

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 28 of 2007

In the matter of
**Petition filed by M/s. Eurotex Industries and Exports Limited seeking review of
Order dated May 18, 2007 passed in Case No. 65 of 2006**

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

ORDER

Dated: September 19, 2007

M/s. Eurotex Industries and Exports Limited (“**M/s. Eurotex**”) filed a Petition on June 22, 2007 under Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (“**CBR**”) seeking review of Order dated May 18, 2007 passed in Case No. 65 of 2006 (in the matter of the Multi-Year Tariff Petition of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08) (“**the impugned Order**”). The Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) have been impleaded as Respondents in the matter. The case of M/s. Eurotex is as follows:

- (i) M/s. Eurotex is a HT continuous process industry engaged primarily in the manufacture and export of cotton yarn and knitted fabrics. M/s. Eurotex is a 100% Export Oriented Unit and a government recognized Export House. The spinning unit of M/s. Eurotex is located at Kolhapur within the area of supply of MSEDCL.
- (ii) As on the month of March 2006, the Contract Demand of M/s. Eurotex was 3000 kVA. Vide letter dated February 4, 2006 from MSEDCL (Circle Office-Kolhapur), official sanction for additional Contract Demand of 1900 kVA at 33 kV to the factory premises of M/s. Eurotex was granted by MSEDCL. Thus, with effect from April 1, 2006, the Contract Demand of M/s. Eurotex stood officially sanctioned as 4900 kVA.
- (iii) During the period from April 2006 to June 2006, M/s. Eurotex carried on trial runs of the various production machines for quality stabilization and establishing the requisite parameters and standards of its processing activity. During the said period, though the maximum recorded demand of

M/s. Eurotex was nearly 88% to 95% of 4900 kVA, the actual consumption was in the vicinity of 61% to 74% of the maximum energy. On and from July 2006, the actual energy consumption was proportionally in line with the increased load of 4900 kVA, and was steady thereafter.

- (iv) The impugned Order, under Clause 7.4(g) thereof, has stipulated that for fixing the benchmark units to calculate the additional supply charge (“ASC”) in case of consumers *“whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which the consumer has utilised at least 75% of the increased sanctioned load/Contract Demand, whichever is earlier.”*
- (v) The criterion for calculation of ASC units under the impugned Order is based on energy consumption while the reference period is based on reaching 75% of the Contract Demand.
- (vi) It has been contended that the process of determining the increased Contract Demand and the process of determination of unit consumption are separate. So far as utilisation of increased Contract Demand is concerned, all the new machinery for which increased Contract Demand has been increased, are first installed and then connected to the supply for trial runs. Thus, the additional demand may be utilised within a few hours of being connected to the supply system, which may be in the vicinity of 75%. Thereafter, after a few days of trial run, all the new installed machinery are stopped for thorough inspection considering (i) whether every moving part of the new machinery is functioning well, lubricants are reaching to every bearing and there is no excessive heating; (ii) whether the finished products manufactured from the new machinery adheres to quality and consistency standards – which may require change of parts, technical adjustments – which process requires a few days time; (iii) the quantum of unit consumption per new machinery – which requires several trial runs and re-runs of short durations. This entire process of stabilizing the production process with the revised Contract Demand requires a duration of three to six months. The time taken for stabilization of increased contractual demand is thus quite different from the time taken for stabilization of unit consumption. M/s Eurotex has contended that the impugned Order’s direction to consider either of the two time-periods as the reference period for computation of applicable ASC is an error apparent on the face of the record.
- (vii) As per Clause 7.4(g) of the impugned Order, the benchmark units for calculation of ASC applicable to M/s. Eurotex have been fixed by MSEDCL on the basis of its unit consumption during April 2006, which being only 61% of the maximum level of consumption does not qualify as proper reference consumption. Adoption of this process for computation of applicable ASC would defeat the purpose of M/s. Eurotex behind increasing its contractual demand. If such a process is adopted, it would lead to stoppage in the utilization of new machinery and idling of labour force.

- (viii) If the benchmarking for calculation of the ASC applicable to M/s. Eurotex is fixed at low levels, it acts as a fetter to M/s. Eurotex to avail the incentive for reduced ASC units, as also provided under the impugned Order.
- (ix) The effect of the provisions under Clause 7.4(g) of the impugned Order, so far as the criterion for calculation of ASC units is based on energy consumption and the reference period be based on the consumer reaching 75% of the Contract Demand, would lead to an anomalous situation.
- (x) The Contract Demand may cross the threshold limit of the stipulated 75% in the very first month of the release of increased Contract Demand on trial running of all new machinery for a short duration exceeding the 30-minutes time-block (which is the maximum demand recording cycle). Such consumption pattern during short trial runs/re-runs will register a high level of energy consumption, and the average energy consumption during the same month would be much lower. The proper level of monthly unit consumption should be determined only after the completion of such short trial runs/re-runs. Benchmarking the unit consumption of a HT consumer with increased demand on the basis of highest use of energy during a period of 30 minutes during the trial run period, would lead to a serious anomaly.
- (xi) It has been contended that the issues raised under the present petition amounts to the discovery of new and important matter which, after the exercise of due diligence, was not within the knowledge of M/s. Eurotex or could not be produced by it at the time of issuance of the impugned Order, and the anomaly caused in terms of Clause 7.4(g) in the impugned Order, could not have been contemplated at the said time.

On the basis of the aforesaid issues, M/s. Eurotex have prayed that either the provisions “*or the billing period of the month in which the consumer has utilised at least 75% of the increased sanctioned load/Contract Demand, whichever is earlier*” be deleted from the impugned Order or in the alternative, a clarification may be provided that Clause 7.4(g) in the impugned Order shall be applicable only after the expiry of six months from the date of increase in the sanctioned load/Contract Demand. Further, M/s. Eurotex has sought directions upon MSEDCL to refund the amounts of energy charges and other incidental charges that M/s. Eurotex has paid to MSEDCL on the basis of erroneous benchmarking of applicable ASC during the month of April 2006.

2. At the admissibility hearing held in the matter on August 14, 2007, Shri. Harish. M. Jagtiani, Counsel for M/s. Eurotex, submitted that for calculation of applicable ASC payable by M/s. Eurotex, the ideal criterion for selecting the reference period should be “*the billing period after six months of the increase in the sanctioned load/Contract Demand*” (which is the first criterion) and not “*the billing period of the month in which the consumer has utilised at least 75% of the increased sanctioned load/Contract Demand*” (which is the second criterion). Further, if the second criterion is to be adopted, then the words “*whichever is earlier*” should be

deleted from the said Clause 7.4(g) in the impugned Order as the implication of the said words completely negates the import and efficacy of the first criterion. It was further submitted that M/s. Eurotex being a Government recognized Export House, cannot compromise on quality production. It is reasonable therefore that 75% of the Contract Demand may be achieved during the trial run/re-run exercise which was required to be meticulously conducted. On the issue of maintainability of the present petition, Counsel argued that the aforesaid facts constitute a fit case for review of the impugned Order. It was submitted that the impact of the said erroneous observation in the impugned Order was realized post the implementation of the same. The implication of the said impugned Clause, and the immediate hardship thereof, could not have been foreseen at the time of adjudication of Case No. 65 of 2006. If the same could have been foreseen and has escaped consideration, the Commission should reconsider it and modify the impugned Order accordingly.

3. Per contra, it was argued by Smt. Deepa Chawan, Counsel for MSEDCL, that the application for approval of Annual Revenue Requirement and Multi Year Tariff for the first Control Period from FY 2007-08 to FY 2009-10, which is the genesis of the impugned Order, was submitted by MSEDCL on December 29, 2006 in accordance with the provisions of the Electricity Act, 2003 (“EA 2003”). Thus, the proceedings under Case No. 65 of 2006 were initiated post the expiry of the period when the additional machinery, for which the Contract Demand was augmented from 3000 kVA to 4900 kVA, were put on trial run. M/s. Eurotex had not taken any steps to address the issues raised under the present petition, during the adjudication of Case No. 65 of 2006. The said application of MSEDCL was widely publicized firstly by MSEDCL, and thereafter by the office of the Commission, for reception of responses in the nature of comments/objections/suggestions, from stakeholders and interested persons. Reasonable opportunity was thus provided to M/s. Eurotex to participate in the multi-year tariff determination process in Case No. 65 of 2006, and aid the overall process. However, M/s. Eurotex have not taken any such steps, or participated in the various public hearings that were conducted before issuance of the impugned Order. It is not feasible for the Commission to accommodate individual grievances post the implementation of the impugned Order and enter into multiple exercises of review of the said impugned Order. The impugned Order being a MYT Order for effect from FY 2007-08 to FY 2009-10, is a generic order which should be implemented with finality.

4. Smt. Deepa Chawan further argued that M/s. Eurotex cannot contend that the particular set of circumstances that have caused their grievance, was not in existence at the time of adjudication of the impugned Order. The case of M/s. Eurotex cannot be considered as a discovery of a new and important matter of evidence which, after the exercise of due diligence was not within their knowledge.

5. Smt. Deepa Chawan further referred to the proceedings initiated by MSEDCL under Case No. 26 of 2007 (in the matter of clarification of the Order dated May 18, 2007 passed in Case No. 65 of 2006) and submitted that the various aspects on which clarification has been sought thereunder cover the issue raised by M/s. Eurotex under the present petition. It was strongly contended that the present petition should be dismissed as not maintainable.

6. Shri. Harish Jagtiani, Counsel for M/s. Eurotex, refuted the argument of Smt. Deepa Chawan that review of a MYT Order, being a generic order, cannot be allowed if the aggrieved person has failed to participate in the tariff determination process initiated prior to issuance of the impugned Order. Shri. Jagtiani submitted that the test of review of any Order is the genuineness of the circumstances or reasons that necessitate review. The aim of justice is the mitigation of the genuine difficulties of interested persons, and non-participation of any aggrieved person in the regulatory process at the relevant time, cannot be a ground for not allowing justified modification of any Order. It was vehemently argued that the imposition of the phrase “*whichever is earlier*” restricts M/s. Eurotex from enjoying the benefit under the aforesaid first criterion, which criterion has been recognized as a valid criterion, and forces the disadvantageous operation of the second criterion.

7. After considering the material placed on record and having heard the parties at length, the Commission observes that the present issues raised by M/s. Eurotex have been considered by the Commission in the disposal of Case No. 26 of 2007, in the matter of the Clarificatory Petition filed by MSEDCL on the Commission’s Order in Case 65 of 2006. The relevant extract under the combined Clarificatory Order dated August 24, 2007 in Case Nos. 26 of 2007 and 65 of 2006 is reproduced as under:

“12. Reference bill period for HT foundries in cases of increase in Contract demand

In cases of increase in Contract Demand after the reference period, the extant clarification states,

(g) In case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which the consumer has utilised at least 75% of the increased sanctioned load/Contract Demand, whichever is earlier.

Some HT Foundries have submitted that after increase of the Contract Demand, they exceed 75% of their Contract Demand on their first trial run itself, though their monthly consumption is much lower. As the first month then becomes the reference period in such cases, such consumers are consequently

subjected to higher ASC in the subsequent months. These consumers have requested the Commission to link the levy of ASC to the average consumption in the first six months after increase in Contract Demand, for HT foundries.

Commission's Clarification and Ruling

Though this may be a genuine problem of some such HT Foundry consumers, the Commission is of the opinion that it may not be appropriate to give relief to any specific segment of industry, which may have peculiar characteristics. The Commission's Order and the clarifications have to be generic and applicable across all industries and consumers. Giving relief to any specific industrial segment may lead to a similar demand from other industries, which may have different problems.

However, the Commission is of the opinion that there could be cases where the Billing Demand exceeds 75% of the Contract Demand in the first month itself due to trial runs, etc. At the same time, there has to be some criteria related to Contract Demand to ensure that this provision is not being misused. Hence, the Commission clarifies that this provision will be modified to provide for the first three incidences of recorded demand exceeding 75% of Contract demand, as follows:

*"In case of consumers whose sanctioned load/Contract Demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which **the third occasion of the consumer utilising at least 75% of the increased sanctioned load/Contract Demand after increasing the Contract demand is recorded, whichever is earlier.**"*

8. Subsequently, the Commission issued a further Clarificatory Order in this matter, on September 11, 2007. The relevant extract of this Clarificatory Order dated September 11, 2007 in Case No.s 26 of 2007 and 65 of 2006 is reproduced as under:

"Further to the issue of the above Clarificatory Order, the Commission has noted certain issues, where additional clarifications are required to be given. Accordingly, the Commission is issuing this Clarificatory Order in order to further clarify the Order, wherever necessary. The clarifications in this Order will also come into effect from May 1, 2007, unless specifically mentioned otherwise.

1. Reference consumption to be considered for levy of ASC

(a) Cases of increase in Contract Demand/Sanctioned Load

In the context of the reference period in case of consumers where the Contract Demand has been increased subsequent to the billing month of December 2005, the Commission had clarified on pages 25 and 26 of the Clarificatory Order under the heading “Reference bill period for HT foundries in cases of increase in Contract demand” as under:

*“In case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which **the third occasion of the consumer utilising at least 75% of the increased sanctioned load/Contract Demand after increasing the Contract demand is recorded, whichever is earlier.**”*

The Commission had also clarified on pages 14 and 15 of the Clarificatory Order that,

“...clause (g) of the Order reproduced above, will be applicable only in cases, where the increase in Contract Demand is equivalent to 25% or more of the Contract Demand during the reference period from January 2005 to December 2005...”

In continuation, the Commission clarifies as under:

- a. The above clarifications on pages 14, 15, 25 and 26 of the Clarificatory Order dated August 24, 2007 are to be read in conjunction, and not independently.*
- b. Though the heading under which the clarification has been given may appear to indicate that the clarification is applicable only for HT Foundries, the detailed clarification makes it clear that it is applicable for all consumers where the Contract Demand/sanctioned load has been increased.*
- c. The reference to sanctioned load is applicable only to consumers where the demand is yet to be contracted, and the fixed charges are being billed on the basis of sanctioned load.*
- d. The clarification effectively means that in cases where the increase in Contract Demand/sanctioned load is equivalent to 25% or more of the Contract Demand during the month of December 2005, the consumer will get at least three months time (grace period), since the third incidence of utilising at least 75% of the increased Contract Demand/Sanctioned Load can occur at the earliest in the third month, as the maximum demand meter records only the highest recorded demand in the month, and does*

not record each individual incidence when the recorded demand is higher than a specified limit.

- e. Further, till the reference period is reached under this clause (billing period after six months of the increase in the Contract Demand/sanctioned load or the billing period of the month in which the third incidence of utilisation of at least 75 % of the increased Contract Demand/sanctioned load), the ASC will be levied at the stipulated proportion of 11% and 24%, as the case may be. Thereafter, the ASC on the increase/decrease in consumption vis-à-vis the reference consumption will be charged in accordance with the Commission's orders in this regard.
- f. Accordingly, the illustration given on Page 15 of the Clarificatory Order dated August 24, 2007, in the context of the sample cases put forth by MSEDCL, stands modified as follows:

Sl.	Sample Case	Contract Demand in 2005	Current Contract Demand	Reference Period	Basis
		kVA	kVA	Month	
1	Case I	5000	9500	July 2006	Contract Demand has not increased by at least 25% over 2005 levels
2	Case II	9000	10500	Average of 2005	
3	Case III	10000	7000	Average of 2005	
4	Case IV	10000	7000	Average of 2005	

9. Further, there is no merit in the Petitioner's contention that the words "whichever is earlier" after the second criterion negates the import and efficacy of the first criterion, and should hence, be deleted. Specifying such a limitation after stipulating two or more criteria, is a standard practice, and cannot be said to negate the import and efficacy of any criterion. For instance, the definition of billing demand specifies that the billing demand will be the higher of the following:

- i. Actual Maximum Demand recorded in the month during 0600 hours to 2200 hours
- ii. 75% of the highest billing demand recorded during preceding eleven months
- iii. 50% of the Contract Demand.

10. In the aforesaid circumstances, the Commission observes that reconsideration of the same issue is not necessary under the present proceedings. So far as benchmarking the units for calculation of ASC is concerned, the clarification provided under the

aforesaid Clarificatory Orders dated August 24, 2007 and September 11, 2007, will have general effect. The revised criterion on the reference period for calculation of ASC applicable on HT foundries thereunder, is applicable *mutatis mutandis* on all HT industrial consumers.

11. In relation to the reliefs sought by M/s. Eurotex for the issuance of appropriate directions upon MSEDCL to refund the amounts of energy charges and other incidental charges that M/s. Eurotex has paid to MSEDCL on the basis of erroneous benchmarking of applicable ASC during the month of April 2006, the Commission observes that MSEDCL should undertake implementation of the Clarificatory Orders dated August 24, 2007 and September 11, 2007 in Case Nos. 26 of 2007 and 65 of 2006 with retrospective effect, i.e., from the date of operation of the Order dated May 18, 2007 passed in Case No. 65 of 2006. Accordingly, appropriate refund should be made to M/s. Eurotex.

With the aforesaid observations, the Commission disposes of the Petition filed by M/s. Eurotex Industries and Exports Limited.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman

(P.B. Patil)
Secretary, MERC