Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 130 of 2007

Dated: March 27, 2008

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

IN THE MATTER OF:

Maharashtra State Electricity Distribution
Company Limited,
Prakashghad, Plot No. G-9,
Bandra (East), Mumbai-400 051 .... Appellant
V/s.

1. Maharashtra Electricity Regulatory Commission
13th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

2. Chamber of Small Scale Industry Associations,
TSSIA House, Plot No. P-26,
Road 16/T, Wagle Industrial Estate,
Thane-400 604.

3. Laghu Udyog Bharati-Maharashtra
Pradesh Ashida House, A-308,
Road No. 21, Wagle Industrial Estate,
Thane-400 604.

4. Kolhapur Engineering Association
Through its Honorary Secretary
Shri Shrikant Nayandev Dudhane,
1243, Shivaji Udhamnagar,
Kolhapur-416008.

5. Mahratta Chamber of Commerce,
Industries and Agriculture,
Post Box No. 525, Tilak Road,
Pune-411 002.

6. Nashik Industries and Manufacturers Association,
NIMA House, P-401, MIDC Satpur,
Nasik. .... Respondents

Counsel for the appellant	:	Ms. Deepa Chawan, Ms. Alpana Dhake & Ms. Anita Rajora
Counsel for the Respondents	:	Mr. Buddy A.Ramachandran for Resp.1 – MERC Mr. M.G. Ramachandran for Resp. 4-Mumbai Grahak Panchayat Mr. Abay Nevgi & Ms. Shuchi Jain for Respondent 5.

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal of the Maharashtra State Electricity Distribution Company Ltd. (for short 'MSEDCL') is directed against the order of the Maharashtra Electricity Regulatory Commission (for short 'MERC') dated March 3, 2007 rendered in Review Petitions filed against the order of the MERC dated October 20, 2006.

2. The Appellant filed its Annual Revenue Requirement petition on July 20, 2006 for the purpose of determination of tariff for the FY 2006-07. Thereupon the Commission issued a

public notice inviting objections in respect of ARR petition. Public hearings were held at various places between the period August 17, 2006 to August 25, 2006. After public hearing the MERC passed the tariff order by which in respect of LT-V categories, it was directed as follows:-

"(e) LT V – General Motive Power

LT V- General Motive Power	**Fixed Charge (Existing) Rs./ HP/ mth**	**Fixed Charge (Revised) Rs./ kVA/ mth**	**Energy Charge (Existing) p / kwh**	**Energy Charge (Revised) p / kwh**	***Revenue p.u. (Revised) Rs./ unit***	***Cross Subsidy (Revised)***
0 – 1000	60	220	230	300	4.40	33%
> 1000	60	220	250	400		

Through this Order, the Commission has abolished HP based tariffs applicable to Low Tension Industrial Consumers (LTP – G i.e. General Motive Power). The fixed charge billing for this category shall be done now onwards on the MD basis only and would be charged at 65% of Maximum Demand or 40% of the contracted demand whichever is higher.

The Commission has made ToD tariff mandatory for this category in this Order. To ensure effective response to the prescribed ToD tariffs and energy conservation measures, the ToD tariffs have been increased marginally over existing levels. The Commission is of the view that if *consumers respond effectively to the ToD incentive, it shall bring down the tariff impact.*

Further, the Commission directs MSEDCL to initiate an immediate awareness program wherein the LT Industry V consumers would be required to declare / register their contract demand, within two months of the issue of this Order. MSEDCL should install appropriate tri-vector meters capable of recording Maximum Demand for all the consumers in this category, within three months of the issue of this Order. Till the MD meters are in place, MSEDCL shall bill the consumers on the following basis:

- *For consumers below 25 HP for whom kVA based meters have not been installed, billing would be based on 50% of sanctioned load converted into kVA and 65% of such derived contracted demand would be used for billing purpose.*
- *For Consumers below 25 HP who have kVA based meters installed, billing would be based on 0.9 power factor.*

The Commissioner is of the view that all the consumers above 25 HP, are already having MD (kVA) based meters".

3. The Chamber of Small Scale Industry Associations, Laghu Udyog Bharati-Mahatrashtra Pradesh and Kolhapur

Engineering Association filed review petitions before the MERC against the order dated October 20, 2006 on the ground that the tariff order relating to LT-V category adversely affects the low voltage consumers and small scale industries as it casts unbearable increase in tariff. It was, *inter alia,* submitted that the monthly bills of consumers of LT-V category would be increased by minimum of 40% and maximum of 80%.

4. On December 26, 2006, the MERC sought information from MSEDCL regarding progress in installation of MD meters. Pursuant thereto, the following information was submitted by the MSEDCL:-

S. No.	PARTICULARS OF LT-V CATEGORY	<=10KW	>10KW &<=20KW	>20KW& <=50KW	>50KW	TOTAL
1.	Total number of consumers as on 31.12.2006	159426	28822	34515	5062	227825
2.	Number of consumers who have opted for LTMD tariff before issue of Tariff order dated Set. 29, 2006	0	9	88	724	821
3.	TOD meters with MD option as on 31.12.2006	349	315	1307	3458	5429
4.	NON-TOD Meters with MD Option as on 31.12.2006	28	50	180	96	354

Beside, it was submitted by MSEDCL as follows:-

"i. The details given above may not be considered in isolation since major progress has subsequently been made in metering of LT-V consumers as envisaged in the Tariff Order dated 20.10.2006.

ii. In the absence of metering, MSEDCL is billing the consumers as per the methodology determined by the Commission, i.e. on assessment basis.

iii. The various efforts taken by MSEDCL with respect to consumer awareness are as follows:-

a. MSEDCL has appealed to declare the contract demand (CD) in the bills issued to LTP-G consumers

b. MSEDCL has also requested consumers orally to declare the Contract Demand (CD)

c. MSEDCL has undertaken the meter replacing work on war footing and intends to complete the same by 28th February 2007. However, Commission may also grant the extension for completion of metering work till 31st March 2007.

iv. Though MSEDCL was directed to complete the requisite metering (as envisaged in the Tariff Order) in 3 months time from date of Tariff Order, MSEDCL was unable to do so because of the huge quantum of work involved, *logistics of procurement and dispatch of meters upto sub-division level, however, now MSEDCL has initiated the work on war footing and intends to complete 100% metering work w.r.t. LTP-G (LT-V consumers) by 28th February 2007. However, in case MSEDCL is unable to complete the metering work due to some reasons, the Commission may also grant the extension till 31st March, 2007.*

v. It is requested that, pending the compliance of the directive with regards to the completion of metering, MSEDCL may be allowed to bill as envisaged in the Tariff Order and also may be kept revenue neutral (for 2006-07 also) with regards to the recovery through retail tariff, for any decision taken in this regard".

5. The MERC on consideration of the submissions of the parties and the material on record reviewed its order dated October 20, 2006.

6. According to MERC, the data submitted by the MSEDCL on the progress of installation of MD meters for LT-V category showed complete lack of application and seriousness on the

part of MSEDCL in implementing its order. MERC underlined the following reasons for its view:-

" i. *In its ARR and Tariff Petition for FY 2006-07, as well as in its MYT Petition for the Control period from FY 2007-08 to FY 2009-10, MSEDCL has indicated the total number of consumers in LT-V category (erstwhile LTP-G category) in FY 2006-07 as around 2.95 lakh consumers. However, while submitting the status of metering for the entire population of LT-V consumers, the total number of consumers as on 31.12.2006 has inexplicably been indicated as 2.28 lakh consumers, amounting to a mismatch of 67000 consumers.*

ii. Though MSEDCL had been directed to install meters with TOD facility for all consumers over 20 kW sanctioned load, as far back as in the Tariff Order for FY 2003-04, MSEDCL has installed MD meters with ToD facility for only 4765 consumers out of 39600 LT-V consumers above 20 kW sanctioned load (based on revised data submitted now).

iii. MSEDCL (erstwhile MSEB) has been steadfastly maintaining that all consumers including LTP-G, with sanctioned load of 20kW and above, have been provided with MD meters (having ToD features) to *meet compliance requirements of earlier Tariff Order directives.*

iv. *MSEDCL, in its ARR and Tariff Petition for FY 2006-07, requested for introduction of compulsory MD based tariffs for entire LT-V category, even though, by its own latest admission, it has completely failed to install MD meters for around 34850 out of 39600 LT-V consumers.*

v. *Even now, after the passage of three months of the Commission's Operative Order dated September 29, 2006, MSEDCL has installed MD meters for only 664 LT-V consumers, out of the total balance population of around 2.90 lakh consumers.*

vi. *The Commission finds it hard to place any reliance on MSEDCL's submission that significant progress has been made subsequent to December 31, 2006 given that tardy progress in metering achieved by MSEDCL over the last three years as highlighted above.*

vii. *Even in the Tariff Order in Case 54 of 2005, the Commission, being aware of possible transitional fallouts, had directed MSEDCL to initiate an immediate awareness programme wherein LT-V consumers would be required to declare/register their contract demand, within two months of the issue of this Order. The efforts taken by MSEDCL in*

> *communicating with its consumers and educating them regarding the concept of Contract Demand also appear to be very lackadaisical, as no evidence has been submitted regarding the efforts taken to educate the consumers. Also, given the number of representations received by the Commission in this regard, it is clear that MSEDCL has failed completely, for reasons best known to them, in its duty to create awareness amongst the consumers about this very significant change in billing procedure.*

7. On the question of maintainability of the Review Petitions, the MERC was of the view that the same was maintainable as the discovery of consequences of the order dated October 20, 2006 was a new matter. The MERC was also of the view that in so far as levy of demand charges of Rs. 220/kVA/month for LT-V category consumers, the consumers were subjected to unintended tariff shock due to failure of MSEDCL to install MD meters and to educate the consumers regarding the implications of proper assessment of contract demand and the need for registering the same with the MSEDCL. This ground was found to be a sufficient reason for

review of the order dated October 20, 2006. The MERC accordingly superseded its earlier directions contained in the order dated October 20, 2006 for levy of demand charges at the rate of Rs. 220/kVA/month and directed the MSEDCL to revert back to the earlier prevailing tariff of Rs. 60 per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL.

8. The order was made effective from October 1, 2006 and it was directed that consequential credit be given in future bills issued in the next two months. The modification was made applicable even for consumers who had already installed MD meters. Besides the MERC was of the view that since MSEDCL failed to install the desired meters even for consumers above 20 kW, who should have been metered long ago, the revenue loss due to the modification of the order will be to the account of MSEDCL and it will not be entitled to claim recovery of the shortfall in revenue on this account at a later stage.

9. We have heard learned counsel for the parties.

10. It was contended by learned counsel for the appellant that MERC was not right in reviewing its order in as much as the power of review was to be exercised in accordance with provisions of order 47 Rule 1 CPC. According to learned counsel it was not a case of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of respondent nos. 3,4,5 and 6 herein or could not be produced by them at the time when the order was passed nor there was any mistake or error apparent from the face of the record. It was also submitted that there was no other sufficient reason for review of the matter.

11. We have considered the submissions of the learned counsel for the appellants but we regret our inability to accept the same. The consequence of the order dated October 20, 2006 is surely a new and important matter. It has been pointed out by the MERC in its impugned order that the levy of demand charges of Rs. 220/kVA/month for LT-V category consumers and the unintended tariff shock caused to the

consumer category due to failure of MSEDCL to install MD meters and to educate the consumers regarding the implications of proper assessment of contract demand was a sufficient reason for review of the order dated October 20, 2006. Obviously the impact of the order dated October 20, 2006 could be known only after it was passed. The scale of increase of tariff of LT-V category was more in comparison to any other category. It mostly affected only the consumers falling under LT-V category. It was pointed out in the review petitions that many of the small scale industries had to be closed. It was also pointed out that about three lakh small scale industries were covered under LT-V category and on an average about 10 workers in each of the small scale units are employed, which means that about 30 lakhs people are employed in the small scale industry.

12. The economic progress of the State depends upon its industrial output. Closure of small scale units which were not able to bear the hike in their electricity bills does not augur well for the economic health of the State. The MERC

had directed the MSEDCL to complete the installation of MD meters for LT-V category. The data given by the MERC in its impugned order clearly shows that the work was not completed within the stipulated time and it was proceeding on tardy pace. Pending the installation of meters, the method for billing placed a heavy burden on LT-V consumers.

13. The grievance of the consumers relating to bills for the intervening period between the date of the order of the MERC, viz. October 20, 2006 and installation of MD meters is justified. Therefore, we are of the view that the relief granted by the MERC by directing MSEDCL to revert back to the earlier prevailing tariff of Rs. 60/- per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL cannot be faulted. However, in so far as the MERC has decided that the revenue loss due to the modification of its order in review will be to the MSEDCL's account and MSEDCL will not be entitled to claim recovery of the shortfall in revenue on this account at a later stage needs modification as in our view in case of any

revenue loss after truing up will need to be recovered from the consumers. We order accordingly.

14. In this view of the matter, it is not necessary to go into the question whether the MSEDCL has been subjected to unwarranted penalty as alleged by the appellant. With the aforesaid modification appeal is disposed of.

(Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated: March 27, 2008

"Reportable/Non-Reportable"