

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

Dated: 15 June, 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. Satish Chavan (Rep)
Shri. Milind Digraskar (Rep)

For the Intervener: Shri. Pratap Hogade (Rep)

Consumer Representatives: Smt. Ann Josey (Prayas)
Dr. Ashok Pendse (TBIA)
Dr. S. L. Patil (TBIA)
Shri. Omprakash Rathi (CMIA)
Shri. Hemant Kapadia (Individual CR)
Shri. Sunil Sonawane (Individual CR)

Daily Order

1. Heard the representatives of the Petitioner, the Intervener and Consumer Representatives.
2. MSEDCL stated that:
 - i. In compliance of the Commission's direction in Daily Order dated 23 March, 2017, copy of the Review Petition has been circulated to all Institutional as well as

Individual CRs. MSEDCL has also filed detailed replies to the objections of Prayas (Energy Group) and MVGS.

- ii. Considering the precarious financial condition of MSEDCL, relief may be granted expeditiously.

3. MVGS (Intervener in MA No.5 of 2017) stated that:

- i. MSEDCL is seeking approval for a Revenue Gap of Rs. 24251 crore which will have a huge impact on Tariff. In its Judgment on an earlier Appeal filed against an MERC Order, APTEL had ruled that public consultation is mandatory before allowing any tariff hike. Hence, the relief sought in the present Review Petition cannot be granted without a proper Public Hearing process. Alternatively, the Commission may ask MSEDCL to file its Mid-Term Review (MTR) Petition early, which is due for filing by 30 November, 2017, and the present Review Petition can be clubbed with it.
- ii. MSEDCL has stated that any further delay in granting relief may lead to the collapse of MSEDCL and consumers may be subjected to Load Shedding. This is not correct as it is obligatory on MSEDCL to provide electricity to its consumers.
- iii. MSEDCL has also stated that it does not have a policy for physical verification of its assets and does not have any objection if the Commission undertakes such verification. Hence, the Commission may undertake third party verification of MSEDCL's assets.
- iv. Para 8.2 of the Tariff Policy, 2016 mandates the Commission to undertake independent assessment of base-line data for various parameters for every Circle of the Distribution Licensees. It further mandates the Commission to institute a system of independent scrutiny of financial and technical data submitted by Licensees. The Commission pursue these provisions of the Tariff Policy.
- v. As against the approved average power purchase rate of Rs 3.80/kWh, MSEDCL's actual power purchase rate for the period of April-February, 2017 was Rs. 3.75/kWh, i.e. lower than the approved rate. However, in the current month, MSEDCL has levied average FAC of Rs. 0.56/kWh, details of which are not available on MSEDCL's website. The Commission in its Order dated 24 December, 2013 (Case No. 170 of 2013) had directed MSEDCL to upload the details of FAC on its website, but MSEDCL is not complying with this direction.
- vi. The Bombay High Court, in its Judgment dated 11 February, 2004 has expressed its opinion on T&D Losses. Further, the Supreme Court in its Judgment dated 5 November, 1993 had issued directions relating to 'protection of the interest of consumers'. These comments and directions of the Courts should be considered while deciding the Review Petition.

4. Prayas (Energy Group), Authorized Institutional Consumer Representative, stated that:
 - i. There is no ground for review of claims such as O&M expenses and Agricultural sales. O&M expenses has been approved based on MYT Regulations, 2015. Similarly, the Commission has provided the detailed methodology and reasons while approving Agricultural sales. Such reasoned decision cannot be altered under the review jurisdiction.
 - ii. MSEDCL has claimed a huge amount in its Review Petition. Such impact cannot be passed on without a public consultation process. If the Commission decides to admit this Review Petition, Public Hearings should be held at several locations in the State. Many of the issues in the Review Petition can also be dealt with at the MTR stage instead.
 - iii. Although MSEDCL has requested immediate relief for overcoming its precarious financial situation, allowing such a large Tariff increase may lead to migration of MSEDCL's high end consumers to Open Access, Solar Rooftop Net-Metering, etc. and thereby worsen its situation.
 - iv. Tariff increase is not the only solution for overcoming the precarious financial situation. MSEDCL should look for other options such as increased financial support from Government under UDAY, etc.
5. Thane-Belapur Industries Association, Authorized Institutional Consumer Representative, stated that:
 - i. During the public consultation process on the MYT Petition conducted from June to July, 2016, MSEDCL submitted that the IIT Report on Agricultural consumption is expected to be finalized soon. MSEDCL should submit the status of the Report and, if it is ready, it should be submitted to the Commission.
 - ii. Since its first Tariff Petition in the year 2000, MSEDCL is claiming a difficult financial position for justifying tariff hikes. This cannot be a ground for relief under a Review Petition. MSEDCL should withdraw this Petition and file its MTR Petition instead.
 - iii. The claim of Rs 24,251 crore is huge and will have a very adverse impact on Industries and other consumers. MSEDCL can include this claim in its MTR Petition, which is due by 30 November, 2017. However, if the Commission admits the Review Petition, then Public Hearings should be conducted at different locations in the State.
 - iv. Details of FAC should be made available on MSEDCL's website.

6. Chamber of Marathwada Industries and Agriculture (CMIA), Authorized Institutional Consumer Representative, stated that:

- i. Even though the Commission in its Daily Order dated 23 March, 2017 has directed MSEDCL to serve its Rejoinder to all parties and CRs, MSEDCL has provided it only to those who have filed written objections and not to others.
- ii. The present Petition is actually an Appeal in the guise of Review, and needs to be rejected. Instead, MSEDCL should be directed to file its MTR Petition.
- iii. Industry in Maharashtra cannot afford any increase beyond the existing tariff. Presently, Industries are facing a situation such that all their efforts to improve efficiency and thereby reduce costs are nullified by higher electricity tariffs.
- iv. MSEDCL should try to reduce its inefficiencies which will help it to generate savings for mitigating the Revenue Gap. With its huge skilled manpower, MSEDCL has the capability for its revival. Inefficiencies of MSPGCL and losses in MSEDCL should be reduced on priority.

7. Shri. Hemant Kapadia, Authorized Individual Consumer Representative, stated that:

- i. The MYT Order was issued on 3 November, 2016. Within three months, MSEDCL has filed the present Review Petition with an additional demand which is 40% of its MYT ARR. However, MSEDCL has not been able to establish any error in the impugned MYT Order.
- ii. From 2005 to 2012, consumers have faced 12 tariff hikes. Through the impugned MYT Order dated 3 November, 2016, the Commission has decided the tariff for several years, which provided much needed visibility in tariff projections. Therefore, instead of altering such tariff at this stage, MSEDCL should club this Review Petition with its upcoming MTR Petition.
- iii. Status of IIT Report on Agricultural consumption is not known. If the Commission desires, CMIA is ready to conduct audit of Agricultural consumption in the Aurangabad area with the help of local Engineering Colleges.
- iv. MSEDCL should not claim the costs relating to its assets in the ARR since physical verification of assets is not completed.
- v. Almost every work of consumer is done under 1.3% supervision charges and hence cost of such work should not be accounted in ARR of MSEDCL and depreciation, etc. may not be considered.

8. Shri. Sunil Sonawane, Authorized Individual Consumer Representative, stated that:
- i. Even after the Commission's direction at the last hearing, MSEDCL has not served a copy of its Review Petition to him.
 - ii. MSEDCL has claimed Rs. 24251 crore and carrying cost in its Review Petition. Such a large amount cannot be allowed through a Review Petition, and hence the Petition should be dismissed.
 - iii. Gross Fixed Asset which is used for tariff determination is yet to be verified physically. Hence, the Commission should direct MSEDCL to complete such physical verification on priority.
 - iv. MSEDCL should be directed to publish the Circle-wise profit and loss so that the picture becomes clear to consumers. High losses in certain Circles due to inefficiencies should not be passed on to other consumers.
9. In reply to the issues raised during the hearing, MSEDCL stated that:
- i. Initiating MTR process will take another six to seven months. In the present Petition, MSEDCL has only claimed review on the issues where there is error apparent on the face of the record. Hence, the Review Petition needs to be decided without waiting for the MTR Petition.
 - ii. MSEDCL is not challenging the Commission's decision on Agricultural sales for FY 2014-15 and FY 2015-16. The Report of the Committee set up for studying Agriculture Consumption is yet to be received by MSEDCL. Once it is received, it would be submitted to the Commission.
 - iii. Since April, 2014, MSEDCL is maintaining its Asset Register in the SAP system. The Companies Act mandates physical verification of assets on annual basis. Although at present MSEDCL does not have a policy for physical verification, it is in the process of framing the policy.
 - iv. Details of FAC are being uploaded on MSEDCL's website on regular basis. However, if there is a problem in viewing or downloading, it will be sorted out immediately.
10. The Commission notes that the Review Petition has been filed under Regulation 85 of MERC (Conduct of Business) Regulations, 2004 which specifies 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.”

Thus, the ambit of review is limited and MSEDCL's Petition has to be evaluated accordingly. However, before passing on the impact of such review, if any, the Commission will ensure that process of public consultation mandated under the Electricity Act, 2003 and as stipulated in the APTEL Judgment are complied with.

Case is reserved for Order.

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

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