

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www. merc.gov.in**

Case No. 46 of 2017

Dated: 15 November, 2017

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

In the matter of

**Petition of Maharashtra State Electricity Distribution Co. Ltd., for modification of the directives of the Commission dated 01.03.2017 for refund of FAC for the period from April to October, 2016 amounting to Rs.369.54 crore to the Consumers.
(Case No. 46 of 2017)**

And

**Intervention Application filed by GMR Warora Energy Ltd
(MA No. 21 of 2017 in Case No. 46 of 2017)**

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

GMR Warora Energy Ltd.Intervener

Appearance:

For the Petitioner: Smt. Deepa Chawan (Adv)

For the Intervention Applicant: Shri. Amit Kapoor (Adv)

Daily Order

1. Heard the Advocate of the Petitioner and the Intervener.
2. MSEDCL stated that:
 - i. Subsequent to last hearing held on 22 June, 2017, MSEDCL has amended its Petition. Although MSEDCL is seeking review of the Commission's direction of refunding FAC of Rs. 369.54 crore to consumers, it has already complied with that direction by refunding the FAC amount in seven installments.

- ii. The Commission's direction to refund Rs 369.54 crore on the basis of recalculation of FAC for the period of April to October, 2016 by considering the power purchase cost approved in MYT Order dated 3 November, 2016 is inconsistent with the date of applicability of the Order, which is from 1st November, 2016.
 - iii. MYT Order dated 3 November, 2016 was made applicable from 1 November, 2016. By directing recalculation of FAC, the Commission has in fact applied it from 1 April, 2016. The applicability of the Order cannot be changed by a letter from the Commission. Further, such applicability has been changed only for one component of ARR, i.e. power purchase expenses.
 - iv. During the period of April to October, 2016, the MYT Order dated 26 June, 2015 was applicable. Accordingly, MSEDCL has calculated FAC for these months based on the power purchase cost approved in that Order. Further as per Regulation 10 of the MYT Regulations, 2015, post applicability of the revised Tariff from 1 November, 2016, MSEDCL had submitted FAC calculations for November, 2016 for prior approval of the Commission in February, 2017. Thereafter, MSEDCL is submitting FAC submissions for post facto approvals.
 - v. The Commission's direction of recalculating FAC for the period of April to October, 2016 by applying the revised power purchase expenses approved in MYT Order dated 3 November, 2016 is not consistent with law and hence needs to be reviewed.
3. GMR Warora Energy Ltd (GWEL), Intervention Applicant, stated that:
- i. The Commission in its FAC vetting report dated 1 March, 2017 has rejected MSEDCL's request of deferring refund of FAC of Rs. 369.54 crore and directed MSEDCL to refund this amount in seven equal installments to consumers. In the same letter, the Commission has also rejected MSEDCL's prayer of recovering this amount from generating companies including IPPs.
 - ii. Nevertheless, MSEDCL has withheld Rs. 42.30 crore from the bill raised by GWEL towards compensation for Change in Law events from March, 2014 to December, 2016, stating that the amount is withheld subject to the final decision of the Commission in the present Case.
 - iii. As per provisions of the PPA, MSEDCL cannot unilaterally withhold GWEL's payments. Further, withheld amounts cannot be more than Rs. 5 crore per annum.
 - iv. Thus GWEL is a necessary and proper party for the adjudication of the present Petition. MSEDCL has already handed over a copy of the Petition. GWEL may be allowed to intervene and file its submission.

4. With regard to the Intervention Application, MSEDCL suggested that the Commission may first decide its review Petition and thereafter the issue of the Applicant can be dealt with appropriately.
5. The Commission notes that, vide its email dated 12 November, 2017, Chamber of Marathwada Industries and Agriculture (CMIA), Authorized Institutional CR, has mentioned that it has not received the revised Petition of MSEDCL. MSEDCL should ensure that its revised Petition is circulated to authorized Institutional CRs. All parties, including Intervener may file its submission, if any, within two weeks with copy to all parties.
6. GMR Warora Energy Ltd. has filed an Intervention Application. With regards to the issue raised by GWEL, the Commission is of the view that it may wait till the Order in the instant Petition filed by MSEDCL is issued and approach the Commission depending on the outcome, or may file a separate Petition at this stage. The Commission, therefore, rejects GWEL's Intervention Application.

Case is reserved for Orders

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

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