

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

**Case No. 2 of 2009**

**In the matter of**  
**Extension of Tariff Order dated May 31, 2008 read with Errata and Corrigendum dated**  
**September 5, 2008 up to issuance of new Tariff Order for FY 2009-10**

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

**ORDER**

**Dated: May 11, 2009**

The Maharashtra State Power Generation Company Limited (MSPGCL) submitted Petition on April 9, 2009 seeking continuation of billing to Maharashtra State Electricity Distribution Company Limited (MSEDCL) in the FY 2009-10 as per the existing Tariff Order dated May 31, 2008 in Case No. 71 of 2007 read with Errata and Corrigendum dated September 5, 2008, up to the issuance of new Tariff Order for FY 2009-10.

2. MSPGCL has prayed as under:

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1. *MSPGCL may please be allowed to continue to bill Maharashtra State Electricity Distribution Company Limited (MSEDCL) as per the tariff order dated 31<sup>st</sup> May 2008 (Case No. 71 of 2007) read with errata and Corrigendum dated 5<sup>th</sup> September 2008;*
2. *MSPGCL may please be permitted to bill with effect from 1<sup>st</sup> April 2009 and to continue such practice till the Hon'ble Commission determines the tariff for FY 2009-10 and such tariffs come into force;*
3. *MSPGCL 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. MSPGCL has submitted in its Petition that in the Commission's Order dated May 31, 2008 in Case No. 71 of 2008, the Commission has determined the Tariff for FY 2008-09 and the same was applicable with effect from June 1, 2008 to March 31, 2009. Thus, the applicability of the Order dated May 31, 2008 has ceased with effect from April 1, 2009. Further MSPGCL requested the Commission to permit continuation of applicability of tariff



and accordingly bill to MSEDCL for the period starting from April 1, 2009 based on the tariff Order dated May 31, 2008 in Case No. 71 of 2007 read with Errata and Corrigendum dated September 5, 2008, up to the issuance of new Tariff Order for FY 2009 – 10.

4. 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 MSPGCL.

5. MSPGCL has submitted its Petition dated December 8, 2008 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 January 12, 2009 in the office of the Commission. Pursuant thereto, MSPGCL has submitted a revised Petition on February 12, 2009. The Public Hearing was held in the matter on May 4, 2009 and consequently, the Tariff Order for FY 2009-10 will be passed shortly.

6. The Commission, vide its Notice dated April 17, 2009, scheduled a hearing in the matter on April 20, 2009, and directed MSPGCL 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.

7. At the hearing held in the matter on April 20, 2009, Shri. M.R. Shelar, Director (Operations), appeared on behalf of MSPGCL. Shri. Shelar reiterated the prayers as made in the Petition, before the Commission and requested the Commission to pass an order accordingly.

8. The Commission is of the view that MSPGCL is 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 tariffs that are in force till March 31, 2009 are not extended till the revised tariffs are determined for FY 2009-10 under the APR framework, MSPGCL will be forced to be liable to penal consequences under different provisions of the EA 2003 in case the tariffs as existing as on 31.3.09 are charged beyond 31.3.09 without being extended through an Order of this Commission. 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 to MSEDCL.



9. 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 MSPGCL to bill MSEDCL as per the existing Tariff Order as aforesaid, and accordingly **the Commission extends the applicability of the aforesaid Tariff Order in Case No. 71 of 2007 read with errata and Corrigendum dated September 5, 2008 in Case No. 71 of 2007 for continuation of billing to MSEDCL, with effect from April 1, 2009, till revised tariff is determined for FY 2009-10 under the APR framework and Order is issued thereunder.** 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, MSPGCL should submit revenue data separately for the period from April 1, 2009 till tariff is determined for the balance period for FY 2009-10.

Ordered accordingly.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC