capital base stands as stated in the application. However as and when required for the purpose of meeting the capital adequacy norms in terms of the applicable rules and regulations, the applicant shall be backed and assisted by DLF Universal Ltd. In this regard the parent company of the applicant, DLF Universal Ltd., has committed to fund the cost of the project by way of equity/loan to the extent of Rs.25 crores. The Letter of Commitment issued by M/s DLF Universal Ltd. to this effect has also been supplied.

The Section 3 of the above cited Rules states, " Requirements of capital adequacy and creditworthiness – (1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003 decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.

The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined

under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.”

**In view of the above, the contention of the DHBVNL that the applicant does not fulfill the requirement of capital adequacy and creditworthiness is not justified. As provided in the above cited rules notified by the Government of India, the Commission is required to decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area. After determination of the same the applicant is required to satisfy the Commission regarding capital adequacy.**

**g) Code of Conduct :**

With reference to section 4 of the above cited rules of Government of India notified on 23.3.2005, the Commission made a reference to the applicant company regarding compliance of requirements of code of conduct. **The applicant has supplied the requisite certificate from their Chartered Accountant which indicates fulfillment of various provision of this section by the company.**

**h) Type of distribution licence :**

The HVPNL through its filing as well as in Public Hearing dated 4.4.2006 wanted the applicant to specify the type of distribution licence it has applied for. The representative of the applicant wanted time to file reply to this issue. Since DHBVNL and HVPNL had also asked for another opportunity to submit additional information sought by the Commission, the Commission accepted the request.

The applicant in its filing dated 14.4.2006 submitted that- “having due regard to the facts and circumstances under which the application for licence had been filed by the applicant, the applicant seeks a licence for distribution of electricity in the proposed area to the exclusion of the existing licensee DHBVNL since the applicant has been carrying out the functions of the existing licensee at its own cost and expenses and the present distribution system was laid out by the applicant and has also been constantly maintained and upgraded by the applicant at its own costs and account.”

In its presentation during second hearing of the case held on 14.6.2006 and subsequent filing received on 21.6.2006 the applicant stated that “the intention of the applicant is to exclude the current licensee i.e. DHBVNL from the use of the distribution network laid by the applicant which is also being maintained by the applicant at its own cost and expense since the same has admittedly not been taken over by DHBVNL. The applicant does not intend to avoid or restrict competition as envisaged under the Act. The applicant has no objection to the existing licensee competing with the applicant by distributing electricity in the proposed area by laying its own system. As per the provisions of the Act a licence may be granted to two or more persons through their own distribution system within the same area.”

Thus the applicant seems interested only in exclusion of the incumbent licensee from the use of the electrical infrastructure created, augmented and maintained by it and has no objection to the existing licensee competing with the applicant by distributing electricity in the proposed area by laying its own system.

**We are of the view that neither the Act nor the regulations have made it mandatory for the applicant to specify the type of distribution licence. The matter regarding type of licence is to be decided by the Commission as per the provisions of the Electricity Act, 2003.**

i) **Source of power, interconnection points, transmission capacity**

The HVPNL has objected that “the applicant has neither indicated the source of power, nor provided the interconnection points, as such, the transmission system

strengthening involved, if any, cannot be calculated and commented upon. At present, the 66 KV substations and 66 KV transmission network catering to the requirement of existing distribution licensee i.e. DHBVNL belong to HVPNL and are fully loaded for the requirements of the present distribution licensee.” During the course of hearing also the MD, HVPNL emphasized that the existing transmission system is fully loaded for meeting the requirements of its own distribution company i.e. DHBVNL and it will not be possible to wheel the power through its system for feeding the area to be catered by the applicant. M/s DEDL has submitted in this regard that “the format prescribed in the Regulations for making an application for grant of a licence for distribution or the language of regulations or the relevant provisions of the Electricity Act 2003 do not suggest power purchase arrangement to be a pre-condition for grant of licence.

It is rather a premature contention on part of the HVPNL to expect the applicant to have already procured a power purchase agreement without having a licence for distribution of electricity. This is an operational and implementation based issue, which can be dealt with during the implementation stage. However, the applicant has furnished the MoU executed by it with PTC along with its application for grant of licence and shall make appropriate arrangements for purchase of power if this Hon’ble Commission decides to grant a licence to it.

It is incorrect and rather a far-fetched argument on part of the HVPNL to suggest that the grant of licence for distribution of electricity is linked with the intra state connectivity. It is submitted in this regard that it is the responsibility of state transmission utilities to discharge all the functions of planning and co-ordination relating to intra-state transmission system with, inter-alia, the licensee.”

**We are of the view that it is not practical to expect the applicant to make arrangement for procurement of power unless the Commission conveys its intention to grant the licence for distribution of electricity. The Power Purchase Agreements, the details regarding quantum of power required to be wheeled, the interconnection points etc. are to be finalized in the period intervening between the date of communication of Commission’s decision to**

**grant the licence and date of commencement of distribution licence as determined by the Commission, keeping in view the reasonable time required by the prospective licensee for making necessary arrangements for ensuring reliable quality supply to the area.**

- 3) The abstract of the prayer made by the applicant in its last filing dated 21.6.2006, submitted with reference to the direction of the Commission in Public Hearing dated 14.6.2006 is as under :
- i) dismiss the objections of DHBVNL and HVPNL.
  - ii) grant a licence for distribution of electricity to the applicant of such nature as this Hon'ble Commission may deem fit.
  - iii) till such time that the application of the applicant is pending, keeping in view of the inconveniences being faced by the residents, direct the licensee to discharge its duties as a licensee in the proposed area.
  - iv) in the event that this Hon'ble Commission is constrained not to issue the licence to the applicant then direct the present licensee DHBVNL to discharge its duties as a licensee in terms of the licence granted to it viz. operation, maintenance and upgradation of the distribution network in order to put an end to the inconveniences and confusion being caused to the consumers.

The prayer of the applicant and facts brought out above reveal that M/s DEDL was compelled by circumstances to file an application before the Commission for grant of licence for distribution of electricity in the area which was developed by its holding company i.e. M/s DLF Universal Ltd, Gurgaon . The electrical systems in different phases of DLF City (Phase I to V falling under HUDA Sectors 24,25,25 A,26,26A,27,28,42,43,53 & 54) were got laid by M/s DLF Universal Ltd., through HSEB, as deposit works, as per the latest electrical load norms issued by the Chief Engineer, HSEB for calculating the ultimate load requirements of different sizes of residential plots. According to the guidelines issued by the Chief Engineer, HSEB the layout plans and estimates for

creation of electrical infrastructure were to be checked by the local authorities of HSEB and sanctioned by the concerned Chief Engineer. The estimates for creation of distribution infrastructure were sanctioned by the Chief Engineer Zone –II , HSEB, Delhi. Between 1989-90 and 1992-93.

Apart from the estimated cost of the electrical infrastructure, the developers were charged supervision charges @ 24% of the total estimated cost and inspection charges @1.5%. Since the area was under development, the HSEB also charged 25% of the estimated cost of the electrical distribution system infrastructure as Operation and Maintenance (O & M) charges @ 5% per annum of the estimated cost for the initial five years. Despite receiving all the above cited charges from the developer of the area, M/s DLF Universal Ltd., the incumbent distribution licensee i.e. DHBVNL and its predecessor HSEB did not take over the system for maintenance, though they kept on sanctioning the new connections and collecting huge annual revenue from the consumers of the area. The huge amount of O & M charges recovered from M/s DLF Universal Ltd. towards maintenance of the electrical system for initial period of 5 years, remained deposited with the licensee for a long period of about 15 years but the licensee did not care to maintain the electrical distribution system causing great hardship to the residents of the area.

It is evident from the submissions of almost all the residents and Residents Welfare Associations (RWAs) of the area that the DHBVNL had not been maintaining the distribution system since its inception and they had been approaching the developer of the area who as a goodwill gesture and in order to alleviate the hardship of the residents of the area developed by it, had been performing the duties of a distribution licensee by providing manpower and material at its own cost and spending large amount every year for the maintenance of the electrical system.

This condition continued for about 15 years due to the indifferent attitude of the incumbent licensee as no remedy was available with the developers and the

residents of the area. However, the position changed after enactment of the Electricity Act, 2003. According to the provisions of this Act, any person, subject to fulfillment of certain conditions, could be granted a licence by the Appropriate Commission, for the distribution of electricity. Taking advantage of the changed legal scenario, the developer of the area i.e. M/s DLF Universal Ltd., in order to solve the problem of hardship to the residents of the area developed by it, filed an application dated 31.3.2005, to the Commission, for grant of licence for the distribution of electricity, through its 100 % owned subsidiary company M/s DEDL which had already been providing various services to the residents of the area .

Almost all the RWAs and residents of the area which include reputed persons like Mr. V.K. Schdeva, IRS, Chief Commissioner Income Tax ( Retd.) and Lion P.N. Piplani, District Governor have strongly pleaded in favour of granting licence for distribution of electricity to M/s DEDL. During Public Hearings and also in various filings, the DHBVNL, the incumbent distribution licensee, seemed totally unconcerned about the hardship caused to the electricity consumers of the area. DHBVNL, the distribution licensee has neither shown any intention to maintain the electrical system of the area nor was in favour of granting licence to M/s DEDL.

The DHBVNL has strongly opposed grant of distribution licence to M/s DEDL. Various objections raised by the DHBVNL and HVPNL and the views and decisions of the Commission have been dealt at 2 (ii) (a) to (h) above. Moreover, there was great opposition from the State Transmission Utility (HVPNL), the holding company of DHBVNL, who apart from supporting the issues raised by DHBVNL, conveyed its inability and inadequacy of the transmission system to wheel power, to be arranged by M/s DEDL, for feeding the area proposed to be supplied by it.

We are of the considered view that as soon as the O & M charges for 5 years, were recovered from the developer of the area, way back during the year 1989-90 to 1992-93, the system was required to be taken over immediately and maintained by the HSEB and subsequently by the DHBVNL. Any minor discrepancy in amount of O & M charges could have been settled during that period. The huge amount of O & M charges paid by the developer remained deposited with DHBVNL and it kept on releasing new connections and collecting revenue from the consumers of the area, at the approved tariff, which also includes the expenses for Operation & Maintenance of the system allowed by the Commission. However, the DHBVNL had not been maintaining the electrical system since its inception, thereby causing great hardship to the consumers for such a long period.

Keeping in view the strong opposition by the DHBVNL and HVPNL to grant of licence to M/s DEDL and further HVPNL declining to allow usage of its transmission system as the transmission is fully loaded and is incapable to wheel power to be arranged by M/s DEDL for the area proposed to be fed by it, and the final prayer of the applicant, the Commission, at present, declines to grant the licence for distribution of electricity to M/s DEDL.

The electrical system of the area has neither been developed nor augmented by DHBVNL, still the we allow the DHBVNL to use the electrical distribution system of the area as a custodian, for performance of its duties as a distribution licensee. This system will remain with DHBVNL as a custodian, till such time it is maintained by it. The DHBVNL is required to perform all the Duties of the Distribution Licensee as per the provisions of the Electricity Act, 2003 and comply with the regulations/codes/orders/guidelines/directions issued by the Commission from time to time and shall act in accordance with the terms of the licence for distribution of electricity granted to DHBVNL vide Commission's order dated 04.11.2004

**(Case No. HERC/PRO-2/99, HERC/PRO-3/99, HERC/PRO-4/99). We direct that the DHBVNL will take over the electrical distribution system of the DLF City Phase I to V for which M/s DEDL has applied for grant of licence for distribution of electricity and maintain and strengthen it as per the terms and conditions of the licence granted to DHBVNL. The compliance of our order be made within three months of date of issue of the order to mitigate the suffering of the consumers of the area.**

**Date: 18.08.2006**

**Place: Panchkula**

**T.S. Tewatia  
Member**

**Lt. Col.(Retd.) Raghbir Singh  
Chairman**

My views on the application for grant of license for distribution of electricity in DLF City Phase I to V by M/s DLF Estate Developers Ltd (DEDL) are as under:-

There are two provisions for grant of a license for distribution of electricity in Electricity Act, 2003, namely section 14(b) which provides for grant of a license to any person to distribute electricity and sixth proviso of section 14 which provides for grant of a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the condition that the applicant for grant of a license within the same area, shall, without prejudice to the other conditions or requirements under the Act, comply with the additional requirements (including the capital adequacy, credit-worthiness or code of conduct) as may be prescribed by the Central Government. As the application filed by M/s DEDL for grant of a license to distribute electricity in DLF City Phase I to V was vague viz-a-viz the aforesaid provision (s) of the Act, HVPNL's filing dated 31.3.2006 presumed that the applicant seems to be seeking the license for parallel distribution and retail supply (in terms of sixth proviso to section 14 of the Act) which was reiterated by MD,

HVPNL in his presentation at the time of public hearing on 4.4.2006. In order to properly appreciate the scope of the application under reference, the authorised representative of M/s DEDL was asked (by me) to clarify the point. M/s DEDL's advocate was unable to clarify the point and sought time. The Commission acceded to the request and directed M/s DEDL's advocate to submit the requisite filing by 17.4.2006. MD, HVPNL & MD, DHBVNL too were directed (by the Commission) to submit the supplementary filings in light of the proceedings of public hearing on 4.4.2006 by 17.4.2006. The Commission received the said filings in time.

M/s DEDL in their filing dated 14.4.2006 *inter-alia* submitted that 'the applicant seeks a license for distribution of electricity in the proposed area to the exclusion of the existing licensee DHBVNL'. It clearly established that the applicant is not seeking the license to distribute electricity in the proposed area under sixth proviso of Section 14 of the Act.

Further, in my opinion, the applicant Company's above clarification seeking a license for distribution of electricity in the proposed area to the exclusion of existing licensee – DHBVNL – amounts to change in the Area of Supply (Schedule I) of the Distribution & Retail Supply License granted by the Commission to DHBVNL on 4.11.2004. It means amendment of the said license is required for which neither an application from the incumbent licensee of the area is pending (with the Commission) nor the Commission has taken any action under Section 18 of the EA 2003. The applicant Company in his application dated 28.3.2005 has applied for grant of license to distribute electricity under Section 14 of the EA 2003 (precisely to be dealt with under Section 14 (b) in view of the position explained in the preceding paragraph). Thus, the prayer made by the applicant company in its application dated 28.3.2005 for grant of license to distribute electricity in DLF City Phase I to V Gurgaon has become invalid and, therefore, in my opinion, be rejected.

In view of the above position, in my opinion, there is no need to discuss the various issues made out by the applicant company in its filing(s) and counter-commented upon by the licensee(s). Hence, I do not agree with Sarvshri Raghbir Singh Hon'ble Chairman & T.S. Tewatia Hon'ble Member who have chosen to analyse and discuss the various issues though declining to grant the license for distribution of electricity to M/s DEDL. I may, however, add that, in my opinion, the Commission have no role to decide the applicable provision of Section 14 – namely either Section 14(b) or sixth proviso of Section 14 of the Act – under which an applicant files the application for grant of a distribution license. It is the job of the applicant to decide and accordingly file the application for grant of a distribution license.

The incumbent licensee must take note of the grievances aired by the Residents' Welfare Association(s) and some of the residents of DLF City in their individual capacity during the course of public hearings on 4.4.2006 and 14.6.2006 and swing into action to attend to them forthwith. As far as the DHBVNL's contention in regard to laying of inadequate distribution system by the applicant company in the area is concerned, it, in my opinion, does not hold water as they (or their predecessor) had approved the concerned electrical layout(s). The RWAs and the general public are called upon to make use of the institution(s) established for redressal of grievances of electricity consumers under sections 42(5) & 42(6) of Electricity Act 2003 namely the Forum set up (by DHBVNL) at Hisar and Ombudsman appointed (by the Commission) at Panchkula in case the DHBVNL does not respond.

( T.R. Dhaka )  
Member

## ORDER

1. In terms of Section 92 (3 & 4) of the Electricity Act, 2003 (Act 36 of 2003), the majority view of Lt. Col. (Retd.) Raghbir Singh, Chairman and Sh. T.S. Tewatia, Member will be the order of the Commission.
  
2. This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18<sup>th</sup> day of August, 2006.

Date : 18.08.2006

Place : Panchkula.

**T.S. Tewatia**  
Member

**T.R. Dhaka**  
Member

**Lt. Col.(Retd.) Raghbir Singh**  
Chairman