

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case Nos 36 and 41 of 2006

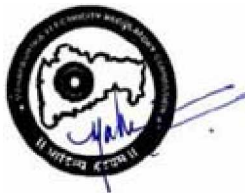
In the matter of
Petitions filed by MSEDCL seeking review of Order dated September 29, 2006
in Case No. 31 of 2006

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

ORDER

Dated: 13th February, 2007

Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) filed a Petition on October 31, 2006 seeking review of an Order dated September 29, 2006 passed by the Commission in Case No. 31 of 2006. This Petition have been numbered as Case No. 36 of 2006. The Petitioners have contended that severe financial hardship will be caused to the Petitioners on account of the stipulation at paragraph 21 of the impugned Order which reads as: “*All payments related to transmission charges shall be due for payment within 7 days from date of invoice. In case, there is delay in payment by any of the TSU, late payment surcharge at the rate of 1.25% per month or part thereof shall be applicable*”. The Petitioners have submitted that on account of the aforesaid stipulation in the impugned Order relating to the due date of payment of transmission charges, the Petitioners will be required to pay transmission charges of Rs. 105.38 Crores for each month within seven (7) days from date of invoice. However, the Petitioners need to have enough cash flow to make payment of transmission charges. The available cash flow is not adequate to meet the said liability within the first seven (7) days from date of invoice. The Petitioners have submitted that the amounts that are receivable by them from customers (who are supplied with electricity) are due within fifteen (15) days from the date of invoice. Also, during the very first seven (7) days of the month, there is an outgo of cash flow as the Petitioners are required to make payments to various CPSUs such as NTPC, NPCIL and Power Grid (CTU) in the first week of the month. Further, payment to electricity traders are also made by Petitioners on weekly basis for bilateral purchases. Outgo of cash flow also occurs as payment to Maharashtra State Power Generation Company Limited (“MSPGCL”) is required to be made within seven (7) days from date of invoice to avail rebate at the rate of 1.25%. Therefore, the outgo of cash flow of the Petitioners during the first week of the month far exceed the receivables making it impracticable to make payment of the entire transmission charges of Rs. 105.38 Crores in one go by the 7th day of each month. Modification of paragraph 21 of the impugned Order has been sought on the above grounds to enable the Petitioners to



make payment of transmission charges in three equal installments payable on the 7th, 14th and 21st of every month. It has been prayed that there should be no surcharge for payment made in installments and surcharge ought to be applicable on the outstanding after the respective due dates for payment of the scheduled installments only. It has further been submitted that issues relating to intra-state transmission system (“InSTS”) tariff and pooling mechanism were taken up in the 5th meeting of the Grid Co-ordination Committee (“GCC”) held on October 13, 2006. The above mentioned cash flow management problem of the Petitioners was also discussed therein, wherein it was noted that all transmission licensees using the InSTS agreed to the proposal to stagger the due dates of payment in three equal installments. While agreeing to the said proposal, the GCC had advised the concerned distribution licensees to approach the Commission seeking a review of the impugned Order incorporating the aforesaid proposal. It was further agreed in the said meeting that, in such case the STU will raise one bill for the entire amount on the 1st day of each calendar month indicating three due dates of payment of respective three installments and any delay in payment by distribution licensees beyond seven (7) days of the due date will attract late payment surcharge at the rate of 1.25% per month or part thereof.

2. MSEDCL filed another Petition on November 10, 2006 seeking a review of the same impugned Order as in Case No. 36 of 2006, as aforesaid. The Petitioners have sought a review of paragraph 31 of the impugned Order on the ground that overdrawal and underdrawal by various TSUs if settled on the basis of weighted average system marginal price prevalent for the month and paid for by overdrawing TSU to under-drawing TSU, will result in recovery of lower prices by the Petitioners when compared to the costly short-term power purchases made by them as settlement of inter-utility exchange at weighted average system marginal price shall not adequately compensate the Petitioners. It is apprehended by the Petitioners that other distribution licensees are likely to overdraw from their system. The Petitioners also apprehend that there is a high possibility of a TSU overdrawing power from the system of the Petitioners instead of making purchase of costly power. The Petitioners have cited paragraph 38 of the order dated October 20, 2006 passed by the Commission in Case No. 54 of 2005 as follows: “38. *The Commission has decided that in case of any inter-utility power exchange within the State, the rate applicable shall be the marginal cost of the supplying utility and the same shall be applicable on the net supply between utilities for every thirty-minute time block.*” It is the contention of the Petitioners that the stipulation in paragraph 31 of the impugned Order gives leeway to the TSUs who may refrain from purchasing costly power at the marginal cost of the supplying utility and would rather prefer overdrawal of power from the system of the Petitioners. As per the Petitioners, such indiscriminate overdrawal by TSUs will not only hinder the financial viability of a TSU such as the Petitioners from whose system power is overdrawn by other TSUs/distribution licensees, but will also pose a severe threat to the grid. In light of the above, suitable modifications to the impugned Order have been sought or in the alternative it has been prayed that specific mechanism for payment of Un-Scheduled Interchange (UI) be implemented as part of the intra-state ABT. The proceedings under this Review Petition have been numbered as Case No. 41 of 2006.



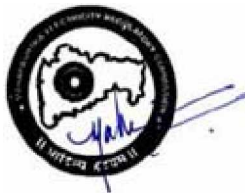
3. As both the aforesaid Review Petitions have been filed seeking review of the same impugned Order dated September 29, 2006 passed by the Commission in Case No. 31 of 2006, a combined hearing was held in the matter on January 10, 2007. Shri. A.D. Palamwar, Director (Operations), MSEDCL appeared for the Petitioners. Shri. R.B. Goenka, appeared on behalf of Vidarbha Industries Association, one of the consumer representative organisations authorised on a standing basis under Section 94(3) of the Electricity Act, 2003 (“EA 2003”) to represent the interest of the consumers in the proceedings before the Commission. Submissions have neither been made by the Petitioners in the Petitions filed nor during the hearing held, as aforesaid, on the maintainability of the Review Petitions so filed against the requirements and criteria set out in Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 (“CBR”). However, during the hearing held, as aforesaid, the Petitioners have fairly admitted that there are no grounds they can rely upon to establish the maintainability of the Review Petitions filed and that issuance of clarifications by the Commission instead of grant of review would suffice and would be the appropriate course of action under law.

4. 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.

5. In Case No. 36 of 2006, the Petitioners have sought a review of the stipulation at paragraph 21 of the impugned Order in relation to the due date of payment for transmission charges. The Petitioners have not made out any ground permitted for the grant of review. The modification sought in relation to the due date of payment of the transmission charges would affect other entities that are part of the InSTS. The Petitioners should have sought consent from such TSUs by making them parties to the present Review Petition. The aforesaid Minutes of the GCC meeting cannot be taken as a consent by such TSUs and distribution licensees to the proposal of staggering due dates of payment of transmission charges. A review of Paragraph 21 of the impugned Order relating to due date of payment of the transmission charges, cannot be granted for the reasons stated above. The Petitioners may, however, file fresh Petition seeking consent from TSUs, as aforesaid.

6. In Case No. 41 of 2006, the Petitioners have sought the implementation of the methodology of “marginal cost of the supplying utility” instead of “weighted average system marginal price” for the settlement of overdrawal and underdrawal by various TSUs.

7. The Commission is of the view that the meaning of the terms ‘weighted average system marginal price’ in the impugned Order and ‘marginal cost of supplying utility’ as referred at paragraph 38 of the Order dated October 20, 2006 (Case 54 of 2005), are no different. The Petitioners have wrongly interpreted the term ‘weighted average system marginal price’ of the supplying TSU (or



under-drawing TSU) to over-drawing TSU to be 'overall average per unit power purchase cost' of Petitioners for the month. The Commission would like to clarify that the 'weighted average system marginal price' should be derived for the 'quantum of energy units' being supplied by concerned TSU (say, Petitioners in this case) from its marginal sources of supply to the extent of 'overdrawal quantum' by other TSU and not for entire quantum of power purchase as contemplated by Petitioners. The Commission observes that determination of 'weighted average system marginal price' for supplying TSU to overdrawing TSU in the above manner, will include costly short term power purchase, as the same would form part of marginal price in accordance with the merit order stack.

8. For the sake of abundant clarity, the Commission would like to elaborate the above principle through an illustration as under:

Illustration: If TSU-1 (say, TPC) overdraws 400 MU from TSU-2 (say, Petitioners) during a month and as per merit order for TSU-2, there are three marginal sources contributing to 400 MU comprising as under. (i) 100 MU procured from marginal source-1 at Rs 7.00 per unit, (ii) 200 MU procured from marginal source-2 at Rs 6.00 per unit and (iii) 100 MU procured from marginal source-3 at Rs 4.00 per unit. The 'weighted average system marginal price' of the supplying TSU-2 (MSEDCL) for overdrawal of 400 MU by TSU-1 (TPC), in this illustration shall be Rs 5.75 per unit.

9. In view of the above, the Commission rejects the Petitions filed by the Petitioners seeking review of the Order dated September 29, 2006 passed by the Commission in Case No. 31 of 2006 as being not maintainable being devoid of any grounds permissible to grant review. .

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman



(Malini Shankar)
Secretary, MERC