

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 37 of 2011**

**In the matter of**

**Petition filed by M/s Abhijeet MADC Nagpur Energy Private Ltd., seeking clarification of the Order dated 12<sup>th</sup> September, 2010 in Case No. 111 of 2009 in respect of MSEDCL's Annual Performance Review (APR) for FY 2009-2010, True up for FY 2008-2009 and ARR and Tariff Determination for FY 2010-2011 regarding applicability of Tariff Category for Startup Power connection of Power Plant.**

**Shri V.P. Raja, Chairman**

**Shri Vijay L. Sonavane, Member**

The Executive Director,  
Abhijeet MADC Nagpur Energy Pvt Ltd.  
39, Ambazari Layout,  
Nagpur 440 010

..... Petitioner

Vs.

The Managing Director  
Maharashtra State Electricity Distribution Co Ltd.  
Prakashgad, Bandra (East)  
Mumbai 400 051.

.... Respondent

**ORDER**

**Dated: 20<sup>th</sup> July, 2011**

Abhijeet MADC Nagpur Energy Private Ltd. (AMNEPL) filed a Petition under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, before the Commission

on 3<sup>rd</sup> March, 2011, seeking clarification of the Order dated 12<sup>th</sup> September, 2010 in Case No. 111 of 2009 in respect of MSEDCL's Annual Performance Review (APR) for FY 2009-2010, True up for FY 2008-2009 and ARR and Tariff Determination for FY 2010-2011 regarding applicability of Tariff Category for Startup Power connection of Power Plant.

2. The main prayers in the Petition as follows:

“

- a. *Please to clarify regarding applicability of Tariff Category for Startup Power connection of Power Plant.*
- b. *Please to exercise the powers as contemplated u/s 93 of conduct of business regulation of MERC in the interest of the safeguarding consumers interest and promotion of economy in activities of the generation of electricity.*
- c. *Condon any inadvertent omission /errors/shortcomings and permit AMNEPL to add/change/modify/alter this filing and make further submission as may be required at a future date.”*

3. AMNEPL, in its Petition, submitted as under:

- a) AMNEPL is a company incorporated under the provisions of the Indian Companies Act, 1956, with its registered office at 39, Ambazari Layout, Nagpur. AMNEPL is a joint venture between Maharashtra Airport Development Company Ltd. (MADC) and the Abhijeet Group.
- b) MADC is the developer for MIHAN-SEZ at Nagpur which has been notified by the Ministry of Commerce, Government of India vide its Notification No. 845(E) on 29<sup>th</sup> May, 2007. MIHAN is a prestigious project of Government of Maharashtra and one of the largest multi-products SEZ in the Country.
- c) AMNEPL is a special purpose vehicle promoted by MADC and Abhijeet Group, for construction of Power Plant at village Khairi Khurd and to cater the power requirement of the various units established in the MIHAN-SEZ area.
- d) AMNEPL's power plant is having EHV connection of 16 MVA contract demand for catering their Startup Power requirement. As there is no approved Tariff Category for startup power connection, MSEDCL has applied HT-II Commercial Category for this connection.

e) AMNEPL is a ‘Generating Company’ having power requirement of temporary nature and that also when all generators are shut down and generation auxiliaries are required to start for starting of Power Plant. Such power requirement is only in case of emergency, that to for a maximum period of Six hours. AMNEPL is not like other consumers of Power such as industries, railways and others.

f) The AMNEPL further submitted that while undertaking the rationalization of tariff categories, the Commission considered the provision of Section 62(3) of the Electricity Act 2003 (EA, 2003), which stipulates as under:

*“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumers load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”*

g) The Commission in its Order has used extensively “the criteria of purpose” of supply to categorize different type of consumers, with categories such as residential, non-residential / commercial, industrial, agricultural, street lighting etc.

h) Since there is no mention of purpose of “Startup Power connection for Power Plant” in tariff decided by MERC, this Petition is filed to seek clarification as to which Tariff Category will be applicable for this purpose which is peculiar in nature (temporary and that also in case of emergency).

i) The Commission in its Tariff Order has clarified that the “Commercial” category actually refers to all ‘non-residential, non-industrial’ purpose, or which has not been classified under any other specific category. In spite of this, without going into details of power consumption pattern, MSEDCL has applied HT-II Commercial Category to ‘Startup Power connection’ of AMNEPL.

j) This is not dispute between MSEDCL and a Generating Company, but the clarification is sought from the Commission on its Order. Since ‘Startup Power Connection’ purpose is not mentioned in the Categorization and by considering peculiar nature of consumption (temporary and that also in case of emergency only), it is submitted that, Petitioner should be categorized in HT VIII – HT - Temporary

Supply. It is further requested that, as power supply is required only in case of emergency, the Commission may create a separate category for purpose of 'Startup Power connection' of Power Plant.

4. The Commission, vide Notice dated 27<sup>th</sup> April 2011, fixed a hearing in the matter on 5<sup>th</sup> May 2011 and directed the Petitioner to serve a copy of the Petition on the Respondent and Authorized Consumer Representatives.

5. During the hearing held on 5<sup>th</sup> May 2011, Shri Satish Shrikhande and Shri Milind Deoghare appeared on behalf of AMNEPL. Advocate Rahul Seinha, Advocate Abhishek Mitra and Shri R.G. Sonawane, Superintending Engineer, appeared on behalf of MSEDCL.

6. During the hearing the Petitioner stated that there is no specific approved Tariff Category for Startup Power connection of Power Plant. Whereas, MSEDCL has submitted that, as per Tariff Order, consumer which cannot be classified under Residential or Industrial category can be categorized under Commercial category and accordingly MSEDCL has applied HT-Commercial category to 9 numbers of upcoming / recently commissioned Power Plants including the Petitioner.

7. As every Power Plant requires Startup Power, the Commission directed both parties to study and submit the Industrial practice being followed at State and Central levels for treatment of Startup Power requirement of Power Plant. With these directives, the hearing was adjourned to 10<sup>th</sup> June 2011.

8. On 2<sup>nd</sup> June 2011, MSEDCL has filed its reply to the Petition. In the said reply, MSEDCL has submitted as follows:

- a. The Petition has been filed under Regulation 85 of MERC (Conduct of Business) Regulations, 2004. The Petitioner has submitted that, there is no separate tariff category for Startup Power and MSEDCL has applied the HT-II Commercial category for this connection. Petitioner through its various submissions in the Petition has sought a clarification regarding applicable tariff category for their Startup Power connection of Power Plant.
- b. The Petitioner has nowhere in its Petition stated that it is aggrieved by the classification by MSEDCL. MSEDCL, as a distribution licensee, has been empowered under Regulation 13 of the Supply Code to classify a consumer into an appropriate category.

- c. The Petitioner is effectively seeking introduction of a new category into the tariff order, which would specifically cover the case of the Petitioner for Startup Power. The Petitioner is not seeking any review of the tariff order based on the various ground mentioned at Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, but is in fact seeking a substantial modification of the tariff order, which is the only conclusion derivable from the prayer of the Petitioner.
- d. It is submitted that the present Petition is not maintainable as a review or clarificatory petition, as the same is really a petition seeking substantial modification of the tariff order which was passed after a public hearing process.
- e. As regards to the classification carried out by MSEDCL, it is submitted that from the tariff order for FY 2010-11, the only category within which the Petitioner could be classified is HT-II Commercial. The Petitioner's suggestions as to applicability of the HT-VIII Temporary Category is not tenable (although the energy charges are significantly higher for HT-VIII Temporary Category) as the connection of the Petitioner is not a temporary connection, but is in fact a permanent connection with sanctioned contract demand. In other similar cases also, MSEDCL charges such connections under HT-II Commercial Category, details of which are given below:

<b>Sr. No.</b>	<b>Name of Consumer</b>	<b>Load</b>	<b>Tariff</b>	<b>Date of Sanction</b>
1	Mouda Thermal Power Station, NTPC	30 MVA	HT-Commercial	4.8.2009
2	M/s Adani Power Maharashtra Ltd., Tiroda	30 MVA	HT-Commercial	7.10.2009
3	Wardha Power Co. Pvt. Ltd., Warora	20 MVA	HT-Commercial	12.11.2009
4	Abhijeet MADC Nagpur Energy Pvt. Ltd	16 MVA	HT-Commercial	15.03.2010
5	Gupta Energy Pvt. Ltd, Usegaon, Chandrapur	12.2 MVA	HT-Commercial	12.03.2010
6	M/s JSW Energy (Ratnagiri) Ltd, Jaigad	16 MVA	HT-Commercial	30.3.2010
7	Uttam Galva Steel Limited, Khalapur, Raigad	3 MVA	HT-Commercial	7.08.2010
8	Maharashtra Vidyut Nigam Ltd, Wardha	1 MVA	HT-Commercial	2.5.2011

- f. Maharashtra State Power Generation Company Limited (MSPGCL) and Ratnagiri Gas Power Project Limited (RGPPL) are supplying 100% of their generation to

MSEDCL hence for these two companies netting of power has been carried out through their bills.

9. Vidarbha Industrial Association, authorized Consumer Representative, vide its letter dated 7<sup>th</sup> June 2011 submitted as follows:

- a. There is no separate Tariff for Startup of Generating Power Plant but it should come under the industrial tariff i.e. HT-I tariff since the equipments required to start up the generating plant are motive loads like pumping, fan / blowers, conveyors, and other electronic equipments. These loads are industrial loads and not commercial loads.
- b. The Petitioner has correctly said that commercial category refers to all non-residential and non-industrial tariffs. The load as elaborated above is an industrial load hence commercial tariff cannot be made applicable.
- c. The Startup requirement of generating plants is not a continuous requirement but it is required only when the generating plant stops or trips and is to be restarted. Rather such tariff should be cheaper compared to the normal industrial tariff. The generator has to pay demand charges for whole month even if he has utilized the start up power only for 1 or 2 hours in a month. Considering above reasons the Regulatory Commission in the State of Chhattisgarh has determined a separate startup tariff at lower rates. The startup tariff (HV-8) in State of Chhattisgarh is same as other industrial tariff but demand charges are 50% compared to other industrial tariff. There is another category in State of Chhattisgarh i.e. low load factor industries (HV-4) and the tariff for this category is same as other industrial tariff but demand charges are 50%.
- d. As per section 62(3) of the Electricity Act 2003, Commission may differentiate the consumers tariff based on load factor of the industries. For low load factor industry, the demand recorded by the meter is much more compared to his consumption. Particularly in case of startup power the demand is utilized hardly for one or two hours during starting of the plant but the consumer has to pay demand charges for whole month. In the matter of Case No. 56 of 2003 in case of determination of tariff for CPP, Commission has decided to charge demand penalty to the CPP consumers, for exceeding his demand beyond contract demand and standby demand on hourly basis which is correct methodology.
- e. In light of all above facts it is requested to decide startup tariff having 50% demand charges rate keeping the unit charges same as HT Industrial tariff.

10. Further hearing in the matter was held on 10<sup>th</sup> June 2011 and 13<sup>th</sup> July 2011. During the hearing, MSEDCL has reiterated its written submission dated 2<sup>nd</sup> June 2011 and mentioned that separate tariff category of ‘Startup Power connection of Power Plant’ as prayed by the Petitioner cannot be created through the present Petition. The Petitioner has agreed to this position and further requested the Commission to direct MSEDCL to propose above said tariff category in its next Tariff Petition. It is further submitted that, as suggested by the Commission, the Petitioner will approach Central Electricity Authority (‘CEA’) for its recommendation on the treatment of Startup Power of Power Plant.

11. Having heard the parties and after considering all the documents available on the records, the Commission is of the view as follows:

- a. The Commission in its Tariff Order dated 12<sup>th</sup> September 2011 in the matter of Case No. 111 of 2009, stipulated applicability of HT-Temporary Supply as follows:

***“HT VIII - HT - Temporary Supply***

***Applicability***

***Electricity used at High Voltage on a temporary basis of supply for any decorative lighting for exhibitions, circus, film shooting, marriages, etc., for a period of less than one (1) year.” (emphasis added)***

The above provision makes HT-Temporary category applicable only in case of connection is taken for the period of less than one year. In the present case, AMNEPL has obtained Permanent connection (for the period more than one year) with sanctioned Demand from MSEDCL. Therefore, HT-Temporary category as claimed by the Petitioner cannot be made applicable to them.

- b. As far as issue of creation of separate category for the ‘Startup Connection of Power Plant’ is concerned, the same can be dealt with only at the time of determination of Tariff and not through the present Petition.
- c. However, during the normal operation of Power Plant, requirement of auxiliary Power is met through own generation whereas in case of emergency such as tripping of Power Plant, grid support is required to feed the auxiliaries to start the Power Plant. Such a grid support is required only for period of few hours depending upon the type of Power Plant. As Power Plants being the most essential components of Power System, such a grid support has to be provided. However, how to treat this grid support i.e. whether to adjust the consumed units with the energy injected in to the grid or to charge the Power Plants for the energy consumed by them is needed to be

decided. As this issue being not restricted to the State of Maharashtra but equally applicable at National level, the Commission is of the view that, Central Electricity Authority (CEA) being a technical body at the Central level is the appropriate authority to set guiding principles on the same. Therefore, the Commission directs both the parties to approach CEA on the above mentioned issue and thereafter considering all the pros and cons, if required, MSEDCL may propose separate Tariff Category for 'Startup Power Connection of Power Plant' in its upcoming Tariff Petition.

- d. The Commission has also noted that, MSEDCL is treating the Startup Power requirement of Power Plant of Mahagenco and RGGPL differently than the other Power Plants in the State. This is due to the fact that, MSEDCL being sole procurer of Power generated from plants of Mahagenco and RGGPL, any charges levied by MSEDCL for Startup Power requirement of these Power Plants will be ultimately recovered by them from MSEDCL only. Such discrimination amongst the same class of consumers can not be allowed under the Electricity Act 2003. However, decision in this matter can be taken after considering recommendations of CEA on the issue of 'treatment of Startup Power requirement of Power Plant'.

With above observations and directives, the Case No. 37 of 2011 hereby stands disposed of.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman