

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 176 of 2016

Dated: 23 March, 2017

**CORAM: Shri Azeez M. Khan, Member
Shri. Deepak Lad, Member**

**In the matter of
Petition of Maharashtra State Electricity Distribution Co. Ltd. for Review of
Multi-Year Tariff Order dated 03.11.2016 in Case No. 48 of 2016**

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)Petitioner

Maharashtra Veej Grahak Sanghatana (MVGS)Intervener

Appearance:

For the Petitioner: Shri. Sanjeev Kumar (Rep)
Shri. Satish Chavan (Rep)
Smt. Swati Vyavahare (Rep)

For the Intervener: Shri. Pratap Hogade (Rep)

Consumer Representatives: Smt. Ann Josey (Prayas)
Shri. R. Kaparathi (CMIA)
Shri. Hemant Kapadia (Individual CR)

Daily Order

1. Heard the representatives of the Petitioner, the Intervener and Consumer Representatives.
2. MSEDCL stated that:
 - i. There are some errors in the Multi Year Tariff (MYT) Order dated 03/11/2016. Hence, the present review Petition has been filed on 16 December, 2016, i.e. within 45 days.

- ii. Vide letter dated 17 March, 2017, MSEDCL has informed the Commission of its precarious financial situation. MSEDCL's total liability, which was Rs 11714 crore on 31 March, 2014, has increased to Rs. 21000 crore as on 31 January, 2017. Therefore, the Commission may allow recovery of the impact of the review Petition by way of a suitable mechanism.
- iii. Although the MYT Order is effective from 1 November, 2016, the revenue from the revised tariff has been considered as if the Order is applicable for the complete FY 2016-17. This has created a substantial Revenue Gap for MSEDCL. Further, reduced Industrial sales are negatively affecting its revenue. Short term borrowing has reached the level of Rs. 8274 crore. MSEDCL is finding it difficult to sustain its financial operations. Hence, the Commission may allow recovery of the impact of the review Petition from 1 April, 2017.
- iv. The MYT Regulations, 2015 require that the sharing of efficiency gains / loss be undertaken at the time of Mid Term Review (MTR). However, in the impugned MYT Order, the Commission has provisionally shared the efficiency loss on account of higher Distribution Losses for FY 2015-16 to FY 2019-20. Although MSEDCL is not challenging the Commission's calculation of agricultural sales at present, the provisional sharing of losses, which is not in accordance with the Regulations, should not be required at this stage.
- v. There is an error in the energy balance for the MYT Control Period. Due to this error, sales for the Control Period have been overstated. In view of the decreasing sales of Industrial category, the Commission may lower its Industrial sales projections. Further, LT Agricultural sales have been understated due to an error in the connected load considered for projecting sales.
- vi. The Commission did not consider the reconciliation of opening GFA for FY 2014-15 submitted by MSEDCL in its MYT Petition. Further, Rs. 483 crore has been allowed as capitalization of Infrastructure Scheme Phase II for FY 2015-16 as against Rs. 2440 crore projected by MSEDCL. To the Commission's observation that such capitalization was allowed based on the progress report furnished by MSEDCL, MSEDCL requested that the capitalization be reconsidered based on the Audited Accounts for FY 2015-16 which are now available.
- vii. MSEDCL has separately filed a Miscellaneous Application for amending the O&M expenses provision in the MYT Regulations. The Commission has reserved that Application for Orders. The O&M expenses approved in the MYT Order are much lower than warranted. With such lower approved O&M expenses, MSEDCL will not be able to meet its employee expenses for FY 2017-18, and it will affect its ability to serve consumers. Hence, O&M expenses may be allowed as projected in the MYT Petition.

- viii. The Commission has ruled that Additional Surcharge will not be applicable to Captive Users to the extent of their self-consumption. However, while projecting revenue from Additional Surcharge, the Commission has considered consumption of such Captive Users also. This is an error apparent on the face of the record which needs to be corrected.
 - ix. The Commission in its previous Tariff Orders did not allow MSEDCL's claim for any excess or short provision of depreciation in prior period adjustments. However, in the impugned Order, the Commission has deducted excess provision on depreciation through prior period adjustment. This is not consistent with its earlier Orders, and hence requires to be reviewed.
 - x. Bhusawal Unit 3 and Nashik Unit 3, 4 and 5 are costly Generating Units but, due to transmission constraints, these Units are being run. However, the Commission has not included these Units in its monthly Merit Order Despatch (MOD) projections. Further, there is an error in the fixed cost considered for Adani Power's 1200 MW PPA. All these have lead to understating the power purchase cost of MSEDCL.
 - xi. The Commission has included penalty refund of Rs 109 crore to Adani Power in O&M expenses, which is subjected to sharing of efficiency losses as per the Regulations. This penalty of Rs. 109 crore was considered as Non-Tariff Income in previous years. Hence, Rs. 109 crore should be allowed over and above O&M expenses.
 - xii. Provisional imposition of RPO Regulatory Charges has created further difficulties in the critical financial situation of MSEDCL. MSEDCL has filed a separate Petition regarding the Commission's direction on fulfilling RPO by FY 2015-16. The Petition is pending before the Commission. Hence, the provisional imposition of RPO Regulatory Charges may be reviewed.
 - xiii. There is an error in the intangible assets written off for FY 2014-15. The impugned Order records that the GFA Table in the Annual Accounts does not show intangible assets written off, and hence the Commission has disallowed expenses towards such write off. However, at the same time, the Commission has reduced the GFA of MSEDCL on account of intangible assets written off. This inconsistency in the impugned Order needs to be corrected.
 - xiv. Rs. 24251 crore is the total impact of the review sought in the present Petition. The Commission should also allow carrying cost on this amount.
3. The Intervention Application filed by MVGS in MA No.5 of 2017 has been allowed by the Commission. MVGS stated that:
- i. As against MSEDCL's proposed Revenue Gap of Rs. 56372 crore, the Commission in the impugned Order has allowed a Revenue Gap of Rs. 9149 crore. Now, through the

present review Petition, MSEDCL is seeking approval for a Gap of Rs. 24251 crore which, if allowed, would lead to a tariff increase of 11.65%. One can have sympathy about the precarious financial position of MSEDCL, but there are limitations on what can be allowed through a review Petition. Every issue raised needs to be scrutinized against the provisions governing review of Orders.

- ii. The Auditors have made serious adverse remarks relating to the fixed assets of MSEDCL in the Annual Accounts for FY 2014-15. According to the Auditors, MSEDCL does not undertake physical verification of assets, which is mandatory. Therefore, the Commission should undertake third party verification of MSEDCL's assets. Cost benefit analysis reports should also be verified before allowing capitalization of schemes.
 - iii. MSEDCL's contention of reduction in HT Industrial sales may be true only upto the month of October, 2016 because, subsequent to imposition of Additional Surcharge and revised Cross Subsidy Surcharge from November, 2016, Open Access consumers are returning to MSEDCL. As regards Agricultural sales, MSEDCL may be directed to file its MTR Petition along with the Report of the Committee on Agriculture sales, which would have to undergo a public process.
 - iv. Regarding MSEDCL's request to add 3 Generating Units/Stations in the MoD stack, it is observed that power from 9 Generating Units which were not part of the MoD approved in the impugned Order is being scheduled. Considering FAC, there is only a 4 paisa increase in Average Power Purchase Cost, the impact of which would not be more than Rs. 300 crore for 9 months. The Applicant has calculated a negligible additionality of 4 paise, considering the cumulative power purchase summary for April-December, 2016 shown on MSEDCL's website, which may be referred to. However, the Applicant has no objection to some other treatment of genuinely 'must run' Unit impacts if there are adverse consumer perceptions regarding passing on such increase in FAC.
 - v. The Commission has allowed O&M expenses as per the provisions of the MYT Regulations, 2015. These Regulations have now achieved finality. Hence, MSEDCL's request of allowing O&M expenses as per its MYT Petition cannot be allowed.
 - vi. The Distribution Loss trajectory may be revisited only after the Committee report becomes available.
 - vii. All these issues raised by MSEDCL cannot be allowed through a review Petition. MSEDCL may pre-pone filing of its MTR Petition for early relief on these issues.
4. Prayas Energy Group, Authorized Institutional Consumer Representative, stated that it would give its detailed written submission. In the meantime, it stated as follows:

- i. Most of the issues raised are not admissible under review proceedings. Such review Petition will vitiate the tariff determination process as it does not require public consultation.
 - ii. The MYT Order has set out the detailed rationale for its interim assessment and dispensation regarding Agricultural sales. This can be reviewed during MTR proceedings once MSEDCL files the report of the Committee on Agricultural sales.
 - iii. The sharing of efficiency gains and losses would in any case be reviewed in MTR proceedings. To do so now would be to revisit the merits of the impugned Order, which is beyond the scope of review.
 - iv. Under the guise of review of O&M expenses, MSEDCL is asking the Commission to go against or completely change its own MYT Regulations. Besides, it has filed a separate Petition for this, and would also have an opportunity at the MTR stage.
 - v. Income from Additional Surcharge depends on the actual Open Access sales. At the time of MTR, the actual sales under Open Access will be available, and hence it will be better to review this issue at the time of MTR.
 - vi. During the public consultation process on the MYT Petition, MSEDCL had not claimed any carrying cost in order to avoid impact on consumer tariffs, that it could be met by increased efficiency, etc. But now in this Petition, MSEDCL is seeking carrying cost on the amount to be allowed in review. This should not be allowed.
 - vii. The 'must run' dispensation for some Units because of transmission issues, etc. cannot be in perpetuity, and the issue should be examined comprehensively.
 - viii. The review Petition should not be admitted. If at all the Commission decided to admit the Petition then further process should be through public consultation similar to the proceedings on the MYT Petition.
5. CMIA, Authorized Institutional Consumer Representative, referred to its written submission circulated today, which includes the, following among other points:
- i. MSEDCL is not serving copies of its Petitions within time, and CMIA received it only on 07/03/2017. The scope of review proceedings is limited. Most of the issues raised are new issues which cannot be allowed in review.
 - ii. MSEDCL delayed filing its MYT Petition for 2 years. MSEDCL may be directed to file its Petition written along with the Report of the Committee on Agricultural sales, which was to be finalized by 31.03.2017.
 - iii. As regards the much higher capitalization claimed, MSEDCL has submitted new material regarding the progress of Infrastructure Scheme Phase-2. Such new material cannot be a basis for review of the MYT Order.

- iv. Annual Accounts of FY 2014-15 have comments of the Auditors regarding serious irregularities in accounting of fixed assets by MSEDCL, including regarding asset verification and power purchase. Under these circumstances, third party verification of MSEDCL's assets is essential. Till such verification is completed, GFA of 31 March, 2013 may be allowed to MSEDCL. Digitization and other system's should also be put in place.
 - v. Re. capex cost-benefits analysis, for instance for capacitor banks, impact data can be maintained. In case of sub-stations, some assessment of impact on losses on account of reactive powers should be made.
 - vi. In MYT Petition, MSEDCL had requested to reduce its ARR by excess provision on depreciation through prior period adjustment. Now, MSEDCL is seeking to reverse such treatment allowed by the Commission. Such request cannot be allowed in review.
 - vii. In impugned Tariff Order, the Commission has restated the Distribution Loss to higher level, indicating a higher level of inefficiencies. Hence, Distribution Loss trajectory should be maintained at 13.50% or lower.
 - viii. Electricity Tariff in Maharashtra is already high. Any additional increase in tariff will affect the consumers very adversely.
6. Shri. Hemant Kapadia, Authorized Individual Consumer Representative, stated that he would file his written submission. In the meantime, he mentioned the following:
- i. Though he is an Authorized CR, MSEDCL has not served the review Petition to him. He became aware of this Petition through newspaper reports.
 - ii. The objective of the MYT Regulations is to have stability in electricity tariff over the Control Period. The MYT Order was issued on 3 November, 2016. Now, if this Petition is allowed, this objective will be defeated, particularly since the claim amounts to around 40% of the ARR approved.
 - iii. The report of the Committee on Agricultural Sale is expected by 31 March, 2017. Agricultural sales contribute 25 to 30% to the total sales of MSEDCL. If there is uncertainty about such considerable quantum of sales then no purpose will be served by admitting this review Petition.
 - iv. MSEDCL is claiming depreciation on assets created by consumers under DDF schemes. This is not correct. Third Party verification of assets will reveal such facts.
 - v. As per the Tariff Policy, consumer tariffs should be within the range of $\pm 20\%$ of ACoS. At present, tariff of most consumer categories is more than 20% of ACoS. Any tariff hike will further increase this gap.

7. The Commission directed MSEDCL to serve its review Petition to authorized Individual CRs. Institutional and Individual CRs shall file their responses, if any, within 10 days with copies to MSEDCL. MSEDCL shall file its Rejoinder, if any, within 10 days with copies to them.
8. The Commission noted that representations have been received from Shri Mahaveer Jain and some others who are not CRs or parties to these proceedings. These representations are also on points which are not specific to the issues raised in the Review Petition, and may be taken up separately during the forthcoming MTR proceedings. In the meantime, the representations will be forwarded to MSEDCL.

After filing of the above submissions, the Secretariat of the Commission will communicate the next date of hearing.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**