

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No.46 of 2009**

**In the matter of**  
**Petition filed by Reliance Infrastructure Ltd. Distribution Business (RInfra-D) for**  
**Clarifications on Tariff Order issued by the Commission on RInfra-D's APR**  
**Petition for FY 2008-09 in Case No. 121 of 2008**

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

**Dated: September 10, 2009**

The Commission, in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and after taking into consideration all the submissions made by RInfra-D, all the suggestions and objections of the public, responses of RInfra-D, issues raised during the Public Hearing, and all other relevant material, and after review of Annual Performance for FY 2008-09, determined the Aggregate Revenue Requirement (ARR) and Tariff for RInfra-D for FY 2009-10 vide its Order dated June 15, 2009 in Case No. 121 of 2008. The Commission also issued an Order dated July 15, 2009 in Case No. 121 of 2008, wherein, as directed and called upon by the GOM under Section 108 of the EA 2003 and considering the special circumstances, and the direction to the Commission to undertake a detailed investigation on metering, power purchase expenses and transactions undertaken by RInfra-D, as well as capital expenditure schemes, the tariff increase as approved by the Commission in the Order dated June 15, 2008 in Case No. 121 of 2008 was stayed for selected consumer categories and sub-categories till the Commission issues further orders.



Subsequently, RInfra-D filed a Petition dated July 30, 2009, seeking clarifications on the above said Order of the Commission dated July 15, 2009, pertaining to the issue of consumer billing. RInfra-D submitted that till such time the clarification is received, RInfra-D would be charging tariffs as per its understanding.

RInfra-D also sought clarifications vide its letters dated June 26, 2009, July 21, 2009, and July 25, 2009 on the above-said Orders dated June 15, 2009 and July 15, 2009, with the stated objective of ensuring the correct implementation of the Tariff Order. The issues on which clarification was sought by RInfra-D are as under:

1. Penalty in case LT II Commercial category consumers exceed Sanctioned Load
2. Prompt payment incentive
3. Slab-wise tariff for individual dwellings within HT Group Housing Society
4. Applicability of Power Factor Incentive and Power Factor Penalty to HT Categories
5. Applicability of Additional Fixed Charges for HT-IV Category
6. Tariff Structure of FY 2008-09 vs. FY 2009-10
7. Fuel Adjustment Charge (FAC) Cap
8. Payment to TPC-G
9. Tariff to be charged to consumers

Since, all the issues raised by RInfra-D were in the nature of clarifications on the Commission's Orders dated June 15, 2009 and July 15, 2009, the Commission scheduled a hearing on the said Petition on August 20, 2009, in the presence of Consumer Representatives authorised on a standing basis under Section 94 of the Electricity Act, 2003. The Commission also authorised Shri. Sandeep Ohri, Shri. N. Ponrathnam, and Shri. Rakshpal Abrol, to represent the interest of the consumers in this case in addition to the four authorised Consumer Representatives. During the hearing, RInfra presented the issues on which it was seeking clarifications from the Commission.

Shri. Sandeep Ohri made the following submissions in writing:

- Any clarification sought by RInfra-D, which may result in any increase in tariff to the consumer as compared to the tariff the consumer was paying as per Tariff



Order dated June 4, 2008 in Case No. 66 of 2007, must not be permitted to be charged to the consumer

- Though RInfra-D has sought clarification on a number of issues, RInfra-D has not provided any details on the impact of the relief that may accrue to RInfra-D and/or the resultant increase in tariff to the consumers, vis-à-vis the Order dated June 4, 2008 in Case No. 66 of 2007
- In future, the licensee should be required to indicate the impact of any relief sought by the Licensee, in the absence of which, the public and the Consumer Representatives may not comprehend the seriousness of the issue
- RInfra-D should make available the detailed calculation of all proposed FAC based on current data
- RInfra-D should make available complete data on consumers who have drawn beyond Sanctioned Load, since the Sanctioned Load is not mentioned in the bills of most consumers, in which case, it needs to be verified as to how RInfra-D determines that the consumer has exceeded the Sanctioned Load.
- Prompt payment discount should be allowed if payment is made within seven (7) working days. Further, Prompt Payment Discount and Delayed Payment Charges should be calculated on the same amounts, since it is unfair to the consumer to grant a discount on a lower amount, while penalty is levied on a higher amount
- RInfra-D should not be allowed to charge Reliability Charges, given that the reliability standards of RInfra-D are the lowest when compared with TPC-D and BEST. Further, RInfra-D should be directed to refund all such Reliability Charges collected from the consumers.

Shri. N. Ponrathnam made the following submissions in writing:

- The basis for levy of FAC to various consumers needs to be understood, and RInfra-D should not be allowed to claim at a later date, any amount that has deliberately not been collected as per the Commission's Order
- Since there is no provision for recording the load drawn by consumers belonging to LT II (A) and LT III categories, how does RInfra-D determine that a consumer in LT II (A) and LT III category has drawn more than sanctioned load? RInfra-D should propose a penalty mechanism and also estimate the benefits expected due to the levy of penalty



- Prompt payment incentive should be payable for payment within seven working days, instead of seven calendar days
- As regards single point supply to Group Housing Society, the metering is done by the licensee and there should be no problem in charging tariffs approved by the Commission for each individual dwelling
- RInfra-D may be allowed to remove/reduce the amount of Reliability Charges levied in the bill to compete with the tariffs applicable for supply from TPC
- Since the Order in Case No. 46 of 2008 was issued on February 2, 2009, RInfra-D was aware of the same before submitting its revised APR Petition on February 18, 2009, and RInfra-D should have claimed this amount in its APR Petition itself.

During the hearing, the Commission enquired of RInfra regarding the basis for RInfra-D's interpretation that Additional FAC can be charged beyond March 2009, since the Additional FAC was permitted to be levied for a specified period from November 2008 to March 2009. Further, the FAC cap in the earlier Order was 54.5 paise/kWh, however, the FAC would vary every month, depending on the actual fuel prices. RInfra-D replied that since only the tariff increase has been stayed, the base tariff has to be charged, and since FAC was merged with the base tariff, the stay means that base tariff plus FAC plus Additional FAC is chargeable. However, RInfra-D clarified that it had not levied the FAC of 54.5 paise/kWh and Additional FAC of 59 paise/kWh in the bills issued for July 2009, though in its Clarificatory Petition, it had stated that till it receives the clarifications from the Commission, it would charge both FAC components. RInfra-D also clarified during the hearing that it was not seeking any Review of the Tariff Order.

Prayas submitted that only base tariff should be charged, and earlier FAC and Additional FAC should not be charged. Shri. Ponrathnam submitted that FAC is chargeable in accordance with Regulation 82 of MERC Tariff Regulations. However, since RInfra-D does not have any Power Purchase Agreement, FAC may not be applicable. Moreover, though FAC has been equated to zero by merging with the base tariff, RInfra-D is charging FAC from the first month itself after issue of new Tariff Order. Shri. Ashok Pendse submitted that there cannot be any penalty for exceeding Sanctioned Load, since the meter provided at the consumers' premises cannot record the actual load in case of LT II (A) and LT III categories.



The Commission's clarification on each of these issues is given in this Order, issued under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004. There is no adverse impact on the tariff payable by the consumers, save for allowance of Rs. 8.5 crore to be recovered in the subsequent ARR, which was on account of inadvertent error. The Commission hereby directs RInfra-D to ensure that the clarifications given in this Order are implemented with effect from June 1, 2009 as applicable, and the consumers' bills are revised accordingly. This will ensure that the Commission's Order is implemented as desired from the date of enforcement of the said Order and the consumers are not unnecessarily burdened on account of lack of clarity on certain aspects related to implementation of the Orders in Case No.121 of 2008.

The Commission also directs RInfra-D that in future, as suggested by the authorised Consumer Representatives in the matter, RInfra-D should ensure that the impact of any clarifications on the consumers is clearly brought out in the Clarificatory Petition itself, so that the consumers/authorised Consumer Representatives are able to give their considered input on the clarifications sought by RInfra-D.

#### **1. Penalty in case LT II Commercial category consumers exceed Sanctioned Load**

RInfra-D submitted that on Page 201 of the Order dated June 15, 2009, it is mentioned that

*“RInfra-D's proposal that for LT Commercial (LT-II) category, if the drawal of a Consumer exceeds the Sanctioned Load as available in the records of the Distribution Licensee, the Consumer would be billed in the respective sub category, is also rejected, as the basis of billing for such consumer is the Sanctioned Load, and if the consumer exceeds the Sanctioned Load, then the prevailing stipulations of penalty are sufficient.”*

RInfra submitted that for LT-II (A) consumers, there are no prevailing stipulations of penalty as referred by the Commission in the above said Order. Therefore, the Commission may clarify about the mechanism and amount of penalty recoverable from LT-II (A) consumers who exceed the sanctioned load. Similarly, clarification is required on the penalty provisions applicable to a consumer billed under LT-III category.



### Commission's Ruling and Clarification

It is clarified that the penalty for exceeding Contract Demand is applicable only for consumers availing demand-based tariff, and where Maximum Demand meters are installed. Since, for LT II (A) and LT III categories, the fixed charges are levied on per connection basis, it is clarified that there is no penalty in case the consumer exceeds the 'Sanctioned Load', as the same cannot be recorded with the existing metering facility. However, if the Utility has clear evidence to show that the actual load is higher than the sanctioned load, then the consumer's sanctioned load will have to be restated.

## **2. Prompt payment incentive**

RInfra-D submitted that on Page 231 of the Order dated June 15, 2009, it is mentioned that

### *"Prompt Payment Discount*

*A prompt payment discount of one percent on the monthly bill (excluding Taxes and Duties) shall be available to the consumers if the bills are paid **within a period of 7 days from the date of issue of the bill.**" (Emphasis added)*

Whereas, on Page 210 of the Order dated June 15, 2009, it is mentioned that

### *"Prompt Payment Discount*

*A prompt payment discount of one percent on the monthly bill (excluding Taxes and Duties) shall be available to the consumers if the bills are paid **within a period of 7 working days from the date of issue of the bill.**" (Emphasis added)*

RInfra sought clarification regarding the period applicable for availing prompt payment discount, i.e., whether it was 7 days or 7 working days.

### Commission's Ruling and Clarification

As, for all distribution licensees in the State, the time period for availing prompt payment incentive is seven 'calendar' days, it is clarified that Prompt Payment Discount will be



applicable for consumers who pay their bills within a period of 7 calendar days from the date of issue of the bill.

### **3. Slab-wise tariff for individual dwellings within HT Group Housing Society**

RInfra-D submitted that on Page 227 of the Order dated June 15, 2009, it is mentioned that

*“This category includes Group Housing Societies taking single point electricity supply at High Voltage for consumption by individual dwellings. Such individual dwellings will pay appropriate tariff LT I: LT- Residential as per RInfra-D Tariff Schedule in force.”*

RInfra-D submitted that the HT-Group Housing Societies are billed at single point by RInfra-D. Hence, payment of LT-I tariff by individual dwellings will result in under-recovery/over-recovery with the Group Housing Society. RInfra-D sought clarification on how slab-wise LT tariff will be applicable to individual dwellings, when RInfra-D billing is based on single point HT supply.

#### Commission’s Ruling and Clarification

It is clarified that the licensee has to bill on the basis of the tariff applicable for HT-Group Housing Societies and the Societies in turn, may levy upto the maximum tariff of LT-I Residential category to the individual dwellings.

### **4. Applicability of Power Factor Incentive and Power Factor Penalty to HT Categories**

RInfra-D submitted that on Page 230 of the Order dated June 15, 2009, it is mentioned that Power Factor Incentive and Power Factor Penalty are applicable for all HT categories. RInfra-D sought clarification whether the Power Factor incentive/penalty mechanism was also applicable to consumers billed under the newly created category of HT IV: HT Temporary Supply, who are not billed Demand Charges.

#### Commission’s Ruling and Clarification

It is clarified that the Power Factor Incentive and Power Factor Penalty are applicable only to HT-I (Industry) and HT- II (Commercial) consumer categories, amongst HT



consumer categories, as well as other LT categories specified in the Order, viz., LT II (B), LT II (C) and LT IV categories.

### **5. Applicability of Additional Fixed Charges for HT-IV Category**

RInfra-D submitted that on Page 224 of the Order dated June 15, 2009, it is mentioned that LT VII (B) consumers shall pay additional fixed charges of Rs. 150 per 10 kW load or part thereof above 10 kW load. However, no such charges are mentioned for HT IV – HT Temporary Supply. RInfra sought clarification regarding whether the additional charges mentioned for LT VII (B) tariff are also applicable for HT-IV: HT-Temporary Supply.

#### Commission's Ruling and Clarification

It is clarified that the additional Fixed Charges are not applicable for HT IV- HT Temporary Supply.

### **6. Tariff Structure of FY 2008-09 vs. FY 2009-10**

RInfra-D submitted that subsequent to the Order dated July 15, 2009, whereby the Commission stayed the tariff increase for selected consumer categories and sub-categories, the tariff applicable for such categories and sub-categories has to be levied as determined in the Tariff Order dated June 4, 2008 in Case No, 66 of 2007, till further orders. However, for the remaining categories such as LT – II (C) Commercial, HT Commercial, etc., the tariff rates determined in the Order dated June 15, 2009 shall apply. RInfra-D submitted that the variable charges as per Tariff Order dated June 4, 2008 consisted of Energy Charges, Standby Charges and Expensive Power Charges, which have been done away with by the Commission in the Tariff Order for FY 2009-10, where the Commission has determined a single unified Energy Charge. As a result, the tariff structure for categories covered under the Stay Order would be different from that applicable for other categories. RInfra-D submitted that having different tariff heads for different consumers within the same financial year has the potential to create confusion in the minds of the consumers, and could convey a wrong impression that certain consumers are being given discriminatory treatment by the Utility. RInfra-D requested the Commission to grant it liberty to charge all consumers under single unified energy charges, by adding all different charges, viz., Energy Charges, Standby Charges and





Expensive Power Charges, and presenting it as a single energy charge on the consumers' bills.

#### Commission's Ruling and Clarification

It is clarified that since the tariffs determined as per the Tariff Order dated June 15, 2009 have been stayed for specified consumer categories, for these categories, the tariff as determined in the previous Tariff Order, i.e., Order dated June 4, 2008 in Case No. 66 of 2007 will be applicable. Since the tariff components specified in the Order dated June 4, 2008 consisted of Energy Charges, Standby Charges and Expensive Power Charges, which were shown separately, the same will have to continue to be shown separately for the specified consumer categories where the tariff revision has been stayed, irrespective of the fact that these tariff components have been done away with in the tariffs determined in the Order dated June 15, 2009.

As regards the submission that Reliability Charges cannot be levied since the reliability standards of RInfra-D are lower than that of TPC-D and BEST, the same cannot be agitated under this proceeding, since the Reliability Charges were levied under the previous Tariff Order dated June 4, 2008, which is not the subject matter of this Clarificatory Order.

#### **7. Fuel Adjustment Charge (FAC) Cap**

RInfra-D submitted that the Order dated June 15, 2009, on Page 204, states that

*“In case of any variation in the fuel prices with respect to these levels, RInfra-D will be able to pass on the corresponding increase to the consumers through the existing FAC mechanism, subject to the stipulated ceiling of 10% of average energy charges, which works out to 67 paise/kWh.”*

RInfra-D submitted that the FAC cap determined by the Commission as referred above, was on the basis of the average energy charges for all categories for FY 2009-10, based on the revised tariffs. However, pursuant to the Stay Order dated July 15, 2009, the computation of average energy charges and thus, FAC cap may undergo a change, due to applicability of different Tariff Orders for different categories. RInfra-D requested for clarification regarding whether the FAC cap of FY 2009-10 will continue as 67



paise/kWh or will undergo a change, and if so, requested the Commission to stipulate the revised FAC cap for FY 2009-10.

#### Commission's Ruling and Clarification

The Commission appreciates that the FAC cap has to be specified after considering the fact that the tariff revision for certain consumer categories has been stayed. One of the options available is that for the specified consumer categories for whom the tariff revision has been stayed, since the tariff as determined in the previous Tariff Order, i.e., Order dated June 4, 2008 in Case No. 66 of 2007 will be applicable, the applicable FAC cap will also be 54.5 paise/kWh, and for the remaining consumer categories, the revised FAC cap of 67 paise/kWh will be applicable. However, the FAC cap cannot be levied differently for different consumer categories, else, it may result in confusion, and require additional reconciliation at a later stage. In order to ensure that the FAC cap is easy to administer, uniform FAC cap needs to be specified, based on the revised revenue from energy charges, by considering the existing tariff for the categories for whom the tariff revision has been stayed, and considering the revised tariff for the remaining categories. The Commission has accordingly, re-computed the FAC cap applicable for all consumer categories for FY 2009-10 as 10% of the average variable tariff, as 64.2 paise/kWh.

#### **8. Payment to TPC-G**

RInfra-D submitted that in Para 3.13.2 of the Order dated June 4, 2008 for The Tata Power Company Limited – Distribution Business (TPC-D) in Case No. 69 of 2007, the Commission has stated as under:

*“Further, the Commission has shared the total surplus allocated to TPC-G between the three distribution licensees of Mumbai licensed area in the proportion of generation capacity allocation in FY 2006-07. The Commission has considered the carrying cost of 6% for one year on this surplus amount to be passed on to Distribution Licensees and consumers by TPC. The total amount of surplus alongwith carrying cost works out as follows:*

- *BEST: Rs. 38.76 crore*
- *REL: Rs. 41.89 crore*
- *TPC-D: Rs. 36.02 crore*



*The surplus alongwith carrying cost to be passed on to BEST and REL should be adjusted from TPC-G monthly bill to be raised to BEST and REL immediately after issuance of this Order.”*

RInfra-D submitted that accordingly, the Commission, in its Tariff Order for RInfra-D for FY 2008-09 in Case No. 66 of 2007 (Page No. 118) considered that TPC would provide the refund to the distribution licensees in their respective monthly bills and thus, considered a credit of Rs. 41.89 crore while approving the revenue gap of RInfra-D for FY 2008-09.

RInfra-D submitted that on a Review Petition filed by TPC in Case No. 46 of 2008, the Commission modified the revenue gap/surplus and efficiency gains and losses for TPC as a whole, as under:

*“The Commission has considered the carrying cost of 6% for one year on this surplus amount to be passed on to Distribution Licensees and consumers by TPC. The total amount of surplus along with carrying cost works out as follows:*

- *BEST : Rs. 30.90 crore*
- *RInfra-D : Rs. 33.39 crore*
- *TPC-D : Rs. 28.71 crore”*

*“(vi) Further, the Commission clarifies that the impact on account of the above modifications shall be taken into account and effected by the Commission in its Order on TPC-D’s Petition for APR for FY 2008-09 and Tariff Determination for FY 2009-10.”*

RInfra-D submitted that with the above Order, though the refund amount was revised to Rs. 33.39 crore from Rs. 41.89 crore for RInfra-D, the differential of Rs. 8.5 crore payable to TPC-G by RInfra-D has not been included in the revenue requirement of RInfra-D for FY 2009-10. RInfra-D sought clarification regarding whether this refund could be made to TPC-G, despite the same not being considered while computing the revenue requirement of RInfra-D for FY 2009-10 in the Tariff Order dated June 15, 2009.



### Commission's Ruling and Clarification

The non-consideration of the amount of Rs. 8.50 crore in the ARR of RInfra-D is due to oversight and the fact that RInfra-D had not included the amount in its revised APR Petition, even though the Order in Case No. 46 of 2008 was issued before the revised APR Petition was submitted by RInfra-D. It is clarified that RInfra-D should refund this amount to TPC-G and include the same in its ARR Petition for FY 2009-10.

### **9. Tariff to be charged to consumers**

In its Clarificatory Petition, RInfra-D submitted that in the Stay Order dated July 15, 2009, the Commission has ruled as under:

*“It is clarified that the tariff of only such categories and sub-categories, where the tariffs have been increased vis-à-vis the tariff prevalent in the previous year (after including FAC and Additional FAC), has been stayed till the Commission issues further Orders in this regard. For these categories, the tariff as determined in the previous Tariff Order, i.e., Order dated June 4, 2008 in Case No. 66 of 2007 will be applicable. The tariff for the other consumer categories and sub-categories, where the tariffs have been reduced vis-à-vis the tariff prevalent in the previous year (after including FAC and Additional FAC), will continue to be charged as determined in the Order dated June 15, 2009 in Case No. 121 of 2008.”*

RInfra-D submitted that the base for comparison in implementing the above are the tariff rates as per Tariff Order dated June 4, 2008, plus FAC of 54.5 paise/kWh and additional FAC of 59 paise.kWh. RInfra-D submitted that based on the above, RInfra-D's understanding is as follows:



- (A) The categories mentioned in the Stay Order dated July 15, 2009, i.e., LT I Residential, LT II Commercial (A) and (B), LT III Industry below 20 kW, LT V Advertisement & Hoardings, LT VII Temporary Others, and HT I Industry, should be charged the tariff rates as per Tariff Order dated June 4, 2008, plus FAC of 54.5 paise/kWh, plus Additional FAC of 59 paise/kWh. Therefore, applicable Energy Charge for these categories shall be sum of Energy Charge, Standby Charge, Expensive Power Charge, FAC, and Additional FAC.
- (B) All categories other than stated in (A) above are to be charged tariffs as per Tariff Order dated June 15, 2009.

Commission's Ruling and Clarification

It is clarified that for the categories mentioned in the Stay Order dated July 15, 2009, i.e., LT I Residential, LT II Commercial (A) and (B), LT III Industry below 20 kW, LT V Advertisement & Hoardings, LT VII Temporary Others, and HT I Industry, the tariff rates as per the Tariff Order dated June 4, 2008 will be charged, in addition to the FAC as applicable for the particular month, subject to the revised FAC cap of 64.2 paise/kWh. The earlier FAC of 54.5 paise/kWh was the FAC cap, which was levied throughout the year in FY 2008-09 due to the steep rise in the fuel prices. Also, the Additional FAC of 59 paise/kWh was allowed to be charged only during the period from November 2008 to March 2009. Hence, the earlier FAC of 54.5 paise/kWh and Additional FAC of 59 paise/kWh will not be levied on the consumer categories for whom the tariff revision has been stayed.

With this Order, the Commission disposes of RInfra's Petition in Case No. 46 of 2009.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(Sanjay Sethi)  
Secretary, MERC