

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No.s 50, 55 and 56 of 2006

In the matter of
Review Petitions filed by Chamber of Small Industry Association, Laghu Udyog
Bharati, and Kolhapur Engineering Association

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

ORDER

Dated: 3rd March 2007

In exercise of powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and upon detailed scrutiny of various responses, objections, suggestions, comments made by consumers, Maharashtra State Electricity Distribution Company Ltd., (MSEDCL) and other key stakeholders as part of their written submissions as well as during the public hearing, the Commission passed an Operative Order dated September 29, 2006, followed by a detailed Order dated October 20, 2006, determining the Annual Revenue Requirement and tariff for wheeling of electricity and retail sale of electricity for MSEDCL (ARR for FY 2004-05, FY 2005-06, FY 2006-07 and Tariff for FY 2006-07).

2. The Commission, in its Tariff order, introduced compulsory MD based tariff for the LT-V category (erstwhile LTP-G category), in furtherance to its stated tariff philosophy, as compared to the earlier dispensation of optional MD based tariff for this category, when fixed charges applicable only on 50% of the sanctioned load. The Commission also made ToD tariffs compulsory for this category, as compared to the prevailing dispensation of optional ToD tariff.

3. Given the prevalent supply situation, an additional supply charge (ASC) has been stipulated by the Commission for levy by MSEDCL in order to effect reduction in load shedding hours through supply of costlier power. In other words, consumers benefiting from the reduced load shedding hours vis-à-vis the uniform load shedding hours should pay for the



costly power procured by MSEDCL through Additional Supply Charge in addition to the base retail tariffs. Appropriate incentives have also been stipulated for consumers to be given a signal for efficient use of electricity and to respond to the ASC, eventually leading to reduction in power procurement by MSEDCL from costly sources and resultant reduction of tariff impact in the bills of consumers.

4. Essentially, being aggrieved by the Commission's Tariff Order dated October 20, 2006 in Case No. 54 of 2006 pertaining to the levy of fixed charges based on Maximum Demand, levy of ASC, and allowance of higher distribution losses to MSEDCL, Chamber of Small Industry Associations (COSIA), Laghu Udyog Bharati (LUB), and Kolhapur Engineering Association (KEA), have preferred separate review petitions before the Commission. These petitions have been numbered as Case No. 50 of 2006, Case No. 55 of 2006, and Case No. 56 of 2006, respectively.

5. The Review Petition filed by COSIA on November 29, 2006 [Case 50 of 2006] had the following prayers:

- a. *"The demand charges for LTP-G consumers to be reduced from Rs. 220/kVA to Rs. 100/kVA*
- b. *The T&D losses of MSEDCL should not be allowed to the present percentage, and consequently, tariff should be reduced*
- c. *Only low cost power should be allotted to industries so as to make them compete with industries from other States"*

6. The Review Petition filed by LUB on December 6, 2006 [Case 55 of 2006] had the following prayers:

- a. *"The fix tariff of LTP-G consumer be brought from Rs. 220/kVA to Rs. 100/kVA*
- b. *The effect of fix charge reduction should be given with retrospective effect and money recovered be refunded to LTP-G consumers."*

7. The Review Petition filed by KEA on December 7, 2006 [Case 56 of 2006] had the following prayers:

- a. The fixed/demand charges for LT-V category should be reduced to Rs. 110/kVA
- b. The fixed/demand charges levied by MSEDCL in October 2006, in excess of that stipulated by the Commission's Order, should be scrapped
- c. The tariff for LT-V category should be determined such that the overall increase is only upto 10%
- d. The Additional Supply Charges (ASC) levied on LT-V category should be scrapped



- e. The excess distribution losses of 11.25% over the levels stipulated by the Commission earlier should be disallowed, and the tariffs be re-determined accordingly
- f. Strict action should be taken against MSEDCL for its non-compliance with the EA 2003, Commission's Regulations and Orders.
- g. All the above should be made effective from October 1, 2006.

8. As the common grievance raised in these petitions pertains mainly to the introduction of compulsory MD based demand charges and levy of ASC, apart from certain other contentions, a combined admissibility hearing was held on December 26, 2006. Maharashtra Chamber of Commerce, Industries and Agriculture (MCCIA), and Nashik Industries & Manufacturers' Association (NIMA) filed objections and comments on the said Order passed on 20th October 2006, on 19th December 2006, and 26th December 2006, respectively, seeking an opportunity of being heard at the combined hearing.

9. At the hearing held on 26th December 2006, Shri. Anil B. Sarda, Chairman of COSIA, submitted that the impact of the Tariff Order dated 20th October 2006 was evident only after its implementation. The Petitioners faced a severe tariff shock on receipt of electricity bills in the month of November 2006. Shri Sarda submitted that various aspects of the said Order have led to this tariff shock, such as increase in fixed charges to the extent of about 11%, increase in variable tariff, and ToD tariff from 9 am to 12 noon, which have caused large-scale grievance among more than 3 lakh consumers falling within the LTP-G category spread across industrial areas located in MIDC, government industrial areas, co-operative industrial areas and unorganized industrial areas. He added that the incidence of load shedding for 5 hours, primarily during peak working hours, severely cripples the ability of the industries to avail any incentives.

10. Shri Sarda stated that the levy of Additional Supply Charges (ASC) to the tune of 28.9% is also uncalled for. The Commission observed that imposition of ASC is related to reduction in load shedding to such consumers through procurement of additional power, which comes at an additional cost. Shri. Sarda submitted that while the observations of the Commission are appreciable, there exists a grey area in the Order dated 20th October 2006. Although the Commission has based its decision on the presumption that MD meters have been installed in the case of LT-V category of consumers having sanctioned load above 25 HP, yet, in the field, installation of MD meters is still pending in the case of about 50% of the aggrieved LT-V consumers. Shri. Sarda stated that though the Commission has directed MSEDCL to install appropriate tri-vector meters capable of recording Maximum Demand for all the consumers in LT -V category, within three months of the issue of this Order, the said directive have not been complied with by MSEDCL. Shri. Sarda submitted that this has caused considerable hardship to the LT-V consumers, as until MD meters are installed, the purpose and intent of imposition of ToD tariff or MD based tariff gets defeated and leads to unnecessary tariff shock. On the issue of increase in ToD tariff, Shri. Sarda submitted in detail



that most LT-V consumers, being single-shift industries where industrial work is carried on from 09.00 hrs to 17.00 hrs, were adversely affected by the levy of higher ToD tariff to the tune of 80 paise per unit during 09.00 hrs to 12.00 hrs, while at the same time, they are unable to benefit from availing the incentive of zero ToD tariff from 12.00 hrs to 18.00 hrs, due to the incidence of load shedding.

11. On the issue of increase in fixed charges, Shri. Sarda submitted that under the Order dated 20th October 2006, fixed charges have been increased by 275%. Shri. Sarda further submitted that from the data available to COSIA, it has been observed that MSEDCL has not installed MD meters in the case of about 1,88,000 LTP-G consumers, where the average consumption per month works out to 1240 units. This sector of LTP-G consumers has been most severely affected by the implementation of the Tariff Order dated 20th October 2006.

12. On the issue of ASC, Shri. Sarda submitted that even if the Commission has rightfully observed that implementation of ASC is essential, there should be a cap on levy of ASC, else it would adversely affect such LTP-G consumers in whose case MD meters have not been installed and who would be forced to carry on their industrial work during high tariff hours, owing to the incidence of load shedding. Shri. Sarda further submitted that COSIA understands the necessity to impose strict measures keeping in view the demand supply gap prevailing in the State of Maharashtra. However, the Commission should consider that the category of consumers represented collectively by COSIA are the small and medium scale industries which have a high potential in contributing to industrial growth.

13. Shri. Pratap Hogade submitted on behalf of KEA that their Petition has been filed representing the grievance of LT-V consumers. Shri. Hogade submitted that the Commission has not provided for any guideline/s on billing procedures that MSEDCL needs to follow. LT consumers should have been allowed additional 4% power for losses, in line with the 4% loss considered in case of HT consumers billed on LT side. Shri. Hogade submitted that the Commission had wrongly considered the consumption of LT-V consumers, for computing the tariff impact. Secondly, the Commission has increased the cross subsidy to the tune of 33% over average cost of supply. Thirdly, per unit tariff applicable in case of LT consumers is higher than that applicable to HT consumers. In reality, the Tariff Order dated 20th October 2006 has shown undue favour to HT consumers which has led to a tariff shock among LT consumers. Even among the LT-V consumers, the said Tariff Order has projected a tariff increase of 13% for consumption upto 700 units and a 24% increase for consumption upto 8000 units, though the actual tariff increase is much higher, if the consumption norms are considered realistically. Shri. Hogade submitted that this amounts to an error apparent on the face of the record, as the tariff increase projected by the Commission is much lower.

14. Shri. Hogade submitted that the LT consumers have to avail supply at the average rate of over Rs. 7 per unit, and have been subjected to a 143% increase in fixed charges and in case of energy charges, the increase is in the range of 7% to 33%. Shri. Hogade submitted that



the consumers' bills have almost doubled over previous levels. The Commission should have considered that about 80% of the owners of LT-V industries are job workers and are not as financially and infrastructure-wise sound as the owners of HT industries. Shri. Hogade submitted that the said Order dated 20th October 2006 violates Section 62(3) of the Electricity Act, 2003 (EA 2003), and the overall tariff shock to LT consumers violates the National Electricity Policy and the National Tariff Policy. It has been submitted that the Commission's own principle of avoiding tariff shock has not been considered while passing the said Order. This has led to large-scale grievance among various LT industries.

15. Shri. Hogade further submitted that in the Tariff Order dated 20th October 2006, the Commission has allowed significantly higher distribution losses to MSEDCL, which is a regressive step, as MSEDCL has been rewarded for its inefficiency. The National Tariff Policy provides that losses should be recovered on normative levels whereas the aforesaid Order has not been in line with the same. It was observed by the Commission that such issues, which are effectively an appeal, cannot be addressed through the present application which seeks a review of the Tariff Order dated 20th October 2006.

16. Shri. Hogade added that the additional burden of ASC which is around Rs. 6 to Rs. 15 per unit has been a major cause of tariff shock. The concept of ASC is new for consumers. Unlike FAC, there is no proper system of recording or verifying ASC and the same may be charged by MSEDCL arbitrarily. The Commission should have provided for the method of calculating ASC and mechanism to verify the said calculations. The method of calculating the amount of ASC that is leviable has been vested solely on MSEDCL without any justification. MSEDCL should be directed to provide details mentioning the ASC levied on them, so that the consumers are in a position to assess the exact amount of ASC. Further, the Commission has not specified whether the levy of ASC is linked to the planned load shedding or actual load shedding. It has been submitted that ASC charges are not justified considering that power supply is frequently disrupted due to load shedding (both regular and irregular), tripping, EHV opening, local maintenance, etc. Shri. Hogade submitted that the Order has not protected the interest of consumers, particularly the LT-V consumers. Also, the LT industrial sector in the State of Maharashtra would be severely incapacitated due to the said Order as they have to compete with their counterparts in other States where the charges for electricity are low as compared to Maharashtra.

17. Shri. Ashvin.V.Treasurer, representing LUB, submitted that the legal validity of the Tariff Order dated 20th October 2006 is in doubt as the Commission had vide Order dated 13th October 2006 in Case No. 13 of 2006 rejected the application of MSEDCL for providing unmetered supply. In the Tariff Order dated 20th October 2006, the Commission has fixed the tariff for MSEDCL despite the fact that MD meters have not been installed by MSEDCL. It has been submitted that the said Tariff Order is erroneous and violates Section 55(1) of the EA 2003. Even if MSEDCL complies with the metering obligations mandated in the said Tariff Order, meter reading will not be concluded before February 2007 and thus, upto March



2007, billing would be done on the basis of assumed consumption. This is contrary to EA 2003 and the Supply Code Regulations made by the Commission thereunder.

18. Shri. Treasurer expressed doubts over the interim formula provided in the said tariff Order for converting the sanctioned load into derived contract demand. It has been submitted that while bills will be issued on the basis of derived contract demand, it may appear to MSEDCL that the amount billed may be lower than the capital expenditure towards procurement and installation of the MD meters. Keeping in view the said facts, it has been submitted that MSEDCL may not be motivated to comply with metering obligations as mandated under the Tariff Order dated 20th October 2006. Shri. Treasurer submitted that the said Tariff Order is not implementable as MSEDCL does not have enough manpower to comply with metering obligations in the case of LTP-G consumers where metering is pending, within a period of three months from 20th October 2006, as mandated. Further, MSEDCL is not serviced by trained personnel (meter readers, billing clerks, etc.) who can correctly read MD meters and thereafter efficiently bill LT-V consumers.

19. Shri. Treasurer submitted that had the distribution losses of MSEDCL been disallowed and the procurement of high-cost power been avoided, tariff shock could have been prevented. The Commission observed that such issues may be deliberated in appeal and not in the present Petition seeking review.

20. Shri. Treasurer further submitted that determination of tariff for MSEDCL under the impugned Order dated 20th October 2006 has not been transparent. The replacement of LTP-G tariff with the mandatory LTMD tariff for LT-V category has resulted in a major tariff shock. It has been submitted that the Consumer Protection Act, 1986 overrides the EA 2003. Under the said enactment, it is the paramount right of a consumer to be educated about a product. A large number of electricity bills issued by MSEDCL issued to various LTP-G consumers do not record the detail of ToD tariff, though consumption has been charged accordingly. On the issue of ASC, Shri. Treasurer submitted that the ASC component has been charged by MSEDCL division-wise. However, as there are more than 100 divisions in the distribution license area of MSEDCL, this would lead to each division being issued different bills which will further differ every month. ASC should be charged circle-wise, so that the imposition is more transparent as required under the EA 2003.

21. Shri. Treasurer, referring to the submissions tendered by the erstwhile MSEB in Case No. 2 of 2003 (which have been considered in the Order passed on 14th July, 2005), stated that MSEDCL may not find it commercially viable to install MD meters in cases of consumers with a sanctioned load below 20 kW (equivalent to approx. 25 HP). The Commission had suggested installation in case of such consumers who are high-end users to monitor their consumption and levy appropriate charges. The Commission should consider that there are over 2 lakh industrial consumers with sanctioned load below 20 kW where metering is pending. Shri. Treasurer submitted that consumption assumed by the Commission



for estimating the bill impact in case of LT-V consumers is erroneous. An average LT-V consumer has a connected load of 16.7 HP and consumes below 182 units per month. The LT-V consumers would be facing an effective tariff hike in the range of 47% to 90%, unless the impugned Order dated 20th October 2006 is amended. Most surprisingly, tariff hike of 90% would be faced by LT-V consumers with a connected load of only 2 HP consuming a minimal 93 units, operating under “kachha” sheds. Based on the aforesaid submissions, Shri. Treasurer prayed that the tariff Order dated 20th October 2006 ought to be re-evaluated/ revised by the Commission. The prescribed LT-V tariff should be rejected and the existing LTP-G tariff should be continued with unless metering obligations to record maximum demand are complied with. Shri. Treasurer suggested that the existing tariff for LTP-G consumers may be continued for LT-V consumers with a sanctioned load less than 20 kW (equivalent to approx. 25 HP). Secondly, LT-V consumers may be charged as per ToD tariff or, in the alternative, required to pay ASC.

22. Shri. Ashok Buva representing MCCIA, tendered an undertaking that since MSEDCL (the Respondents) have not been served with a copy of their written submission dated 19th December 2006, service will be effected in due course. Shri. Buva submitted that LT consumers are the lifeline of HT consumers. HT industries in practice outsource industrial labour from LT industries. Under the Tariff Order dated 20th October 2006, it appears that LT industries have been subjected to a higher tariff hike than HT consumers to the tune of about 19%. The profitability and viability of LT industries are in serious jeopardy. From the perspective of industrial growth, such discrimination fetters the competitiveness and commercial viability of LT consumers located in the State of Maharashtra with LT consumers established in various countries in South-East Asia, especially China, which enjoy low electricity tariff. The economy of LT industries in the State of Maharashtra is critically balanced and such differentiation of 19% extra increase in electricity tariff should not be allowed. Secondly, the imposition of ASC has been undertaken without any explanation/ justification. It seems that a portion of RLC (that has been disallowed by the Commission) has been reintroduced through the imposition of ASC. If the imposition of ASC is justified, the Commission should provide the details of how the ASC would be calculated. Thirdly, the component of fixed charges should be commensurate with actual increase in infrastructural costs. Though the Commission has not provided for any justification in increasing fixed charges to thrice the existing rate, the Commission should have fixed the quantum of fixed charges in line with the quantum levied on LT industries located in other States of India.

23. Shri. M.N. Brahmkar submitted on behalf of NIMA that firstly, while industrial consumers have been subjected to increase in tariff, penalty should be levied on MSEDCL in cases where there is disruption of supply, failure in providing quality supply, irregularities in billing procedures, and disobedience of directives issued by the Commission, especially those directives which require MSEDCL to reduce transmission and distribution losses. It is further incumbent on MSEDCL to offer low-cost power and refrain from high-cost power procurement.



24. Shri. Ashok Pendse of Mumbai Grahak Panchayat, submitted that certain LTP-G consumers with a sanctioned load in the range of 20 KW to 100 KW are aggrieved that the existing tariff rate of Rs. 60 per HP/month (equivalent to approx. Rs. 80/- per kVA per month) has been increased to Rs. 220/- per kVA per month, as per the Tariff Order dated 20th October 2006. Shri. Pendse submitted that majority of LTP-G consumers are being billed on assumption basis and not on actual measurement due to delay in installation of MD meters by MSEDCL. Further, it is observed that in the case of HT consumers, the fixed charges are lower and the energy charges are higher, while in case of LTP-G consumers, the fixed charges are higher and the energy charges are lower. In case of LTP-G consumers with sanctioned load above 100 kW, the increase in tariff is to the extent of 19%. The tariff shock has been two-fold so far as LTP-G consumers with a sanctioned load between 20 kW to 100 kW are concerned. Firstly, increase in tariff (through increase in fixed charges) is more while consumption is reduced and if consumption is increased, a discriminatory increase to the extent of 19 % (through increase in energy charges) is levied. Shri. Pendse submitted that inspite of repeated directives the erstwhile MSEDCL and thereafter MSEDCL have failed to install correct meters to record MD even for LTP-G consumers having sanctioned load above 20 kW. Since bills are being levied on the basis of assumption rather than actual recording, the consumers are put at a great disadvantage.

25. Shri. S.L. Patil on behalf of Thane Belapur Industries Association submitted that the distribution losses of MSEDCL that have been allowed in the tariff Order dated 20th October 2006 are very high. Further, justification for imposition and method of calculation of ASC has neither been provided by the Commission nor disclosed by MSEDCL. MSEDCL should be accountable and transparent while it charges new components of costs.

26. Shri. Nikit Abhyankar submitted on behalf of Prayas (Energy Group) that contrary to the philosophy followed by the Commission, the impact of the Tariff Order dated 20th October 2006 has been a tariff shock primarily to LT-V consumers. Since maximum demand based billing of LT-V consumers has been undertaken by MSEDCL for the first time, sufficient time should be given for LT-V consumers to adjust with the new billing methodology. Since their load factor is very low, the effective fixed charges for such LT-V consumers are high. Additional time given to consumers may also serve the purpose of helping the LT-V consumers to rationalise their contract demand with mutual consent with MSEDCL. Further, the quantum of load factor assumed by the Commission (around 23% to 25%) in the case of LT-V consumers is considerably higher than the average load factor of LT-V industrial consumers (around 15% to 16%). This leads to a tariff hike of at least 40%. The Commission may reduce the quantum of fixed charges stipulated in the Tariff Order dated 20th October 2006 and load the same to variable charges so that LT-V consumers may have control over consumption, and allow MSEDCL to recover the reduction in revenue while truing up.



27. Shri. Gaurav Joshi, Counsel for MSEDCL, submitted that the Petitioners have not made submissions on the maintainability of their Petitions under Regulation 85(a) of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004. It was submitted that in its Petition, MSEDCL had proposed the levy of MD tariff of Rs. 220/- per kVA per month. The Commission had considered the same and accordingly, passed the Order dated 20th October 2006. While disposing the present Petitions, the Commission should consider that any change in tariff of LT consumers would consequently affect the tariff for all other consumer categories. Shri. Joshi submitted that the Commission may consider making suitable adjustments in the MYT of MSEDCL and reject the prayers sought seeking review of the Tariff Order dated 20th October 2006.

28. The Commission sought information from MSEDCL regarding the progress in installation of MD meters with respect to the directives given by the Commission in its Tariff Order. After a lot of delay, MSEDCL, vide letter dated February 18, 2007, submitted on March 1, 2007, the data on progress of installation of MD meters for LT-V category on, in the format specified by the Commission, as reproduced below:

SR. NO.	PARTICULARS OF LT-V CATEGORY	<= 10 KW	>10 KW & <= 20 KW	>20 KW & <=50 KW	>50 KW	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 dtd Sep 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

29. MSEDCL further submitted that
- 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.*
 - In the absence of metering, MSEDCL is billing the consumers as per the methodology determined by the Commission, i.e., on assessment basis.*
 - The various efforts taken by MSEDCL with respect to consumer awareness are as follows:*
 - MSEDCL has appealed to declare the contract demand (CD) in the bills issued to LTP-G consumers*
 - MSEDCL has also requested consumers orally to declare the Contract Demand (CD)*
 - MSEDCL has undertaken the meter replacing work on war footing and intends to complete the same by 28th February 2007. However, the*



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 despatch 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.*

30. Having heard the parties and after considering the material placed on record, as against the common issues raised by the Petitioners, the Commission is of the view as under:

- a. The Commission disagrees with the Petitioner's contention regarding applicability of S.55 (1) of EA 2003 in this case, as S.55 (1) stipulates that no licensee shall supply electricity except through installation of a correct meter, which is not the matter under dispute here. Moreover, linkage of this case to the agricultural metering issue is not appropriate while discussing the issues raised in these Review Petitions.
- b. At the same time, the desired implementation of MD based tariff for LT-V category is directly linked to the installation of MD meters for this category.
- c. The data submitted by MSEDCL on the progress of installation of MD meters for LT-V category shows complete lack of application and seriousness on the part of MSEDCL in implementing the Commission's Orders, as explained below:
 - 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 20 kW 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 as stated above.
 - 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 the 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 program wherein the 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.
- d. The Commission's views regarding the levy of ASC and the relationship of load shedding to ASC and the computations have been elaborated in the Tariff Order itself as well as in the Commission's Order on Review Petitions filed against the Tariff Order dated October 20, 2006 [Combined Order in Case 53, 54, 58, 61 and 62 of 2006, issued on March 2, 2007], and hence, there is no need to repeat the rationale adopted by the Commission in this matter.

31. On first principles, a review of any order, direction or decision is permitted under the Regulations governing the conduct of business of the Commission, only upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons. The scope of review does not permit rehearing of the matter and/or passing a fresh decision on the case. The maintainability of the Review Petitions filed by the Petitioners has to be tested against the requirements and criteria set out in Regulation 85 of the CBR. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".



32. As regards the matter of levy of demand charges of Rs. 220/kVA/month for LT-V category consumers, given the status of metering, and the unintended tariff shock caused to this consumer category due to abject failure of MSEDCL to install MD meters and educate the consumers regarding the implications of proper assessment of Contract Demand and the need for registering the same with MSEDCL, the Commission holds that sufficient reasons exist for review of the Order dated October 20, 2006 in Case No. 54 of 2005. The Commission has accordingly reviewed its aforesaid Order dated October 20, 2006 in Case No. 54 of 2005 and in supercession of the direction contained therein to levy demand charges at the rate of Rs. 220/kVA/month, directs 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.

33. This modification is to be done with retrospective effect from October 1, 2006, and all such consumer's bills should be adjusted accordingly (credited) in future bills issued in the next two months. This modification will be applicable even for consumers who already have MD meters installed (either optional or after issue of Tariff Order dated September 29, 2006), as it would be unfair to discriminate between these consumers, solely on account of MSEDCL's incapability to install the desired MD meters. MSEDCL is directed to submit the compliance of above directions at the end of next two billing cycles for LT-V consumers, on affidavit to the Commission. MSEDCL is also directed to complete the MD metering latest by March 31, 2007, as submitted by them in their latest submission, to enable the Commission to specify MD based metered tariff in future.

34. Further, as this situation has arisen primarily because of total failure on MSEDCL's part to install the desired meters, even for consumers above 20 kW, who should have been metered long ago, the Commission has decided that the revenue loss due to this modification will be to MSEDCL's account, and MSEDCL will not be entitled to claim recovery of the shortfall in revenue on this account at a later stage.

35. The relief sought by the Petitioners as regards levy of ASC is in the nature of an appeal in disguise, and does not qualify under the scope for Review, as stipulated under the Commission's Regulations. Hence, the review sought by the Petitioners on this aspect cannot be granted. The issue of levy of ToD tariffs in an era of load shedding, and industries' inability to avail the incentives, does not qualify for review, and is more in the nature of an appeal in disguise. Hence, the review sought by the Petitioners on this aspect cannot be granted. The issue of allowance of distribution losses is in the nature of an appeal in disguise, and does not qualify under the scope for Review, as stipulated under the Commission's Regulations. Hence, the review sought by the Petitioners on this aspect cannot be granted.

36. Thus, the other issues raised by the Petitioners, viz., levy of ASC charges, ToD tariff, and allowance of higher distribution losses, strictly speaking cannot be said to fall within the



ambit and scope of Regulation 85, and are therefore rejected by the Commission. As stated in the foregoing paragraphs, there are other submissions raising substantial issues which cannot be allowed under review proceedings as a review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

37. With this order and for the reasons stated above, the Commission disposes the review petitions filed in Case No. 50 of 2006, Case No. 55 of 2006, and Case No. 56 of 2006.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman, MERC



Secretary, MERC



Annexure: List of persons present at the hearing on 26th December 2006

1. Shri. Anil B. Sarda, Chamber of Small Industry Associations.
2. Shri. M.R. Khambete, Chamber of Small Industry Associations.
3. Smt. Madhu Gupte Chamber of Small Industry Associations.
4. Shri. P.R. Kolhe, KAMA.
5. Shri. M.M. Gajeralwar, KAMA.
6. Shri. A.V.Treasurer, Laghu Udyog Bharati.
7. Shri. S.G. Bhor, Laghu Udyog Bharati.
8. Shri. Manohar Kulkarni, Laghu Udyog Bharati.
9. Shri. Sauarbh Deshmukh, Laghu Udyog Bharati.
10. Shri. Shambekar S.M., Laghu Udyog Bharati.
11. Shri. N.K. Nande, Laghu Udyog Bharati.
12. Shri. P.K. Peshkar, Laghu Udyog Bharati.
13. Shri. S.H. Kapadia, Laghu Udyog Bharati.
14. Shri. P.K. Joshi, Dapoli Co-operative Society.
15. Shri. A.G. Manwade, Nashik Industries & Manufacturers' Association.
16. Shri. M.N. Brahmankar, Nashik Industries & Manufacturers' Association.
17. Shri. Satish Gadiyar, Nashik Industries & Manufacturers' Association.
18. Shri. Bhavesh Mane, TSSIA.
19. Shri. Ashish Sirsat, TSSIA.
20. Smt. Sujata Soparkar, TSSIA.
21. Shri. Shashi Doshi, TSSIA.
22. Shri. B.B. Patil, Gokul Shirgaon Manufacturers Association.
23. Shri. T.S. Ghatge, Shriroli Manufacturers Association.
24. Shri. Anil Khelkar, Institute of Engineering, Pune Local Centre.
25. Shri. Tendelkar Ravi, Kolhapur Industrial Association.
26. Shri. Pratap Hogade, Kolhapur Engineering Association.
27. Shri. Ramesh Pawar, Federations of Association of Small Industries of India.
28. Shri. Kishor Vishnudas Mehta
29. Shri. Prashad N. Mehta
30. Shri. C.K. Deshmukh, Rice Mill
31. Shri. A.B.Gandhi, Rice Mill
32. Shi. K.D. Tupe, Chamber of Small Industry Associations
33. Shri. Vinod Parasrampur, Taloja Manufacturers Association.
34. Shri. Haushad Khate, Taloja Manufacturers Association.
35. Shri. Kamlesh Bhansali, Taloja Manufacturers Association.
36. Shri. Ashok Buva, MCCIA.
37. Shri. Subodh Purohit, MCCIA.
38. Shri. Gaurav Joshi, Counsel for MSEDCL.
39. Smt. G.R. Joshi, Advocate for MSEDCL.
40. Shri. Kiran Gandhi, Advocate for MSEDCL.



41. Shri. R.G. Sonwane, MSEDCL.
42. Dr. Ashok Pendse, MGP.
43. Dr. S.L. Patil, TBIA.
44. Shri. Nikit Abhyankar, Prayas.
45. Shri Anil Kelkar, Inst. of Engineers, Pune Local Centre
46. Shri Aniruddha Das, Advocate, IC Legal
47. Shri Harshad Kate, Taloja Manufacturers Association
48. Shri Sunil Kumar, Consultant, PwC

