

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005.
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 76 of 2006

In the matter of
TPC's Petition seeking Clarification of Order dated 29.09.2006 in Case No 31 of 2006

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

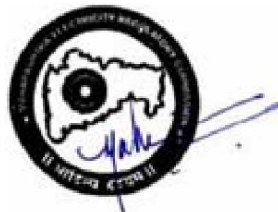
ORDER

Dated: May 15, 2007

The Tata Power Company Limited ("TPC") filed a Petition on January 25, 2007, with the following prayers:

- a) *that this Hon'ble Commission be pleased to clarify the Order in Case No 31 of 2006 dated September 29, 2006 regarding determination of transmission tariff for Intra-State Transmission System (InSTS) on the over-drawal and under-drawal by various TSU's and applicability and method of calculating the weighted average system marginal price for such over-drawal/ under-drawal;*
- b) *that this Hon'ble Commission be pleased to approve the earlier energy charges at Rs.2.99 /kWh plus the applicable FAC or any other fixed rate as decided by the Hon'ble Commission taking into account the ARR of all the licensees for this contracted power i.e. energy drawn during the period of Standby;*
- c) *that this Hon'ble Commission may grant such further and other reliefs as may be necessary.*

2. The Commission scheduled the hearing in the matter on March 28, 2007 in the presence of consumer representatives authorized on a standing basis under the Electricity Act, 2003 ("EA 2003"). Notices were issued accordingly.

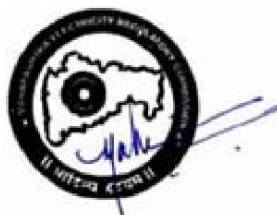


3. At the hearing held in the matter on March 28, 2007, Shri. J.D. Kulkarni, TPC, submitted that the present Petition of TPC has been submitted for clarification on two major issues – (i) whether the weighted average system marginal price should be charged on a monthly basis or on a half-hourly basis; and (ii) whether supply of stand-by power should be charged as per rates applicable for supply of contracted power. During the hearing, Shri Kulkarni stated that the Order of the Commission dated February 13, 2007 in Case Nos. 36 and 41 of 2006 adequately clarifies 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. Shri Kulkarni confirmed that the said issue has been settled.

4. Regarding the issue of settlement on monthly basis vs. half hourly basis, Shri. Kulkarni submitted that the Commission’s Order dated September 29, 2006 in Case No. 31 of 2006 provides that the “overdrawal and underdrawal by various TSUs shall be settled on the basis of weighted average system marginal price prevalent for the month and shall be paid for by overdrawing TSU to under-drawing TSU”. However, the Order dated October 20, 2006 in Case No. 54 of 2005 [in the matter of approval of MSEDCL’s Annual Revenue Requirement for FY 2004-05, FY 2005-06 & FY 2006-07, and Determination of Tariff for FY 2006-07] provides that 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”.

5. The Commission invited the opinion of Shri. Balawant Joshi, one of the consultants of the Commission to clarify the issues raised by TPC. Shri Joshi submitted that as per the Tariff Orders dated October 20, 2006 and October 3, 2006, payment for procurement of power above contracted power should be on a half-hourly basis after the implementation of the intra-State ABT mechanism. However, till such time intra-State ABT is pending implementation, marginal price computation should be on a monthly basis, as provided in the Order dated September 29, 2006 and February 13, 2007. He explained that settlement on monthly basis was necessitated as metering is not in place for all T<>D metering points.

6. In this regard, Shri. Kulkarni submitted that MSEDCL has already started billing on half hourly basis from January 2007. The readings for REL and BEST are also available on half hourly basis. However, appropriate meters have not yet been



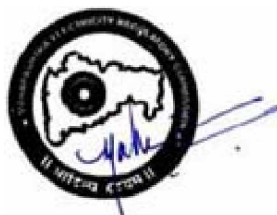
specified by the STU for the purposes of recording of power from transmission licensees to Mumbai distribution licensees.

7. Shri A D Palamwar, Director – Operations, MSEDCL submitted that until intra-State ABT is implemented, MSEDCL may be allowed to charge TPC on a half-hourly basis in terms of the Order dated October 20, 2006.

8. In this regard, the Commission would like to clarify that it is the responsibility of each distribution licensee to pay for its own deviations. Current practice of payment by TPC on behalf of all Mumbai distribution licensees must be stopped with immediate effect. The Commission had directed SLDC to develop the mechanism for energy accounting on monthly basis for all distribution licensees in the State. As directed by the Commission in Para 22 of its Order in Case 86 of 2006 dated 2nd April 2007, SLDC has submitted 'Energy Account and Settlement Statement' based on 'centralised pooling mechanism' to the Commission vide its letter dated 25th April 2007 for the period October 2006 to March 2007. In view of the above, the Commission hereby directs that till such time intra-State ABT is implemented in the State, settlement shall be carried out monthly basis on the basis of energy accounts prepared by the SLDC in this regard. On implementation of intra-State ABT, trading period and settlement period shall be as prescribed in the Commission's Order in the matter.

9. With regard to payment for deviations during stand-by arrangement, Shri. Kulkarni submitted that that drawal during stand-by arrangement qualifies under contracted power and, therefore, the same should not be charged at weighted average marginal price. He submitted that since Mumbai utilities are paying huge cost as fixed charges for stand-by arrangement, the energy charge for supply of power may be Rs. 2.99 /kWh, or any other fixed rate, the Commission may find appropriate, taking into account the ARR of all the TPC and MSEDCL, for pricing of deviations during such stand-by period.

10. Shri. Balawant Joshi submitted that the rate of stand-by supply @ Rs. 2.99/kWh, was determined taking into consideration supply of power from Kawas plant. He suggested that the said rate and principle may not be deviated from. Standby power arrangement is not a contract for quantum of power but the same is for capacity of power. Thus, the Commission may consider the payment of stand-by power at the marginal price.



11. Shri Kulkarni submitted that the rate of Rs.2.99 / unit was not linked to Kawas power but was fixed after taking into consideration all factors that were involved in the supply of stand-by power at that time. However, he agreed that standby power arrangement is a contract for capacity of power and no quantum of energy has been specified.

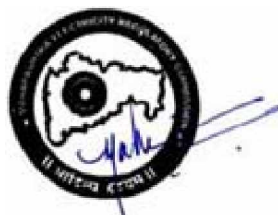
12. Shri Kapil Sharma, REL submitted that pricing mechanism for deviations during planned outage and forced outage periods should be different. He further suggested that pricing of deviations during planned outage should be linked to average variable cost of supply of power of MSEDCL.

13. On this issue, Smt Deepa Chavan, Counsel for MSEDCL submitted that the concept of stand-by arrangement is akin to the concept of insurance premium. TPC should consider stand-by arrangement as insurance towards power shortage. She further suggested that the Commission should consider the high rates at which MSEDCL has to procure power while adjudicating the present matter. She further argued that supply to TPC during stand-by period causes increase in the demand ~ supply gap of MSEDCL, resulting in higher load shedding. Under such scenario, MSEDCL should not be required to subsidise TPC while supplying power under the stand-by arrangement.

14. Further, she contended that the submissions provided by REL on the issue of payment during planned outage and forced outage have no basis or bearing and the same should be rejected. Furthermore, re-determination of the rate at which stand-by power may be supplied will simultaneously require re-determination of tariff, as the same substantially affects the ARR.

15. In this regard, the Commission is of the view that standby arrangement is a contract for capacity of power and not for energy of power. It is the responsibility of MSEDCL to supply power during period as defined in the 'Standby Agreement'. The Commission's Order in Case No. 7 of 2000 dated May 31, 2004, in the matter of Payment of Standby Charges to MSEB by REL and TPC, provides as under:

12. *“Standby charges are levied by and payable to the MSEB by TPC, irrespective of whether or not any of the backup supply is actually drawn, and on the basis of Agreements between TPC and MSEB regarding the*



quantum of the standby facility and the charges therefor (expressed in rupees per KVA per month).”

220. *“It may also be noted that, whereas the standby charge is levied for the guarantee of a facility, separate energy charges are levied on the quantum of energy actually drawn.”*

16. The aforesaid Order dated May 31, 2004 was challenged in appeal by TPC before the Appellate Tribunal for Electricity (Appeal No. 202 of 2005). The Hon’ble Appellate Tribunal’s order (Per Hon’ble Mr. Justice Anil Dev Singh, Chairperson) dated 4th October, 2006 provides as under:

“81. The merger of the order of a judicial or quasi-judicial forum takes place with the order of an appellate forum, whether or not the appellate forum affirms, modifies or reverses the decision of the former. This view draws its sustenance from decisions of the Supreme Court in Chandi Prasad & Ors. Vs Jagdish Prasad & Ors (2004) 8 SCC 724 and Kunhay Ammed Vs State of Kerala (2000) 6 SCC 359.”

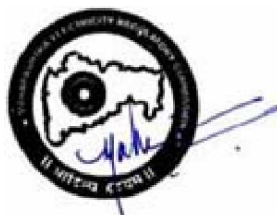
17. Therefore, the portion of the aforesaid Order dated 4th October, 2006, to the extent relevant to the present matter is reproduced hereinbelow:

“70.....The controversy with regard to nature and concept of the stand-by does not survive in view of the following observations of the Supreme Court contained in para 18 of its Judgment dated October 17, 2003 in Civil Appeal Nos. 8360-8361 of 2003:-

*“.....For this kind of a guarantee and availability of power, the TPC had to pay charges for the same to MSEB. **This payment was in addition to the charges or price which the TPC had to pay to MSEB for the actual drawal of electrical energy.**” [Emphasis added]*

18. As regards the rate of Rs. 2.99 per kWh referred by TPC, applicable for net sale by MSEDCL to TPC, Paragraphs 21.1.2 and 55.2 of the Commission’s Tariff Order for the erstwhile MSEB dated March 10, 2004, states,

*“The energy charge to be levied for net sale to the TPC has been increased to match **the highest cost of power purchase, i.e. 299 p/u.**”(emphasis added)*



19. Thus, it is clear that the rate of Rs 2.99/kWh determined by the Commission for net sale from MSEB to TPC was based on the marginal rate prevalent then. Further, such rate was applicable in addition to and independent of the arrangement for standby power. The standby charge being paid by the distribution licensees is towards the fixed charges, and energy charges have to be paid separately.

20. MSEDCL will obviously have to procure power at marginal prices to be able to supply to Mumbai licensees and MSEDCL cannot be expected to supply low cost power to Mumbai licensees, while itself consuming high cost power. Therefore, the Commission is of the view that settlement of deviations during standby period should also take place using the principles of weighted average system marginal price.

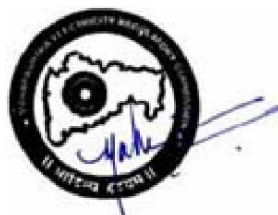
21. In this regard, the Commission would like to draw attention of all licensees to the various directives issued by the Commission. Firstly, the Commission had clearly laid out in its Order in Case No 31 of 2005 that each transmission system user (distribution licensee or the open access user, as the case may be) shall be responsible for transmission losses as well as their own energy requirement. The Commission had also laid down the responsibilities of SLDC in this regard.

22. The Commission had reiterated the issue in Para 38 of the Order in Case No 54 of 2005 dated October 20, 2006 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.”

23. The Commission notes that in spite of such directives, MSEDCL is continuing to bill TPC on behalf of all Mumbai utilities. The Commission feels that such practice is a violation of the Commission's directives and must be stopped. It is the responsibility of the SLDC to prepare energy accounts for the State and it is the responsibility of each overdrawing distribution licensee to pay for deviations caused by it. The necessary operating structure for transfer of funds may be developed and adopted by all licensees through the Grid Co-ordination Committee.

24. The Commission directs that settlements be undertaken in this manner with effect from October 2006. Further, given that responsibility rests on all utilities, the Commission rules that no interest shall be payable for any delay in settlements for the



period October 2006 to March 2007. Interest shall be payable for delay in subsequent settlements as per the Commission's Orders in force.

The Commission disposes of the Petition with the above clarifications and observations.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Smt. Malini Shankar)
Secretary, MERC