

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
13th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai 400 005.
Tel. 22163964 / 22163965, Fax No. 22163976
E-mail mercindia@mercindia.com
Website: www.mercindia.com

Case Nos. 7 and 8 of 2005

In the matter of
Compliance of Tariff Order with regard to continued recovery of
Regulatory Liability Charges by MSEB/ MSEDCL.

Dr Pramod Deo, Chairman
Shri A. Velayutham, Member

ORDER

Dated: 9th September, 2005

Through its summary and detailed Tariff Orders dated 1st December, 2003 and 10th March, 2004 in respect of Maharashtra State Electricity Board (MSEB) (Case No. 2 of 2003), the Commission had introduced a Regulatory Liability Charge (RLC) on subsidizing categories of consumers, viz. LT commercial, LTPG, HTP-1, HTP-II and Railways, taking into account various factors mentioned in the Orders.

2. Under their Application dated 29th January, 2004 (followed by a further submission dated 31st January, 2005 in response to a letter from the Commission seeking elaboration), the Electricity Consumers Association (ECA) (through its Secretary, Shri Ravi Anand) have alleged non-compliance of the Commission's Tariff Order with regard to the period for which RLC has been levied by MSEB (and, thereafter, by Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL), in whom the erstwhile MSEB's distribution functions have recently been vested). A similar Application dated 25th January, 2005 has been made by the Vidarbha Industries Association (VIA) through its President.

3. According to both Applications, the RLC was applicable only for one year from the date of effect of the revised tariff, i.e. from 1st December, 2003. However, MSEB have continued to charge RLC from the concerned consumers even after 30th November, 2004, in breach of the Tariff Order. Hence, the amount so recovered should be refunded with interest. The RLC itself should also be reviewed, and returned to the consumer categories through tariff reduction as per the dispensation envisaged in the Order. Essentially, the Applicants have relied on certain statements in the detailed Order, particularly the following:

"The net cost of the excess energy input requirement is Rs 947 crore.... Thus, there is a need to contribute Rs 947 crore towards the Regulatory Liability over a period of one year. The average rate of contribution works out to 50 paise per unit for the subsidizing categories...."

4. In their Replies dated 28th January, 2005 and 20th May, 2005, MSEB have stated, inter alia, that:



"The Hon'ble Commission by its tariff Order dated 1st December, 2003 followed by detailed Order dated 10th March, 2004, has introduced the Regulatory Liability Charge (RLC) at the rate of 50 paise per unit applicable to subsidizing categories viz. Low Tension Commercial, Low Tension General Motive Power, High Tension HTP-1 and HTP-II and Railway Traction supply....

As prescribed by Hon'ble Commission, the said RLC has been introduced to compensate the cost of excess losses, i.e. cost of additional power purchase required on account of higher energy input requirement....

The Hon'ble Commission for the financial year 2003-04 has estimated that the excess energy input requirement for the said year would be about Rs 947 crores (6107 million units at an average rate of 1.55 paise per unit) and has accordingly worked out the rate of contribution by above mentioned categories of consumers....

Accordingly with effect from 1st December, 2003, the Regulatory Liability Charge (RLC) is being levied and recovered from consumers belonging to subsidizing categories viz. Low Tension Commercial, Low Tension General Motive Power, High Tension HTP-1 and HTP-II and Railway Traction Supply."

5. The matter was heard on 14th July, 2005, clubbing both Applications together considering the common issues involved. At the outset, Shri R.B. Goenka for VIA referred to the provisions on RLC in the detailed Tariff Order, and quoted as under:

"As regards the Regulatory Liability, the Commission is of the opinion that only subsidizing consumers should contribute to the Regulatory Liability, which would have to be returned by the MSEB in future. Hence, the Regulatory Liability Charge has been designed such that all the subsidizing categories contribute the same amount of RLC to keep the MSEB afloat.

Further,

"the net cost of the excess energy input requirement is Rs 947 crore (6107 MU at an average rate of Rs 1.55 per unit). Thus, there is a need to contribute Rs 947 crore towards Regulatory Liability over a period of one year."

6. Shri Goenka also submitted that the time frame within which the RLC would be returned to the concerned consumer categories through reduction in tariff should have been mentioned in the Tariff Order since it is only an interim arrangement. MSEB/ MSEDCL have been taking advantage of the fact that no specific period has been mentioned, and are in fact not serious about reducing the T&D losses below the benchmark stipulated by the Commission. In this situation, collection of RLC by MSEB will go on, and the amounts would not be returned to consumers in the foreseeable future.

7. Shri Goenka also argued that the concerned consumers have been penalized twice. In their Reply, MSEB had stated that RLC is a component of the tariff. If that is so, RLC should also be considered for computation of incentives such as bulk discount, and power factor incentive, which is not the case.

8. Shri S.V. Deshpande, Counsel for ECA, set out the background of RLC, and referred to para 29.1 of the detailed Tariff Order:

"In the Tariff Order issued in January, 2002, the Commission had initiated the process of levying 'T&D loss charge' for all consumers in proportion to the average realization from that category. By introducing this charge, the Commission intended to create awareness among

the consumers regarding the additional cost of the excess T&D losses by levying this charge in an explicit manner."

After some time, certain Circles were exempted from payment of T&D loss charge because they had achieved the targeted T&D loss levels. Eventually, the T&D loss charge was done away altogether, and RLC introduced through the last Tariff Order. The Commission stated that:

"the T&D loss charge concept cannot be a long term solution and the problem has to be addressed in some other manner."

However,

Para-31: "If the cost of all the excess losses were disallowed, then it is most likely that the MSEB will be unable to meet its daily requirements and will be unable to supply power to its consumers.... The Commission is of the opinion that a pragmatic decision has to be taken in the best long-term interest of the electricity consumers in the State as well as the MSEB. Moreover, this is a transition period and MSEB is likely to be restructured in line with the principles enunciated in the EA, 2003. The Commission hopes that the restructuring will help the successor entities achieve the T&D loss reduction as envisaged, and the T&D losses are reduced in absolute MU terms.

Para-32: "In this context, Mumbai Grahak Panchayat (MGP), a Section 26 consumer representative has suggested that if the MSEB needed 'Oxygen' in the form of tariffs to recover the cost of the excess losses, the consumers would be willing to contribute the same, provided the Commission treated this contribution as a Regulatory Liability owed by MSEB to the consumers, as this was not a part of the MSEB's rightful revenue requirement."

9. Thus, Counsel for ECA submitted that the Commission clearly recognized that RLC was not a part of MSEB's rightful revenue requirement. Even though the spirit behind MGP's suggestion could be appreciated, the consumer cannot be required to pay for the inefficiency, incompetence and corruption on the part of MSEB, which is essentially what the RLC was designed to meet. Admittedly, MGP had suggested that if MSEB needed oxygen in the form of tariffs to recover the cost of excess losses, the consumers could contribute the same. However, this clearly could not continue indefinitely.

10. Counsel for ECA stated further that, while shifting from T&D loss charge to RLC, the Commission had determined that it is not the rightful revenue earning of MSEB and amounts to a loan from the consumers. However, this concept is still vague, and clarity is required in terms of the period for which such charge would continue and when it would be refunded. This also raises the question of the rate of interest payable to consumers upon refund in due course through tariff reductions, regarding which the Order is silent.

11. Counsel for ECA then referred to Para 8 of MSEB's Reply:

"Though the Hon'ble Commission has determined the said RLC on the basis of difference between the actual T&D loss level and desired T&D loss level for the year 2003-04, according to the Board, the process of levy and recovery of said RLC is a continuous process and therefore, pending any further directives from the Hon'ble Commission, the Board is continuing to levy and recover the said RLC from the consumers belonging to the subsidizing categories."

He pointed out that even MSEB had accepted that RLC was being charged only because further directives from the Commission were pending. Para 35 of the Order states that the net cost of the excess energy input requirement is Rs 947 crore at an average rate of Rs 1.55 per unit. Thus, there was a need to contribute Rs 947 crore towards RLC over a period of one year. This was the basis on which the consumers in the subsidizing categories were charged RLC at 50 paise. However, whether thereafter, i.e. from December 2004, the basis for calculating the charges has remained the same or not is a question that will have to be considered. It is time for the Commission to take a fresh look at this, and to bring clarity, specify the period of such revised charges, if any, and then pass a fresh Order. According to the Tariff Order, there is a need to contribute Rs 947 crore towards the RLC, not per year, but over a period of one year, which expired on 30th November, 2004. The Commission will also have to address the issue of how long consumers are expected to pay for the inefficiency, incompetence and corruption of the licensee, which is reflected in RLC.

12. Shri Goenka of VIA submitted that, if the RLC were a part of tariff, then a time limit will have to be stipulated for discontinuation and refund. However, RLC is considered as a liability, and not part of the tariff. As per Section 61(g) of the Electricity Act (EA) 2003, a time frame has to be specified to eliminate it if it is part of tariff and in the form of cross subsidy.

13. Shri Ravi Anand, Secretary, ECA added that, if MSEB/ MSEDCL are not showing any signs of improvement, it is not tenable to require consumers to continue paying money to them in some form or the other for it, by way of T&D loss charges or RLC or otherwise. Counsel for ECA contended that enough time had already been given to MSEB to improve. It was never implied by the Commission that RLC would be an ongoing dispensation. It was only a temporary measure. Now that MSEB have been unbundled into companies, the successor entities should try to achieve the target of 26.87% without 'oxygen' from the consumers, and the Commission should continuously monitor their progress. He suggested that the dispensation of RLC should be terminated for a period of six months on an experimental basis and the impact assessed, without which no efforts would be made for improvement. During that period, MSEDCL should submit a monthly report on their progress, with fresh computations of consequent requirements, if any.

14. Ms. Deepa Chawan, Counsel for MSEDCL, submitted that there is no ambiguity in the Tariff Order. By its very nature, it is operative for a particular period, viz. till the next process of revision is completed, and it has been passed after due public deliberation. What is actually being attempted by the Applicants amounts to a review of the Tariff Order through the back door. Moreover, VIA and ECA cannot claim to represent the entire subsidizing category at large to make statements on their behalf. The issues raised by the Applicants can be considered during the next tariff process.

15. Counsel for MSEDCL further submitted that there is absolutely no tenure mentioned in para 29 of the Order. The one year period mentioned in the Order is merely for the purpose of computation of RLC. It may also be mentioned that MSEDCL had in fact opposed levy of RLC. Moreover, the Tariff Order states that:

"The Commission directs MSEB to file six monthly information. The first such report for the entire year 2003-04 should be submitted by the end of 2003-04 and to also include total TDL Charges Circle wise. Subsequent reports should be submitted within two months of the half year."

The above clearly indicates the intention of the Commission, to continue the RLC until such time as the T&D loss level is at par with the target level of 26.87%, depending upon the deliberations during the next revision process. She also pointed out that, although the target level of 26.87% has not been achieved, the T&D losses have been reduced by almost 3%. She circulated MSEB's Energy Balance Statement (2004-05) during the hearing, which indicates the T&D losses as 35.28%. This is 3% less than the level of 38.20% for the year 2003-04.



16. Counsel for MSEDCL further submitted that the figure of Rs 947 crore computed in the Tariff Order was arrived at after considering certain estimates. On the basis of the present data, the figures work out to be higher, i.e. at 58 paise and not 50 paise provided in the Tariff Order for RLC, since the actual amount is Rs 1100 crore and not Rs 947 crore. Therefore, Counsel found no ambiguity in the Tariff Order. Whatever issues are contemplated by the Applicants can be raised during the next tariff proceedings.

17. Counsel for MSEDCL submitted that the suggestion to do away with RLC for a period of six months on an experimental basis cannot be contemplated at this juncture, i.e. pending tariff revision. The concept of RLC essentially contemplates return of money to the consumer categories through tariff, and has to be read harmoniously with the whole Tariff Order. Undoubtedly, it does not mean that one can go on charging irrespective of any progress in reducing T&D losses. She submitted that, at the same time, the import of the Order cannot be that interest is payable on RLC. If, in future, interest is to be made applicable on return of such RLC, then it would have to be decided during tariff proceedings, and not at this juncture.

18. Shri Goenka pointed out that Regulation 84 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations 1999 provides that the Commission, after being satisfied that there is a need to review the tariff and its terms and conditions, can review it suo moto. Counsel for ECA added that if any Order, by passage of time, suffers from any infirmity by way of vagueness or ambiguity, then it has to be reviewed or clarified. It is not necessary to wait until the next tariff proceedings. The Commission has inherent powers to rectify it. Shri Goenka hoped that the restructuring of MSEB would help the successor entities to achieve the T&D loss reduction due to better accounting of energy at different interconnection points and implementation of profit centres concept. Since the restructuring has now taken place, he submitted that T&D losses will have to be reviewed again.

19. The short point at issue in these two compliance Applications is the claim that the RLC introduced by the Commission through its last Tariff Order and effective from 1st December, 2003 had a tenure of only one year, and whether or not it should have been accordingly discontinued by MSEB from December, 2004, and any recovery made thereafter refunded with interest since it was not mandated by the Commission. Certain related issues have also been raised, such as the rate of interest at which RLC is to be returned to the consumers through tariff in future, and whether various incentives and discounts provided for in the tariff should take into account RLC also. Arguments have also been raised regarding the nature of RLC itself, and whether it is justified to continue it beyond one year. The latter arguments, however, are outside the limited ambit of review by the Commission, and may be the subject matter of appeal before the competent forum. As such, the Commission is not dealing with them here. They are also not the main thrust of the two Applications and their prayers.

20. In both their written and oral submissions, the Applicants as well as MSEDCL have quoted extensively from the Tariff Order, as set out in the foregoing paras, with regard to the nature and background of RLC, and it is not necessary to repeat it except to draw attention once again to some of the provisions of the detailed Tariff Order dated 10th March, 2004 set out below. At para 18 of Part III of the Order, the Commission had ruled that:

"the revised tariffs would be applicable for 4 months of FY 2003-04, i.e. from 1st December, 2003 to 31st March, 2004, and till such further time as the MSEB does not approach the Commission for tariff revision."

Thus, it was made unambiguously clear that the RLC, being a separate component of tariff as clarified in the Order, would continue to be charged beyond 30th November, 2004, and until the next tariff revision takes place. The Petitioners have cited the basis of the computations made by the

Commission to determine the quantum of RLC to support their argument that it was applicable for only one year. However, although the computations for determining the RLC and other charges are based on an assessment for a specific and finite period, the Tariff Order envisages that they would continue until the next tariff revision process is completed, when the ARR would be reviewed.

21. In this connection, the Commission notes that, since its last Tariff Order, significant changes have taken place in the ground realities, notably the unbundling of MSEB into three functional entities and a holding company, changes in the demand scenario, load shedding on an extensive scale, changes in the price scenario with regard to outside purchases, and other parameters. These require MSEDCCL to approach the Commission at the earliest with their ARR, which is already overdue, along with a proposal for tariff revision where necessary. The Commission accordingly directs MSEDCCL to submit their ARR and tariff proposal by the end of November, 2005. The RLC dispensation would also be re-examined during that process.

22. At para 29.1 of Part-III, the Tariff Order states that:

“In future, when the T&D losses are reduced, then the RLC will be returned to these consumer categories through reduction in tariffs. The Commission clarifies that the contribution through RLC will not be recorded and maintained separately for each individual consumer and the category as a whole is expected to get the contribution back.

MSEB is directed to submit on a six monthly basis information on:

- i) *Category-wise RLC*
- ii) *Circle-wise and total T&D loss level in units as well as percentage.*

The first such report for the entire year 2003-04 should be submitted by the end of May, 2004 and should also include total TDL charges (Circle-wise). Subsequent reports should be submitted within 2 months of the close of the half-year.”

As Counsel for MSEDCCL has pointed out, this also makes clear the position that the Commission had not envisaged RLC to be applicable for only one year, but that it would continue at least until the next tariff revision. Moreover, considering the nature of RLC explained above, no interest was envisaged on the refund of RLC through tariff at the appropriate time.

23. With regard to the point raised by VIA regarding whether or not RLC is to be included for the purposes of computation of various discounts and incentives, para 32 of Part-III of the Tariff Order dated 10th March, 2004 makes it clear that such incentives as power factor incentive and bulk discount are to be computed excluding RLC, and so would power factor penalty. To the argument that, if RLC is treated as a separate component of tariff, then it should be included for the computation of these incentives, it may be pointed out that the Commission has specifically also excluded FOCA and demand charges, which are very much part of the tariff. In any case, the Tariff Order is clear and explicit on this point.

The Commission disposes of the compliance Applications of ECA and VIA accordingly.

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman, MERC



(A.M. Khan)
Secretary, MERC