

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 49 of 2009

In the matter of
Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)'s
Petition seeking review of Order dated June 15, 2009 in the matter of implementing
Zero Load Shedding model for the area covered under Pen Circle and for approval
of Reliability Charges to be recovered thereof

Shri. V. P. Raja, Chairman
Shri. S. B. Kulkarni, Member
Shri. V. L. Sonavane, Member

ORDER

Dated: 3rd August, 2010

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition before the Commission on July 30, 2009 under Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, seeking review of the Commission's Order dated June 15, 2009 in Case No.143 of 2008 in the matter of implementing Zero Load Shedding (ZLS) model for the area covered under Pen Circle and for approval of Reliability Charges to be recovered thereof.

2. MSEDCL, in its Petition, prayed as under:

“Permit review of Order dated 15th June 2009 and accordingly may be further pleased to re-determine the Reliability Charge to be recovered from



the beneficiary consumers situated within the area covered under Pen Circle,

Since the said Order dated 15th June 2009 has been delivered by the Hon'ble Commission after public hearing process, no further public hearing be carried out."

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

- a) MSEDCL submitted a Petition before the Commission on February 24, 2008 under Section 14 read with Section 2 (27) of the Electricity Act, 2003 (EA 2003) for implementing the ZLS model for the area covered under Pen Circle and for approval of Reliability Charges to be recovered thereof for compensating the expenditure that would be incurred for procurement of power necessary to mitigate Load Shedding in Pen Circle.
- b) The Commission, during the Technical Validation Session (TVS) on the above said Petition, directed MSEDCL to submit additional data in the matter, and accordingly MSEDCL submitted its revised Petition to the Commission on March 2, 2009 and further submitted an Addendum Petition on March 16, 2009 in Case No. 143 of 2008.
- c) The Commission admitted the revised Petition and conducted a Public Hearing in the matter on May 21, 2009 at Alibag, District Raigad. The Commission, after due consideration of the suggestions/objections submitted by Consumer Representatives/individual consumers during the public hearing process or subsequent thereto, disposed off the Petition and passed an Order on June 15, 2009, thereby inter-alia approving the concept of ZLS as proposed by the Petitioner for Pen Circle and further determined the Reliability Charge as elaborated in the said Order.
- d) MSEDCL has carried out detailed analysis of the said Order dated June 15, 2009 and it appears that some conceptual errors have occurred in the said Order. MSEDCL is therefore submitting the Review Petition to the Commission under the provisions of Regulation 85 (Review of Decisions, Directions and Orders) of MERC (Conduct of Business) Regulations, 2004, which is reproduced below:

"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.”

- e) MSEDCL further submitted that since no appeal has been preferred so far against the said Order of June 15, 2009 and the Review Petition has been filed within the prescribed time limit, the Commission was requested to admit the Review Petition and also to review the said Order dated June 15, 2009 on the following grounds:

Period of power purchase

- i. MSEDCL, in its main Petition (Case No.143 of 2008), had proposed to implement ZLS for the area covered under Pen Circle for a period of one year from April 2009 to March 2010 and had accordingly estimated the total cost of power procurement that would be required for effectively implementing the ZLS model for one year (365 days).
- ii. The Commission, however, permitted additional power procurement vis-a-vis recovery of Reliability Charge for the period from June 16, 2009 to March 31, 2010 (i.e., 289 days)
- iii. However, for determination of Reliability Charge, the Commission considered that the additional power would be available for 350 days and has accordingly estimated the energy available as 235.20 MU.
- iv. The scheme of ZLS being applicable for a period of only 289 days, consideration of 350 days for estimating the availability of power and considering the same for determination of the Reliability Charge needs to be considered as an error apparent on the face of the record.

Impact of 80% of Load Relief

- i. MSEDCL, in its Petition (Case No.143 of 2008), had considered that during load shedding, only 80% of the average load relief is obtained from the said particular feeder.



- ii. However, the Commission has not considered the said contention of MSEDCL, on the basis that MSEDCL has not submitted any detailed rationale for the same.
- iii. Accordingly, for the purpose of the said Order, the Commission has considered that 100% of load relief will be obtained by undertaking load shedding as per the load shedding protocol.
- iv. However, while determining the Reliability Charge, the Commission has computed the quantum of energy required to mitigate load shedding per day (shedtable) considering 80% consumption on average basis, which needs to be considered as an error apparent from the face of the record.

Distribution Loss for FY 2009-2010

- i. MSEDCL, in its Petition for approval of Annual Performance Review for FY 2008-09 and determination of Aggregate Revenue Requirement and tariff for FY 2009-10 in Case No. 116 of 2008, has categorically submitted that during FY 2009-10, MSEDCL would be able to reduce the Distribution Loss by one percent only and accordingly MSEDCL in the said Petition has estimated that the Distribution Loss during FY 2009-10 would be 21.20%.
- ii. MSEDCL, in the said Petition (Case No. 116 of 2008), has specifically requested the Commission to relax the Distribution Loss reduction trajectory from four percent to one percent for FY 2009-10.
- iii. MSEDCL further submitted that MSEDCL has estimated the impact of four percent reduction in Distribution Loss for FY 2009-10 purely as an academic exercise, and has submitted the same to the Commission without prejudice to any of its contentions.
- iv. The Commission, while determining the Reliability Charge to be recovered from the beneficiary consumers situated within Pen Circle area, has however, considered that the Distribution Loss during FY 2009-10 would be 18.2%, which needs to be considered as an error apparent on the face of the record.

Burden on account of procurement of additional power

- i. MSEDCL, in its Petition in Case No.143 of 2008, had proposed to purchase power (on behalf of the Interim Franchisee) for all the twenty four hours of the day.



- ii. The Commission considered this aspect and approved power purchase on RTC basis, however, as a consequence, the quantum of balance power available after mitigating the load shedding, also increases.
- iii. The Commission, in its working of Reliability Charges to be recovered from the beneficiary consumers of the area covered under Pen Circle, has given a separate treatment for such balance power available after mitigating the load shedding. In these calculations, the Commission has first given credit at the rate of average cost of power purchase and has also subsequently given credit for the revenue earned on account of sale of such balance excess power.
- iv. MSEDCL submitted that either the average cost of power purchase needs to be considered, or in the alternative, only the credit of revenue earned on account of sale of such excess power, needs to be considered for determination of Reliability Charge. MSEDCL further submitted that considering both these aspects simultaneously has resulted in passing of undue advantage to the beneficiary consumers at the expense of MSEDCL.
- v. MSEDCL also submitted that such double accounting needs to be considered as an error apparent on the face of the record.

4. The Commission, vide its Notice dated September 11, 2009, scheduled a hearing in the matter on September 29, 2009, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

5. At the hearing held in the matter on September 29, 2009, Advocate Shri A. Mitra appeared on behalf of MSEDCL. During the hearing, Shri. Mitra reiterated the submissions made in the Petition.

6. During the hearing, the Commission directed MSEDCL to submit the following data within ten days to enable the Commission to take a view in the matter:

- a. The Distribution Loss of Pen Circle including town-wise/section-wise data.
- b. The impact on the Distribution Losses and Reliability Charges in case M/s. Ispat Industries is excluded from the ZLS Scheme for Pen Circle, in view of the Appeal filed by M/s. Ispat Industries before the Hon'ble Appellate Tribunal for Electricity.
- c. The impact on the Distribution Losses and Reliability Charges in case industries on the Express Feeders are excluded from the ZLS Scheme for Pen Circle.
- d. The computation of Reliability Charges in case 289 days is considered for the calculation of Reliability Charges.



- e. Legal justification regarding maintainability of the Review Petition in view of the Appeal filed by M/s. Ispat Industries before the Appellate Tribunal for Electricity.
7. Shri. N. Ponrathnam, as a intervener, vide his letter dated September 29, 2009, opposed the Reliability Charges and submitted as under:
- a. The Commission, in Case No. 143 of 2008, has passed the Order with the intention to give quality uninterrupted supply to the consumers of Pen area. The Commission has approved Reliability Charges of 19 Paise/kWh against 16 Paise/kWh projected in the petition, based on the administrative powers vested with the Commission. The Reliability Charges approved by the Commission is not the actual charges but is a calculation, based on the assumptions used for modelling.
 - b. The tariff approved in MSEDCL's APR Order dated June 20, 2008 in Case No. 116 of 2008 cannot be revised till the end of the year, and any revision in the approved tariff, should not be enforced without undertaking a Public Hearing process.
 - c. Penalty for failure to give quality uninterrupted supply to the consumer is not enumerated in the Order.
 - d. Moreover, in the Review Petition, MSEDCL has not enumerated the impact on the cost and Reliability Charges due to the stated conceptual errors in the Order.
8. MSEDCL, in its reply dated November 13, 2009, submitted as under:
- a. Distribution Loss data is maintained sub-division wise by MSEDCL rather than town wise.
 - b. The Distribution Loss of Pen Circle excluding Ispat Industries Ltd. for the period of April 2008 to December 2008 is 9.33%. The average monthly consumption of Ispat Industries is about 138 MU/month for the period from April 2008 to December 2008. In case, if this consumption is reduced from the monthly consumption of Pen Circle, the Reliability Charge works out to be 34 Paise/kWh.
 - c. The Distribution Loss of Pen Circle excluding industries on Express feeders for the period from April 2008 to December 2008 is 22.85%. The average monthly consumption of Express feeders for the period from April 2008 to December 2008 is approximately 250 MU/month. In case this consumption is reduced from the average monthly consumption of Pen Circle, the Reliability Charge works out to be Rs.1.04/kWh.
 - d. For computing the impact on Reliability Charge for various mentioned alternatives, MSEDCL has used the model approved by the Commission in its Order dated June



- 15, 2009, without prejudice to its contentions in the Review Petition, except that average monthly consumption in Pen Circle has now been revised to approximately 297 MU, which is based on the latest data considered for determination of Distribution Loss.
- e. In case 289 days are considered, the Reliability Charge works out to 13 Paise/kWh.
 - f. Legal justification regarding the maintainability of the Review Petition in view of the Appeal filed by M/s. Ispat Industries Ltd. before the Appellate Tribunal of Electricity is as under:
 - i. The present Review Petition, urging recalculation of Reliability Charges imposed by Order dated June 15, 2009 for implementing ZLS model in Pen Circle on the ground that conceptual and calculation errors have crept into the said Order, is maintainable.
 - ii. The powers of the Commission to review its decisions, directions and Orders flows from Section 94 (1) (f) of the Electricity Act, 2003. Further, Regulation 85 (Review of Decisions, Directions and Orders) of MERC (Conduct of Business) Regulations, 2005 notified under Section 181 of EA 2003, sets forth the parameters within which the Commission will entertain/admit review petitions.
 - iii. However, the issues before the Appellate Tribunal in the appeal filed by Ispat Industries Ltd. are distinct from the issues before the Commission in the present Review Petition. In Appeal No. 135 of 2009, the question before the Appellate Tribunal is whether Reliability Charge can be legitimately imposed on the Appellant, which is already on an express feeder for which it has incurred additional costs and is also paying higher tariffs.
 - iv. However, in the Review Petition filed by MSEDCL, review has been urged with regard to conceptual and calculation errors that have crept into the Order dated June 15, 2009, whereby the Reliability Charges approved in the Commission's Order is substantially lower than what it should have rightly been.
 - v. In view of the same, it is submitted that the present Review Petition before the Commission is maintainable, since the questions in the Appeal before the Appellate Tribunal are distinct and substantially different from the questions urged by MSEDCL in the Review Petition before the Commission.
 - vi. MSEDCL further submitted that it is a Public Utility Company operating on the principle of revenue-neutrality. On account of the conceptual and calculation errors that have crept into the said Order of the Commission,



MSEDCL has been incurring a continuing loss since it has been recovering only 19 Paise/kWh from consumers, while the actual Reliability Charge would have been substantially higher had there been no error in calculation. In the circumstances, the shortfall in Reliability Charge for energy already supplied to consumers under the ZLS scheme for Pen Circle would require to be recovered from the consumers in order to preserve MSEDCL's revenue-neutrality.

9. Having heard the Parties and after considering the material available on record, the Commission is of the view as under:

10. The Commission's Order dated June 15, 2009, from which review has been sought, has itself been set aside by the Hon'ble Appellate Tribunal for Electricity. Appellate Tribunal in its Judgment dated December 14, 2009 in Appeal No.135 of 2009 has held as under:

"28. In view of the above discussions, we are of the view that the order impugned passed by the State Commission dated 15.6.2009 is not valid in law and therefore, the same is liable to be set aside. Accordingly, the same is set aside.

29. At this stage we have to mention one more thing. While we disposed the stay application during the pendency of the appeal, we were not inclined to grant stay, however, we have observed in the same order dated 24/09/09 that any payment as Reliability charge made by the Appellant to the Distribution Company during the pendency of this Appeal, in pursuance of the order impugned, the same is subject to the final result of this Appeal. In the light of the said observation, it is appropriate to pass the consequential order directing the Distribution Company to refund the Reliability charges collected by it from the Appellant in pursuance of the impugned order within one month from the date of passing of this order. Accordingly, it is directed.

30. The Appeal is allowed. No orders to the cost."

11. Subsequently, the aforesaid Tribunal's Judgment dated December 14, 2009 in Appeal No.135 of 2009 was challenged before the Hon'ble Supreme Court by MSEDCL by preferring a Civil Appeal No. 8413 of 2009 in the case of MSEDCL vs. Ispat Industries & Anr. The Hon'ble Supreme Court, vide its Interim Order dated December 18, 2009 in Civil Appeal No. 8413 of 2009, stayed the operation of the Judgment of the Appellate Tribunal dated December 14, 2009 in Appeal No.135 of 2009. Since, the final outcome of the said Civil Appeal No. 8413 of 2009 is awaited, the Commission cannot go into reviewing its Order dated June 15, 2009 which stands merged with the Tribunal's Judgment dated December 14, 2009 and is *subjudice* before Hon'ble Supreme Court in



Civil Appeal No. 8413 of 2009. In the circumstances, the present petition cannot be sustained and stands dismissed as not maintainable.

Sd/-
(V.L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K.N Khawarey)
Secretary, MERC