

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 28 of 2005

In the matter of
State Govt. subsidy for providing free electricity supply to agricultural consumers, etc.

Dr Pramod Deo, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: 31st October 2005

In its Petition dated 22nd September 2005, the Government of Maharashtra (GoM) through Industries, Energy & Labour Department (IE&LD) has sought the Commission's approval for the following decisions of the State Government, in the context of the subsidy to be paid to Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Mula Pravara Electric Co-operative Society (MPECS):

- i. *“to release the payment of Rs. 319.84 crores to MSEDCL towards compensation of loss of revenue on account of concession/subsidy in tariff to agricultural and powerloom consumers for the year 2004-05 by way of adjustment against the dues payable by MSEDCL.*
 - ii. *to release the compensation of Rs. 230.32 crores by way of adjustment against the dues payable by MSEDCL and further compensation of Rs. 80.63 crores by way of cash payment to the MSEDCL on account of free power supply to Agricultural Consumer for April 2005 and May 2005.*
 - iii. *To allow Government of Maharashtra to adjust the amount of subsidy for the year 2005-06 (June 2005 to March 2006) against the dues payable by MSEDCL to Government of Maharashtra and the dues payable by Mula Pravara Electric Co-operative Society Ltd., Dist. Ahmednagar to MSEDCL.”*
2. Under the Affidavit submitted by the GoM, it has represented as under:
- a) The GoM has so far released cash subsidy of Rs. 1313.30 crore to MSEDCL and Rs. 31.86 crore to MPECS on account of compensation towards the loss of revenue due to free power supply to agricultural consumers during the period July 2004 to March 2005.
 - b) The State Cabinet has decided that the policy of free power supply to agricultural consumers should be withdrawn with effect from 1st January 2006.



The State Cabinet has also decided to give concession in prevailing tariff to the agricultural consumers and further decided to suitably compensate MSEDCL and MPECS for the loss in revenue

- c) MSEDCL has informed the GoM that the estimated amount of compensation payable by GoM to MSEDCL on account of free power supply to agricultural consumers for the months of April and May 2005, would be about Rs. 305.32 crore. Similarly, the estimated amount of compensation payable by GoM to MPECS for the same period is Rs. 6 crore.
- d) The GoM has already made budget provision of Rs. 713.47 crores for FY 2005-06, for payment of compensation to MSEDCL/MPECS on account of free power/concession in tariff to agricultural and powerloom consumers of the State during FY 2005-06. A further provision of Rs. 897.50 crore has been made in the Budget for FY 2005-06 by way of Supplementary Demand.
- e) A joint exercise of reconciliation of amounts payable by GoM to MSEDCL and vice-versa was undertaken by a Committee of senior officers of GoM and MSEDCL, which included Director (Accounts) of MSEDCL. The Committee has verified the claims of GoM and MSEDCL and has unanimously concluded that as on 31st March 2005, MSEDCL is liable to pay an amount of Rs. 230.69 crore to GoM.
- f) Therefore, the GoM has taken a decision to adjust an amount of Rs. 230.69 crore for the total compensation payable to MSEDCL on account of free power supply during April and May 2005 and has released the balance amount of Rs. 80.63 crore in cash to MSEDCL.
- g) The GoM has decided to continue with the prevailing policy of subsidy in tariff to powerloom consumers of the State for the remaining months of FY 2005-06. As a consequence thereof, MSEDCL has informed the GoM that the estimated amount of compensation payable by GoM to MSEDCL on account of subsidized power supply to powerloom consumers for FY 2004-05, would be about Rs. 258.69 crore. Accordingly, GoM has released an amount of Rs. 258.69 crore to MSEDCL by way of adjustment.
- h) MSEDCL has further informed the GoM that the estimated amount of compensation payable by GoM to MSEDCL on account of subsidized power supply to powerloom consumers for FY 2005-06, would be about Rs. 236.33 crore.
- i) Thus, a total provision of Rs. 1610.97 crore has already been made by GoM for payment of compensation to the MSEDCL and MPECS on account of concessions/subsidy in prevailing tariff to agricultural and powerloom consumers for FY 2005-06, as against estimated compensation of Rs. 1577.20 crore that would be payable by the GoM to MSEDCL and MPECS, out of which an amount of Rs. 311.32 crore has already been released as submitted above. The GoM shall accordingly release the balance amount of compensation to MSEDCL and MPECS for providing the above concessional tariff for FY 2005-06, either by way of adjustment or in cash, depending upon the position of payables and receivables.

3. The Commission heard the matter on 18th October 2005. On the day of the hearing, the GoM submitted a supplementary Petition, wherein it has clarified that, under Resolution dated 21st February 2004, GoM has taken the decision to extend, from December 2003 onwards, the subsidy in prevailing tariff to the entire powerloom industry, including those consumers who have obtained power supply on High Tension (HT). The GoM has further



clarified that the financial implications on account of subsidy in prevailing tariff to all powerloom consumers, including the High Tension powerloom consumers, has already been considered in the budgetary provisions made in this regard for FY 2004-05 and FY 2005-06. Also, the amount of Rs. 319.84 crore so far released by GoM to MSEDCL for loss of revenue on account of concession/subsidy in tariff includes the impact on account of HT powerloom consumers also.

4. The Commission noted that the MSEDCL and MPECS have neither made any written submissions of their own nor have responded to the contents of the GoM's Affidavit.

5. At the hearing, the Commission drew the attention of the GoM to the fact that the MERC (Terms and Conditions of Tariff) Regulations have been notified in August, 2005, and that Regulation 83 sets out the dispensation regarding subsidy as follows:

83.1 *“With effect from the first day of September, 2005, if the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the Commission, the State Government shall pay in advance the amount to compensate the Licensee/person affected by the grant of subsidy in the manner specified in this Regulation, with prior approval of the Commission.*

83.2 *The amount of subsidy agreed to by the State Government shall be provided in the form of grant by the State Government.*

83.3 *The subsidy shall be passed on to eligible consumers only in proportion to the extent to which the total requirement of the Licensee is paid by the State Government.*

Provided that in case of shortfall in actual release of subsidy, either because of errors in estimation or for any other reason, such shortfall, shall be shown clearly in the consumers' bill and shall be distributed on a pro rata basis between the concerned eligible consumers until such time as it is reduced or eliminated.

83.4 *The Licensee shall clearly indicate in the consumer's bill (a) the tariff determined by the Commission; (b) the amount of State Government subsidy and the rate and period thereof; (c) the net amount payable.”*

Thus, as per the Regulations, read with the provisions of S.65 of the Electricity Act, 2003, the subsidy has to be paid in the form of a grant, and book adjustment of subsidy payable by GoM with receivables payable by MSEDCL to GoM is not permissible.

6. The GoM representative submitted that the Regulations state that the new subsidy dispensation was effective from 1st September 2005. Hence, the Commission could consider permitting the GoM to adjust the dues payable by the MSEDCL to the GoM with the subsidy payable for the month of April and May 2005. The Commission observed that, although the period of April and May 2005 were prior to the notification of the Regulations in August 2005, since the GoM had approached the Commission for approving and making the subsidy payment after September 1, 2005, the new Regulations would be applicable.



7. On being queried by the Commission on the method of billing, MSEDCL clarified that it was issuing bills to consumers for the entire amount and was showing the amount of subsidy receivable as arrears in the bills. The Commission observed that the principles of payment of subsidy have been laid down in S. 65 of the Electricity Act, 2003 as well as the Commission's Regulations, and the subsidy has to be paid in advance in accordance with these principles.

8. As regards the amounts payable by GoM on account of different subsidies, Director (Accounts) of MSEDCL clarified that the issue of reconciliation and firming up of receivables and payables on either side was still not completely settled and there was still some disagreement on the amount of adjustment possible and required.

9. The Commission observed that since under the new Regulations, no adjustment of dues between MSEDCL, MPECS and GoM is permissible, the Commission has no role now in the ascertainment of the amounts payable by the MSEDCL and MPECS to the GoM or to each other.

10. Accordingly, the Commission rules as follows:

- a) As per the MERC (Terms and Conditions of Tariff) Regulations, 2005, the subsidy has to be paid in the form of a grant paid in advance. Hence, the proposal for adjustment of MSEDCL dues to GoM with the subsidy payable by the GoM to MSEDCL and MPECS cannot be accepted.
- b) Since the GoM has not paid the subsidy amount in advance for the months of April and May 2005 as well as subsequent periods, the GoM would have to pay interest at the prevailing Bank Rate on the amount of subsidy payable, from the date the subsidy was due till the subsidy is actually paid. Further, no bills should be issued to consumers reflecting the subsidy proposed against tariff merely upon issue of Government Resolutions in this regard. This should be reflected in the bills only if and when, and to the extent that such subsidy is actually received from GOM, in advance and by way of grant, in accordance with the Section 65 of EA 2003 and the Tariff Regulations.
- c) The responsibility of ensuring that the computation of subsidy due is correct rests with the Licensee and the amount should be reflected in the ARR accordingly.
- d) The GoM, MSEDCL and MPECS should finalise the amount of subsidy payable within three weeks time from the date of the hearing and should submit on affidavit to the Commission that the subsidy amounts have been agreed between the Parties.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman, MERC



(A.M. Khan)
Secretary, MERC