

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 146 of 2008**

**In the matter of**

**MSEDCL's Petition to grant permission for continuation of billing as per existing  
Tariff Order dated 20.06.2008 in Case No. 72 of 2007, up to the issue of new Tariff  
Order.**

**Shri V.P. Raja, Chairman  
Shri A. Velayutham, Member  
Shri S. B. Kulkarni, Member**

**ORDER**

**Dated: April 1, 2009**

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) has submitted a Petition under affidavit before the Commission, on March 17, 2009, for continuation of billing as per existing Tariff Order in Case No. 72 of 2007 dated June 20, 2008 to be read with Order in Case No. 42 of 2008 dated December 10, 2008, up to the issue of new Tariff Order for FY 2009 - 10.

2. MSEDCL under its Petition has prayed as under:

“

1. *MSEDCL may please be allowed to continue to bill the consumers as per the tariff Order dated 20<sup>th</sup> June 2008 to be read with Order dated 10<sup>th</sup> December, 2008;*
2. *MSEDCL may please be permitted to continue such practice till the Hon'ble Commission determines the tariff for FY 2009-10 and such tariffs come into force;*
3. *MSEDCL may please be permitted to carry out adjustments as may be necessary on account of under / over recovery due to continuation of existing tariff till new tariff come into force.”*

3. In accordance with Regulation No.17 of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005, the Commission has initiated the Annual Performance Review (APR) process for FY 2008-09 under MYT framework, truing up for FY 2007-08 and determination of ARR and tariff for FY 2009-10 for Maharashtra State Electricity Distribution Company Limited (MSEDCL).



4. MSEDCL has submitted its Revised Petition dated January 31, 2009 seeking approval of Annual Performance Review for FY 2008-09 and Annual Revenue Requirement (ARR) and Tariff Petition for FY 2009-10. Further, the Commission has held the Technical Validation Session (TVS) on February 26, 2009 in the office of the Commission, and MSEDCL has been directed to submit the revised Petition after incorporating the replies to the queries raised during the TVS. Consequently, the Tariff Order for FY 2009-10 will be passed thereafter.

5. The Commission, vide its Notice dated March 19, 2009, scheduled a hearing in the matter on March 24, 2009, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four Consumer Representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003 to represent the interest of consumers in the proceedings before the Commission.

6. At the hearing held in the matter on March 24, 2009, Shri. M.K. Deore, Executive Director (Corporate Planning), appeared on behalf of MSEDCL.

7. Shri. Deore reiterated the arguments submitted in the Petition. Shri. Deore submitted that subsequent to the passage of the Tariff Order in Case No. 72 of 2007, MSEDCL had submitted a Review Petition numbered as Case No. 42 of 2008, on which the Commission had given its Order on December 10, 2008. Shri. Deore added that in this Review Order, the Commission has inter-alia admitted that the revenue gap for FY 2008-09 would have been higher by Rs. 427 crore, and had allowed MSEDCL to levy a differential 'Additional Charge' for consumers of different categories in the remaining four (4) months of FY 2008-09. Shri. Deore stated since the revised tariff for FY 2009-10 would not be decided before March 31, 2009, MSEDCL should be permitted to continue the levy of category-wise tariff beyond March 31, 2009 based on the tariff structure as determined by the Commission by its Order dated June 20, 2008 in Case No. 72 of 2007, along with Additional Charge as determined by the Commission in its Order dated December 10, 2008 in Case No. 42 of 2008 till the Commission determines the tariff for FY 2009-10 and such tariffs come into force. Shri. Deore added that the Additional Charges would be charged on a proportionate basis, such that the additional recovery of Rs. 427 crore is recovered in twelve (12) months.

8. The Commission enquired of Shri. Deore regarding the time required to file the revised APR Petition. Shri Deore submitted that the revised APR Petition would be filed within a week's time.

9. Having heard the Parties, the Commission is of the view as under:

10. The existing tariff determined by the Commission for MSEDCL through Orders dated June 20, 2008 and December 10, 2008 in Case No. 72 of 2007 and Case No. 42 of 2008, respectively, are to be in force till March 31, 2009 and shall lapse thereafter. The licensees are authorised to charge only that tariff, which is determined and approved by the Commission in accordance with the provisions under Part VII (Tariff) of the Electricity Act, 2003 ("EA 2003"). In the event the tariff that is in force till March 31, 2009 is not extended till the revised tariff is determined for FY 2009-10



under the APR framework, the licensee will be forced to be liable to penal consequences under different provisions of the EA 2003 as tariff is necessarily regulated under the EA 2003. Moreover, it cannot be the case that after a certain date, there will be no tariff applicable, leading to a situation of free or no supply of power or supply at an arbitrary tariff rate, a licensee may choose to charge.

11. Therefore, till such time the revised tariff is determined for FY 2009-10 under APR Order, the existing tariff is required to be extended. Once the revenue requirement for FY 2009-10 and revised tariff is determined for FY 2009-10, appropriate adjustments would be made as per the revised tariff rates applicable from the date of the Tariff Order. The Commission is of the view that sufficient reasons exist for granting permission to the MSEDCL to charge tariffs to their consumers as per the existing Tariff Order as aforesaid, and accordingly **the Commission extends the applicability of the aforesaid Tariff Order for the MSEDCL in Case No. 72 of 2007 read with the Order dated December 10, 2008 in Case No. 42 of 2008 with effect from April 1, 2009, till the revised tariff is determined for FY 2009-10 under the APR framework and Order issued thereunder. The Additional Charges will be levied on pro-rata basis for every month, since the Additional Charges determined in the Order in Case 42 of 2008 allowed recovery of Rs. 427 crore over a four month period. Effectively, the category-wise Additional Charges determined by the Commission in the Order in Case No. 42 of 2008 will be divided by four, so that the total monthly recovery through Additional Charges is around Rs. 35.6 crore (427 x 4/12).** Under-recovery or over-recovery, vis-à-vis the approved revenue requirement for FY 2009-10, if any, or financial implications and adjustments, caused solely on account of the continuance of the existing tariff for the period till the revised tariff is determined for the period under FY 2009-10 under the APR framework shall be trued up in the next APR. This will be line with the Judgment dated September 19, 2007 of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 70 of 2007 wherein it inter alia held as under:

*“7. ....Therefore the cost of supply has to be met out of revenue earned by sale of electricity. In case the MYT tariff comes into effect a month later than the day on which it was expected, the required annual revenue minus the revenue realized in that month will have to be recovered in the remaining months of that period. In such a situation, the increased cost of the new period will have to be distributed over the remaining period of the MYT. The other way of fixing the tariff, in case of a delay, would be to distribute the ARR over the entire tariff period so that some amount of revenue for the delayed period remains under-recovered. Here again the under-recovered amount has to be recovered in order to maintain the viability of the licensee.....”*

While submitting the data for truing up, MSEDCL should submit revenue data separately for the period from April 1, 2009 till tariff is determined for the balance period for FY 2009-10.



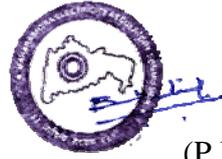
**Further, MSEDCL should ensure that the monthly RLC refund of around Rs. 41.7 crore (500/12) intended under the Tariff Order in Case No. 72 of 2007 is continued to be given, since the same is already in-built into the ARR determined by the Commission in the above-said Tariff Order.**

Ordered accordingly.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC