Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 21 of 2012

IN THE MATTER OF

Petition filed by Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL), under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, seeking review of the Order dated December 30, 2011 in Case No. 100 of 2011 in respect of MSEDCL's Annual Performance Review (APR) for FY 2010-11 and Final True up for FY 2009-10

Shri. V.P. Raja, Chairman

Shri. Vijay L. Sonavane, Member

Maharashtra State Electricity Distribution Company Limited ………………. Petitioner

Present during the hearings:

For the Petitioner : Shri. S.V.Bapat

ORDER

Dated: June 15, 2012

Maharashtra State Electricity Distribution Co Ltd. (MSEDCL) submitted a petition on February 10, 2012 in accordance with the provisions of MERC (Conduct of Business) Regulations, 2004, seeking review of the Order dated December 30, 2011 (Case No. 100 of 2011) passed by the Commission in the matter of Petition filed by MSEDCL for approval of Final Truing Up for the year FY 2009 – 10, Provisional Truing Up and Annual Performance Review for the year FY 2010 – 11.

2. The prayers in the petition are as under:

"

1) *To admit the Review Petition under Section 94 (f) of the Electricity Act, 2003 read with Regulation 85 (a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2005;*
2) *To reconsider the deduction of Rs. 750 Crore towards additional sales for FY 2009-10 along with the sharing of efficiency gains/losses for determination of Annual Revenue Requirement of FY 2009-10;*
3) *To revisit the calculation of unmetered agriculture consumption based on the submissions made by the Review Petitioner in this Petition;*
4) *To revisit the distribution loss and sharing of efficiency gains/losses for FY 2009-10 due to Controllable Factors;*
5) *To consider the Capitalisation as submitted by the Review Petitioner while replying the clarifications sought by Hon'ble Commission;*
6) *To kindly review the Order dated December 30, 2011 in light of the above facts and examine the concerns expressed by the Review Petitioner for a favorable dispensation;*
7) *To grant any other relief/s as it deems fit in to the matter;*
8) *Condone any inadvertent omissions / errors / shortcomings and permit petitioner to add / change / modify / alter this filing and make further submissions as may be required in future;*
9) *Pass such further and other orders, as the Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case."*

3. The petitioner has sought a review of the said Order dated December 30, 2011 (Case No. 100 of 2011) for the following broad items:

a) Deduction of Rs. 750 crore. towards additional sale for FY 2009 –10;

b) Estimation of sales to LT IV Agriculture unmetered category for FY 2009-10.

c) Capitalisation for FY 2009-10

4. The Petitioner stated that certain errors apparent from the face of the record has crept in the Impugned Order within the meaning of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 which

provides as follows:

"85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."

5. A notice was issued to the Petitioner and to the four Consumer Representatives authorised under Section 94(3) of the Electricity Act, 2003 (EA 2003) intimating the date of hearing in the present matter. The Commission scheduled the hearing in the matter on April 12, 2012 and directed the Petitioner to serve copies of the application upon the said authorised Consumer Representatives. During the hearing, the Petitioner reiterated the issues raised in the review petition.

6. The issues raised and the Commission's decisions thereon after hearing the Petitioner and after considering the materials placed on record, are as follows:

I. Deduction of Rs. 750 Crore towards additional sale for FY 2009-10

PETITIONER'S SUBMISSIONS:

7. The Petitioner has submitted that the Commission has undertaken the Truing-up exercise in its Order dated December 30, 2011, based on actual cost and revenue for FY 2009-10 and calculated additional revenue from sale of power at normative distribution loss approved in the MYT Order. In addition to the sharing of gain and losses, the Commission has considered additional revenue of Rs. 750 crore on account of assumed additional availability of energy approved in the Tariff Order dated August 17, 2009 in Case No 116 of 2008.

8. The Petitioner submitted that an error has occurred while estimating the Aggregate Revenue Requirement of the Petitioner for the year FY 2009-10 since the impact of 3% deduction in distribution loss has been considered twice in determination of ARR. The Petitioner submitted that the same being an error apparent on the face of the

record, this alone can be considered as a sufficient ground for grant of review of the Order dated December 30, 2011 passed by the Commission in Case No. 100 of 2011 and the Commission may reconsider the deduction of Rs. 750 Crore towards additional revenue for FY 2009-10.

9. The Petitioner vide its Miscellaneous Application for Interim Relief in Case No. 21 of 2012, dated April 25, 2012 requested the Commission for expeditious disposal of the Review Petition, considering its present financial condition. The petitioner sought an interim Order under section 94 of the Electricity Act 2003, providing financial relief to the extent of Rs. 750 Crore by way of recovery through tariff from the consumers over a period of three months from May 2012 onwards, at a uniform rate of 37 paise per unit.

COMMISSION'S VIEW

10. MSEDCL in its petition for Truing-up of FY 2009-10 and APR for FY 2010-11 reported a distribution loss in FY 2009-10 as 20.60%. However, the Commission in the Order issued on December 30, 2011 (Case No. 100 of 2011) recomputed the distribution loss for MSEDCL during FY 2009-10 at 21.32%. Considering the target distribution loss of 18.2% approved by the Commission in its MYT Order, there was an under-achievement of 3.12% during FY 2009-10. The Commission allowed the sharing of efficiency losses between MSEDCL and the consumers, in accordance with the Regulation 19 of MERC (Terms & Conditions of Tariff) Regulations, 2005 (hereafter referred to as Tariff Regulations, 2005).

11. However, for the purpose of computing the efficiency losses by way of computing loss of revenue as a result of higher distribution loss, the Commission considered the distribution loss level reported by MSEDCL, i.e. 20.60 %. The efficiency losses for FY 2009-10, were thus computed as below:

Particulars	Unit	Amount
Normative distribution losses	%	18.20%
Actual distribution losses	%	20.60%
Actual energy input	MU	80,526
Normative sales	MU	65,870

Particulars	Unit	Amount
Actual sales	MU	63,941
Additional/(Lower) sales due to higher distribution loss	MU	(1,929)
Average Billing Rate*	Rs/kWh	4.24
Additional/(Lower) revenue due to higher distribution loss	Rs. Crore	(817.22)
Efficiency Loss to be borne by MSEDCL	Rs. Crore	(544.81)
Efficiency Loss passed on to consumers	Rs. Crore	(272.41)
** Based on "Revenue from Sale of Power" as per Schedule 14 of Audited Accounts of MSEDCL excluding Standby Charges, Miscellaneous charges from consumers, wheeling charges and theft recovery income.*		

12. The Commission has observed that in the above mentioned Order, in addition to the sharing of gains and losses (as mentioned above), there was a further deduction of Rs 750 Crore from the Gross ARR. This deduction was on account of provisional additional revenue on account of reduced distribution losses, as estimated in Commission's Order in Case No. 116 of 2008 dated August 17, 2009 and later on provisionally approved in Case No. 111 of 2009 dated September 12, 2010.

13. The Commission therefore affirms, that since the efficiency losses, based on actual level of distribution losses, has already been considered, the reduction in ARR to the extent of this provisional amount of Rs 750 Crore need not be considered. The actual revenue gap for FY 2009-10, thus needs to be revised upwards to the extent of Rs 750 Crore.

14. Further, the Order dated December 30, 2011 was limited to determination of actual revenue gap for FY 2009-10, and annual performance review of FY 2010-11 and revenue gap arrived from this truing up process was to be recovered through the tariffs of FY 2012-13. The Commission also notes that with this review petition, the process laid out for recovery of revenue gap has not changed. Hence, the revision of the revenue gap for FY 2009-10, therefore does not warrant any interim relief. The Commission shall consider an additional amount of Rs 750 Crore to re-compute the truing-up gap for FY 2009-10 over and above the gap approved in Order dated December 30, 2011, based on above findings, in the next Tariff determination exercise.

II. Estimation of Sales to LT-IV Agriculture Unmetered Category for FY 2009-10

PETITIONER'S SUBMISSION:

15. The Petitioner submitted that as a part of Truing-up the Sale of Energy to consumers of MSEDCL, the Commission had re-determined the Sale of Unmetered agriculture consumption as 7069 MU instead of 7653 MU as submitted in the Petition.

16. The Petitioner submitted that considering the practical difficulties and constraints along with sincere efforts, it has achieved improvement in meter reading of metered agricultural consumers on a gradual basis since FY 2007-08 and though in initial years, the results were not encouraging, it has achieved significant improvement in FY 2009-10 and onwards, which can be judged from the gradual improvement in the Agriculture meter reading parameter, wherein substantial improvement has started resulting in FY 2009-10.

17. MSEDCL submitted that the specific consumption cannot be considered as a parameter to judge the estimated sales to unmetered agriculture consumers during the year FY 2009-10 as it is itself a derived parameter.

18. The Petitioner further submitted that the methodology followed by it is duly recognized and appreciated by the Commission in previous tariff orders. It was further submitted that taking into consideration a small quantum of metered consumers as compared to the large quantum of unmetered consumers in highly irrigated area / subdivision and in turn major portion of the so available metered consumers supplied on mixed feeders with the supply availability enhance by 7% in FY 2009-10 than that in FY 2007-08, the normal meter indices have increased, resulting in increased sales of unmetered agriculture consumers.

Parameters	Unit	FY 2007-08	FY 2009-10	% Rise / Drop
Supply Availability on mixed feeders	MU	4576	4901	6.64%
Unmetered HP	MU	6286356	5940885	-5.5%
Metered HP	MU	4607505	5885311	27.73
Unmetered Sales	MU	7322	7654	4.53
Metered Sales	MU	4486	5747	28.10

19. The Petitioner submitted that the distribution loss has increased due to part disallowance of the unmetered agriculture sales resulting in efficiency loss that has been shared between MSEDCL and the consumers. It was further submitted that based on the clarification and grounds submitted in the Petition, the change in agriculture unmetered sales will result in change in distribution loss for FY 2009-10. The impact of the same is requested to be shared between MSEDCL and the consumers in accordance with the Tariff Regulations 2005.

COMMISSION'S VIEW:

20. The Commission in the Order dated December 30, 2011 has directed as under:

"Para 3.26.5: Distribution loss achievement

....The Commission has not approved the sales at the reported level as MSEDCL could not furnish justifiable explanation for the same. Therefore, ***the Commission directs MSEDCL to institute a study to determine the correct specific consumption for unmetered agricultural connections based on consumption of metered connections. MSEDCL must submit the report containing the findings of such study to the Commission within one year from the date of this Order.*** *For the purpose of computing the efficiency losses by computing loss of revenue as a result of higher distribution loss, the Commission has considered the distribution loss level reported by MSEDCL, i.e. 20.60%.* ***When MSEDCL will submit the report, the Commission will reconsider sales to unmetered agricultural consumers in FY 2009-10. Based on the findings of the report the Commission will recomputed the sales for this category and accordingly decide the final distribution loss level for FY 2009-10 and make adjustments for sharing of gains/ (losses) for FY 2009- 10. The adjustment will be considered in the next Tariff Order to be passed by the Commission after receipt of the report.*** *However, if MSEDCL fails to present the report within one year from the date of this Order, the Commission will compute…"(emphasis added)*

21. The Commission has already directed the petitioner to submit the Study report for redetermination of Unmetered Agriculture consumption for FY 2009-10, within a period of one year. The Commission therefore does not find any merit in the submissions of the petitioner. Therefore, there is no error apparent on the face of the record and hence this issue raised by the Petitioner does not qualify for review.

III. Capitalisation for FY 2009-10

PETITIONER'S SUBMISSIONS

22. The petitioner submitted that in its Petition of True Up for FY 2009-10 and Annual Performance Review for FY 2010-11 (Case No.100 of 2011), it was submitted that it had undertaken capitalization of Rs. 2,254 Crore in FY 2009-10. Also, the scheme-wise details of capitalization realized in FY 2009-10, were submitted in Table 6 of the Petition. In the said Petition it was also submitted that the amount representing negative balance of Rs. 19 Crore in other Assets in Audited Accounts was only the transfer from one head to another and has further clarified in the said Petition that the said negative balance was not considered for calculation of Depreciation.

23. The petitioner also submitted that in the said Petition it was further requested that based on the audited statement of FY 2009-10, the actual capitalisation of Rs. 2,273 Crore (Rs. 2254 Crore + Rs. 19 Crore) should be allowed and the same should be considered as base for calculation of Depreciation, RoE and Interest on Loan, subject to the prudence check.

24. The petitioner submitted that the Commission vide email dated August 1, 2011 had raised certain Data Gaps regarding the Petition and sought the details of capitalization at corporate office for Rs. 208 Crore.

25. The petitioner submitted that in response to the said Data Gaps, the petitioner by its Letter No. SE/TRC/APR 2010-11/APR 7/25719 dated August 23, 2011 has submitted that "*The capitalization of expenditure has been considered for the year 2009-10 as Rs. 2065 Crore. in Form 5.4. As per the Annual Accounts the capitalization figures in totality is reflected as Rs.2273 Crore. The details of other schemes as reflected in the Schedule – 5 of the Annual Accounts are as under:*

Particulars	Amount in Crore
Capitalisation For the FY 2009-10 as per Schedule - 5 of Statement of Accounts	2273.2
Capitalization considered in Form 5.4	2064.97
Details of other capitalisation as per Schedule - 5 of Statement of Accounts	208.23

Particulars	Amount in Crore
Assets not belonging to the company	*18.75*
Land & Land Rights	*16.79*
Buildings	*7.64*
Vehicles	*0.97*
Furniture & Fixtures	*2.09*
Office Equipments	*15.8*
Other Civil Work	*31.67*
Single Phasing	*114.52**
Total	*208.23*

**The Single Phasing was not approved by the Commission earlier. However, the same is now approved so the same has now taken.*

26. The petitioner submitted that Form 5.4 of the Regulatory Formats provides the Scheme wise details of capitalization whereas the Schedule 5 of the Annual Accounts provides the entire Capitalization undertaken during FY 2009-10.The petitioner further submitted that the entire Capitalization as per Schedule 5 of the Annual Accounts was given in Table 6 of the Petition. The petitioner futher submitted that the Commission, in its Order dated December 30, 2011 (Case No. 100 of 2011) has not considered the above submission made by the petitioner and has approved the capitalisation without considering the facts submitted in the reply as submitted above.

COMMISSION'S VIEW:

27. The Commission noted that MSEDCL in its reply to data gaps dated December 10, 2011 submitted the capitalisation of Rs 2064.97 Crore for FY 2009-10, which was considered by the Commission in its Order dated December 30, 2011.

28. The Commission in its Order dated December 30, 2011 has approved the *Total capitalisation of MSEDCL for FY 2009-10 as below:*

Capitalisation for FY 2009-10

(Rs. Crore)

Particulars	***Approved in APR Order dated Sep 12, 2010***	***Actual***	***Approved after Final Truing Up***
DPR schemes	*384.55*	*1,246.94*	*1,246.94*
Non-DPR schemes	*76.91*	*818.03*	*818.03*
Total capitalisation	***461.46***	***2,064.97***	***2,064.97***

29. Hence, the Commission has considered the latest submission of MSEDCL while considering Capitalisation for FY 2009-10 and therefore there is no error apparent from the face of the record and hence this issue raised by the Petitioner does not qualify for review.

With this Order, the Commission disposes of MSEDCL's review petition in the matter of Case No.21 of 2012**.**

(Vijay L. Sonavane) Member	(V.P. Raja), Chairman