

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 32 of 2011

In the matter of

**Application of Maharashtra State Electricity Distribution Company Limited for Review
of Order dated November 30, 2009 in Case 31 of 2009.**

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Maharashtra State Electricity Distribution Co Ltd.

Registered office:

Prakashgad, Bandra (East),

Mumbai 400 051

.....Applicant

ORDER

Dated: October 20, 2011

Maharashtra State Electricity Distribution Co Ltd. (MSEDCL) submitted a petition on March 3, 2011, dated March 1, 2011 for review of order dated November 30, 2009, in Case No. 31 of 2009 to revisit the model of estimation of Reliability Charge as approved in the said Order.

2. The main substance of MSEDCL's petition was that during reconciliation of Zero Load Shedding (ZLS) data, more particularly for the quarter July 2010 to September 2010, MSEDCL noticed that though MSEDCL was procuring additional power for withdrawal of load shedding in the Head Quarters of the Revenue Divisions (except Nashik), the average consumption in these areas had not increased to the assumed extent (in proportion with the additional power purchased for ZLS of that area) compared to the period when load shedding was implemented in these areas in the past. In this regard MSEDCL also annexed a comparison of beneficiary area-wise average consumption for the period January 2009 to September 2009 with the average consumption of the same beneficiary area for the quarters January 2010 to September 2010 to demonstrate its contention. With this MSEDCL submitted that it appeared that the basic principles decided in the Order in Case No. 31 of 2009 was likely to be defeated while calculating Reliability Charge as the principles of working was on the assumptions made at that point of time, which had undergone a major

change over a period of time. It further explained its point submitting that certain circumstances were not envisaged by the Commission and by MSEDCL during the proceedings of Case No. 31 of 2009, in particular, the circumstance of sharp fall in the cost of power procurement. Therefore, the consumers of ZLS area were likely to end up with a net refund (against a net reliability charge).

3. In its petition MSEDCL argued that since cost of additional power for ZLS sales had to be recovered from the additional MUs sold to the beneficiary consumers, and there was no remarkable additional sales in the beneficiary areas, it necessarily implied that the additional power procured was getting consumed throughout the State. Further, as the rate of these additional purchase were below the average billing rate, the actual situation resulted in a very peculiar situation wherein the consumers of ZLS area were likely to end up with a net refund (against a net reliability charge). It also argued that since additional power was getting diverted to the entire State, the actual power available for sales had to be considered after considering State average distribution loss against the ZLS model of considering area specific distribution loss.

4. With the above arguments, MSEDCL submitted that MSEDCL, being revenue neutral in the ZLS process, the burden of cost of additional power procured got shared by other non beneficiary consumers of the State even though such consumers were not at all benefitted by such additional power.

5. The prayers set out in MSEDCL's petition are as under:

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- a. *Admit the Review Petition;*
- b. *Condone the delay in submission of the Review Petition and may permit Review of the Order dated 30th November 2009;*
- c. *Revisit and modify the model of estimation of Reliability Charge as approved in vide Order dated 30th November 2009 (Case No. 31 of 2009) and re-determine the Reliability Charge as applicable based on the State average billing rate & State average Distribution Loss instead of beneficiary area specific average billing rate & distribution loss;*
- d. *Pending this decision, MSEDCL be permitted to withhold the refunds of reliability charge.*
- e. *Adjourn the scheduled public hearing on 30th March 2011 in case No. 76 of 2010 and permit MSEDCL to defer publication of public notice till further orders of the Hon'ble Commission.*

- f. Give liberty to MSEDCL to add/change/modify/alter this Petition and make further submissions as may be required at a future date.*
- g. Pass such further other orders, as the Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case."*

6. MSEDCL submitted its Petition under Regulation 85 of MERC (Conduct of Business) Regulations, 2004. However, it is to be noted that MSEDCL did not provide any explanation as to why the immense delay of more than one year in submission of its review Petition be condoned.

7. Admissibility hearing was held on April 11, 2011, along with a hearing in the matter of Case No. 93 of 2010, wherein MSEDCL had sought to withdraw load shedding in Divisions of A, B, C, D groups of other Regions.

8. During the admissibility hearing, Shri R. B. Goenka, Consumer Representative made his submission and also submitted a written reply. VIA essentially objected to MSEDCL's non-submission of ZLS data reconciliation and audited reports for the same. He strongly felt that MSEDCL had actually collected large revenue through ZLS Scheme, well in excess of the cost of ZLS Power Purchase and did not intend to refund the money to the consumers from whom it was collected. Shri. Goenka argued that the actual cost of power purchase for ZLS had been much lower than what was assumed in the determination of Reliability Charges in the Order in Case No. 31 of 2009. He further argued that the petition needed to be rejected on the following grounds:

9. MSEDCL did not file the review petition within 45 days of passage of the impugned Order as specified in the MERC (Conduct of Business) Regulations, 2004. In fact more than one year had passed by before MSEDCL filed its petition seeking review of the Order in Case No. 31 of 2009.

10. MSEDCL had not followed the directions of the Commission in the said Order for reconciliation of accounts quarterly and passed on the Reliability Charge, positive or negative, accordingly to the consumers; and,

11. The methodology of calculations of average billing rate and distribution losses cannot be changed at this stage as these figures were calculated based on the ZLS area, which were different for different regions. If the methodology is changed at this stage according to MSEDCL's suggestions, then Reliability Charges for all the areas would come at par and Reliability Charges for those consumers who paid high Reliability Charges, would be required to be refunded.

12. MSEDCL submitted letters to the Commission dated April 20, 2011 and May 13, 2011, (received on May 2, 2011 and May 16, 2011 respectively), providing reconciliation statements for the quarters ending March 2010, June 2010 and September 2010 and audit

reports for Pune, Thane, Vashi, Amravati, Aurangabad and Nagpur for the period July 2010 to September 2010.

13. Having heard MSEDCL and VIA, the Commission is of the view as follows:-

- (i) ZLS scheme has ceased to exist by efflux of time as firstly, for the purpose of calculation, the period assumed was September 2009 to August 2010, and the period of model was considered as 12 months, from December 1, 2009 to November 30, 2010, in the impugned Order. The Commission had extended the applicability of the impugned Order in Case No. 31 of 2009 till June 30, 2011. This was not extended further by the Commission. Therefore, the only matter pending in relation to the ZLS scheme implemented by MSEDCL was the complete reconciliation and audit of the accounts and refund of any excess money collected by it to the consumers. The methodology was not to be reviewed.
- (ii) The impugned Order was passed on November 30, 2009. The present review petition was filed on March 3, 2011, i.e., well over a period of a year. On the other hand, Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 specifically requires that review petitions must be filed within 45 (forty five) days from the date of the order from which review is sought. Regulation 85 is extracted as follows-

“Review of decisions, directions, and orders:

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.”

- (iii) MSEDCL has argued that since cost of additional power for ZLS sales had to be recovered from the additional MUs sold to the beneficiary consumers, and there was no remarkable additional sales in the beneficiary areas, it necessarily implied that the additional power procured was getting consumed throughout the State. Further, as the rate of these additional purchase were below the average billing rate, the actual situation resulted in a very peculiar situation wherein the consumers of ZLS area were likely to end up with a net refund (against a net reliability charge). It also argued that since additional power was getting diverted to the entire State, the actual power available for sales had to be considered after considering State average distribution loss against the ZLS model of considering area specific distribution loss.

The Commission is of the view that if the additional power procured was getting consumed throughout the State, the consumers throughout the State must be paying for the same. It is not MSEDCL's case that it has not got paid for the additional power procured. If the actual situation resulted wherein the consumers of ZLS area were

likely to end up with a net refund (against a net reliability charge), then it is consequential to the demand in the ZLS area and consumption therein. Surely, no error could be attributed to the impugned order dated November 30, 2009. No error has thus been pointed out by MSEDCL far less than one apparent on the face of record.

15. In view of the above findings, the present review petition deserves to be dismissed as not maintainable because the period in question for implementation of the impugned order is over; the review petition is time barred and this immense delay cannot be condoned; and no error whatsoever has been pointed out in the impugned Order. Consequently, the present petition is hereby dismissed as no grounds whatsoever has been made out for grant of review and thus the petition is not maintainable.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman