

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE No. 13 of 2002

**In the matter of
application dated March 27, 2002 filed by M/s BSES Limited,
in respect of Review of the Tata Power Company (TPC) Tariff so far as the Petitioner is
concerned.**

**Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member**

ORDER

Dated: November 7, 2002

M/s BSES Limited, under Regulations 24, 72 & 84 of the MERC (Conduct of Business) Regulations, 1999 r/w Sections 22(2)(e), 29(2)(c), (d), (e), (f), 29(3), and 58 of the ERC Act, 1998, has filed an affidavit on 10th June 2002, with the following prayers [refer Pp 14 –15 of the petition]:

- (a) That this Honourable Commission be pleased to initiate appropriate proceedings for review of the Tata Power Company's tariff in so as far as the Petitioners/Applicants are concerned;*
- (b) That in the alternative, this Honourable Commission be pleased to permit BSES to apply for such revision and on the basis thereof determine the tariff of TPC at least in so far as BSES is concerned.*
- (c) That pending the hearing and final disposal of the petition/ application, this Honourable Commission be pleased to direct that the amounts recovered by Tata Power Company shall be held by Tata Power Company subject to the outcome of the present petition / application and of the revision of the tariff effected by this Honourable Commission and to thereafter adjust the amount received from the Petitioners by Tata Power Company;*
- (d) For ad-interim orders in terms of prayer (c) above;*
- (e) For such further and other reliefs as the nature and circumstances of the case may require and which this Honourable Commission may deem fit and proper.*

2. An admissibility hearing in the matter was held on 12th September 2002, during which the senior counsel representing BSES Limited submitted that (i) either the Commission may initiate suo- moto proceedings to revise the tariff of the Respondent i.e. Tata Power Company or (ii) alternatively the Applicant may be permitted to approach the Commission for determination of the TPC tariff applicable to the BSES.

3. During the admissibility hearing, Prayas, under Section 26 consumer, submitted that since both parties want certain issues to be decided upon by MERC, and this is also one of the demands in their cases before the HC, the petition(s) should be admitted. It was further submitted that if the parties want the issues raised in the petitions before MERC to be decided upon by the HC then the parties should withdraw their petitions before the MERC.

4. During the adjourned admissibility hearing held on 1st October 2002, on a query from the Commission as to whether the present petition should be admitted during the pendency of the Appeal before the HC, the counsel submitted that the present application is for fixation of tariff, which is the primary function of the Commission. Tariff revision is always on prospective and not on retrospective effect. Therefore, it will not in any manner, get affected by the judgement of the Honourable High Court. He further submitted that the petition is only at the admissibility stage and he shall make his full submission including merits, if the petition is admitted. He further stressed that though the Commission in its earlier order has laid certain principles for fixation of standby charges for subsequent years, it does not mean that the tariff has been fixed for the subsequent years also. The standby charges in a way, is an indirect subsidy paid by TPC to the MSEB, which TPC wants to be shared by BSES also. However, such subsidy does not solely decide tariff, which essentially consists of three elements:

- Demand Charges
- Energy Charges, and
- Fuel Adjustment Charges.

5. The counsel further submitted that the BSES is constrained to charge its consumers a higher rate of tariff, which is otherwise not necessary, due to higher purchase cost from TPC. In other words, this creates an opportunity for the TPC to lure the BSES bulk consumers through poaching.

6. The counsel drew attention of the Commission to the Fuel Cost Adjustment Charge levied by the TPC, which is almost 60% of the basic tariff. He further submitted that this was already included in the tariff approved by the Government of Maharashtra (GoM) in 1997 with certain base and couldn't be changed arbitrarily under pass-through mechanism without the Commission's approval under the prevailing ERC Act, 1998. Therefore he requested that the Commission may take note of this important point since the High Court may not consider the elements which are included in the tariff / standby charges while deciding the matter of Appeal.

7. While replying, the TPC counsel submitted that the GoM has approved their tariff in 1997, which have been accepted both by the TPC and the BSES. The Counsel, therefore, further contested the submission of the Applicant, being factually incorrect, in respect of higher charges and submitted that while the tariff charged for other direct consumers are at the rate of Rs.1.95 per unit, the rate for the BSES is Rs.1.77 per unit, which is a preferential rate in itself.

8. Regarding the FCA, the counsel submitted that the fuel cost depends upon the bid-based international price level, which is variable and passed on to the consumers. On a query, he stated that during 1997-98, there was a reduction in FCA rate (from 45 paise to 25 paise), which is based on international index and not fixed in an arbitrary manner. He further submitted that the BSES's contention of being charged at higher rate is factually incorrect. In fact, the average rate to BSES is being Rs.1.77 per unit and not Rs.1.97 [there is a difference of 20 paise per unit]. Further, the TPC is not charging FCA for the first 25% of energy consumed.

9. The Commission observed that the matter of tariff revision would depend on whether both the BSES and the TPC is making the Reasonable Return (RR) as per the Electricity (Supply) Act, 1948 or not. As per the E (S) Act 1948, the licensees are mandated to get their Annual Reports audited by the Chief Electrical Engineer, PWD, GoM. Therefore, they are asked to submit the certification in this regard.

10. The Commission observed that in view of the pending Appeals, filed by both the parties before the Honourable Bombay High Court, against the Commission's Order dated 7th December 2001 in Case No.7 of 2000 and considering review of FCA charged since August 1999, for both the parties, it may be premature to initiate proceedings for complete review of the tariff.

11. However, Fuel Charge Adjustment (FCA) component of the tariff for both the parties need a review, as the same is a pass-through component of the tariff and no way dependent on the other components of the tariff already approved by the GoM. Being pass through it cannot be withheld from levying the consumers for a long time as the same has got a direct bearing on the overall return of the utilities. Further, the Commission feels that there is sufficient ground to review the FCA charge in a transparent manner under Section 37 of the ERC Act, 1998, which has been changed substantially since the Commission came into existence.

- a) The Commission, therefore, admits the application limited to the extent of FCA portion and levying of the same under the ERC Act' 98, without any interim relief.
- b) The TPC and BSES are, therefore, directed to submit their method of charging FCA along with monthly calculations from August 1999 before the Commission for processing under the ERC Act, 1998.

Thus Ordered.

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(Jayant Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(Sanjay Kumar)
Secretary, MERC