

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 42 of 2007

In the matter of
Petition filed by M/s. Hanil Era Textiles Limited disputing certain bills issued by
MSEDCL as illegal.

Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

M/s Hanil Era Textiles Limited
New Era House, Mogul Lane,
Matunga (W), Mumbai 400 016 ... Petitioners

Versus

Maharashtra State Electricity Distribution Company Limited & Anr
Prakashgad, Bandra (E),
Mumbai 400 051 ... Respondents

ORDER

Dated: September 15, 2008.

M/s. Hanil Era Textiles Limited (HETL) submitted a Petition under affidavit, on August 10, 2007, inter alia submitting that the Maharashtra State Electricity Distribution Company Ltd., (MSEDCL) has demanded additional amounts through electricity bills, which are illegal, as the Petitioners (HETL) are Captive Power Plant (CPP) holders and are liable to be charged as per the tariff fixed by the Commission vide its Order dated September 8, 2004 in Case No. 55 and 56 of 2003, in the matter of power purchase and other dispensation in respect of Fossil Fuel based Captive Power Plants, and not as per the tariff fixed for the regular consumers. Shri. Kevic Setalwad, Counsel, and Shri. Sean Wasoodew appeared on behalf of HETL and Smt. Deepa Chawan, Counsel, appeared on behalf of MSEDCL.

2. HETL submitted that it had approached the High Court, Bombay for restraining MSEDCL from disconnecting the power supply of HETL for non-payment of the billed amount. The High Court was pleased to direct the Commission to hear HETL and pass an appropriate Order expeditiously, in the event that HETL files its claim before the Commission within two weeks and pays 50% of the disputed amount within two weeks.



3. HETL filed a Petition before the Commission against MSEDCL as Respondent No.1 and Superintending Engineer (Pen), MSEDCL as Respondent No.2. The Petition was filed on August 10, 2007 challenging the bills dated June 22, 2007 and July 21, 2007 raised by MSEDCL against HETL and disconnection notice dated July 6, 2007 issued by SE (Pen) against HETL on account of non-payment of the bills. The Petitioners have not stated in the present Petition on affidavit that they have deposited 50% of the disputed amount as directed by the High Court, Bombay, which is a condition precedent to the direction of the High Court that the matter is to be heard by the Commission.

4. The following are the prayers of HETL in its Petition:

- a. *“That it be declared that the electric bills dated 22.06.2007 and 21.07.2007, raised by the respondents are bad and illegal to the extent that the sum of Rs. 32,53,245.47 p. is demanded from the petitioner under the heading “debit bill adjournment” (should be read as ‘adjustment’) and sum of Rs. 13,23,433.69 demanded under the heading “Additional Supply Charges plus I.A.S.C.”*
- b. *That it be declared that the petitioner is liable to pay electricity charges to the respondent as per the order dated 08.09.2004 passed by this Hon’ble Commission in case No. 55 and 56 of 2003.*
- c. *That it be further declared that the petitioner is not governed by the order dated 18.05.2007 passed by this Honorable Commission in case No. 65 of 2006 or order dated 20.12.2006 and 23.04.2007.*
- d. *That in the alternative and in case if this Honorable Commission comes to the conclusion that the petitioner is governed by the order dated 18.05.2007 passed by this Honorable Commission, the petitioner prays that the said order dated 18.05.2007 be recalled and the Respondents be ordered and directed to collect electricity charges as per the order dated 08.09.2004, passed in case No. 55 and 56 of 2003.*
- e. *That in the further alternative, the respondents be ordered and directed to raise bills on the basis of monthly average consumption from June 2006 and not from 01.01.2005.*
- f. *That the respondents be ordered and directed to charge the petitioner the M.D. charges strictly on hourly basis.*
- g. *That the respondents be ordered and directed to provide additional load of 1500 KVA sanctioned by the respondents, without demanding further SLC charges (line laying charges from the petitioner).*
- h. *That pending the hearing and final disposal of the petition, the Respondent No.1 be ordered and directed not to disconnect the petitioner’s electricity supply as per disconnection notice dated 06.07.2007.”*

5. HETL submitted that it is bound to pay the electricity charges to MSEDCL in accordance with the Commission’s Order dated September 8, 2004 in Case No. 55 and 56 of 2003 (in the matter of power purchase and other dispensation in respect of fossil fuel based captive power plants), and it is not bound to pay the electricity charges as per the Commission’s Order dated May 18, 2007 in Case No. 65 of 2006 (in the matter of determination of Annual Revenue Requirement [ARR] of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08).



6. HETL submitted that in 1993, it had paid the charges for laying separate electricity wire and cables from the nearest sub-station of MSEDCL, so that HETL could get the supply of electricity from MSEDCL. Thereafter, MSEDCL was not in a position to supply uninterrupted supply of electricity to HETL, which is necessary for production of good quality yarn; hence, HETL installed a Captive Power Plant (CPP) to meet its regular electricity demand. However, due to the break down of the CPP around 10 to 12 months ago, HETL is using the electricity supplied by MSEDCL and paying the bills for the same.

7. HETL contested the bill raised on June 22, 2007, which is for the period from May 21, 2007 to June 16, 2007. HETL submitted that it is not liable to pay the amount of Rs. 70.23 lakh demanded under Additional Supply Charges (ASC) and Incremental ASC (IASC) as a part of its electricity bill dated June 22, 2007. HETL stated that it is liable to pay only around Rs. 57 lakh as energy charges (which it has arrived at by multiplying tariff of Rs. 3.40 per kWh by the total number of units consumed, i.e., 1.68 million units (MU) for the period of May-June 2007. According to HETL, the difference between Rs. 70.23 lakh and Rs 57 lakh, i.e., Rs. 13.23 lakh, is the additional supply charge illegally demanded by MSEDCL. Also, HETL has contested the amount of Rs. 32.53 lakh under the heading of debit bill adjustment as according to HETL, it has paid the electricity bills on or before time and has no arrears pending.

8. HETL submitted that on an enquiry made at MSEDCL office, it was informed that based on an Order passed by the Commission in the month of May 2007, the formula for calculating electricity charges has been changed with effect from May 1, 2007. So HETL was required to pay an amount of Rs. 32.53 lakh for the consumption in past months. It was also submitted that MSEDCL was not in a position to show the copy of the Order passed by the Commission, on the basis of which it had calculated the electricity bills, however, later on the Counsel of MSEDCL had forwarded the copy of Commission's 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 and FY 2006-07 and determination of tariff for FY 2006-07) and Order dated May 18, 2007 in Case No. 65 of 2006.

9. HETL submitted that a disconnection notice dated July 6, 2007 was served on it by MSEDCL for failing to make the payment on or before the due date of the electricity bill for the month of May-June 2007.

10. HETL filed a Writ Petition (Ldg) No. 1452 of 2007 before the Honourable High Court and submitted that it had paid an amount of Rs. 57 lakh out of the amount of Rs. 70.23 lakh. The High Court, in its Judgment, has directed the Commission to hear the Petition in case HETL files the Petition before the Commission within two weeks and pays 50% of the disputed amount within two weeks.

11. HETL submitted that it had received a letter from SE (Pen), MSEDCL on July 17, 2007 communicating that the electricity bill for the month of May 2007 had been calculated based on Commission's Order dated May 18, 2007 in Case No. 65 of 2006. It was also stated that the reference period for calculation of ASC charges was considered as Jan 2005 to Dec 2005 as per the above-mentioned Order.



12. MSEDCL submitted its Counter Affidavit on September 19, 2007 stating its position before the Commission. MSEDCL submitted that the monthly energy bill dated May 22, 2007 was based on the Operative Order of the Commission dated April 27, 2007 and ASC was charged considering the average consumption for the year 2006, which led to an under-recovery of Rs. 31.28 lakh in the bill of HETL, which was later indicated in the revised bill for May 2007 issued after the Commission issued the detailed Order in Case 65 of 2006 dated May 18, 2007. MSEDCL also manually revised the demand charges which, previously were as per the Commission's Order dated September 8, 2004 in Case No. 55 and 56 of 2003 for CPP consumers, which as per the Commission's Order dated May 18, 2007 in Case No. 65 of 2006 worked out to Rs. 1.25 lakh. Hence, MSEDCL had shown the total recovery of bills for the month of May 2007 in the bill for the month of June 2007 as Rs. 32.53 lakh under the heading of debit bill adjustment.

13. MSEDCL submitted that HETL's consumption for the month of June 2007 was recorded as 1,680,000 units. The ASC was levied on 1,599,871 units based on the comparison with the benchmark monthly average consumption of the year 2005. The Additional Supply Charge plus IASC was billed as Rs. 70.23 lakh, and remaining 80,129 units were billed at the base tariff of Rs. 3.40 per kWh amounting to Rs 2.72 lakh, based on the Commission's Order dated May 18, 2007. MSEDCL also submitted that the Commission's Order dated September 8, 2004 in Case No.s 55 & 56 of 2003 is applicable to CPP consumers only for charging the additional demand in excess of the Contract Demand in case of planned and unplanned shutdown, and not in respect of electricity charges.

14. MSEDCL submitted that HETL was supplied power as on October 18, 1993 with a Connected Load of 3750 kW and Contract Demand of 2400 kVA. On the request of HETL, the Contract Demand was enhanced to 4900 kVA from July 1994. Thereafter, again on the request of HETL, the Contract Demand was reduced to 3000 kVA from 4900 kVA in September 1997. HETL again requested for reduction in Contract Demand from 3000 kVA to 1500 kVA from August 1997. MSEDCL had approved the same vide its letter SE/PC/Teach/PNL/Consumer/822 dated February 26, 2001, on the condition that if any enhancement in Contract Demand is required in the future, it would be processed afresh as per the prevailing rules. Further, the above mentioned letter also stated that HETL would have to pay all the charges applicable along with compliance and other formalities and the above mentioned letter would form part of the agreement, in case of demand enhancement in future. MSEDCL submitted that based on the acceptance of the conditions in the above mentioned letter, the Contract Demand was reduced from 3000 kVA to 1500 kVA for the billing month of August 1997.

15. MSEDCL added that HETL had requested for enhancement in its Contract Demand from 1500 kVA to 3000 kVA and Connected Load from 3750 kW to 9560.95 kW, vide its letter dated October 19, 2006. It appears that further enhancement in Contract Demand has been sought by HETL, which has been sanctioned by MSEDCL vide its letter No. Co-ord Cell/Hanil Era/06093 dated March 3, 2007, and the Contract Demand was increased from 1500 kVA to 4900 kVA with Connected Load increased from 3750 kW to 9561 kW on 22 kV dedicated/express feeder. The same was



sanctioned by SE (Pen) vide Load Sanction Order No. SE/PC/tech/PNL/Cons.332/03532 dated June 20, 2007, subject to payment of additional security deposit of Rs. 66.88 lakh and other miscellaneous charges. However, as HETL had not made the requisite payment till date, the additional Contract Demand had not been released.

16. The Commission, vide its Notice dated September 12, 2007, scheduled the admissibility hearing on September 24, 2007 but the same was adjourned owing to the request made by Shri. Sean Wasoodew, Counsel for HETL. The plea for adjournment was made contending that HETL had received a copy of MSEDCL's reply as late as on September 20, 2007 and sufficient time should be provided to HETL for filing of rejoinder to the contentions raised by the MSEDCL. The admissibility hearing in the matter was thereafter adjourned and re-scheduled for September 28, 2007.

17. The admissibility hearing on the above-mentioned matter was held on September 28, 2007. During the Hearing, Shri. Kevic Setalwad, Counsel, appeared on behalf of HETL and Smt. Deepa Chawan, Counsel, appeared on behalf of MSEDCL. Shri. Setalwad sought an adjournment in order to apprise the Commission on the maintainability of the present proceedings if at all considered as a review of the MYT Order and submit written submissions in this regard, if need be. It was further submitted that the present proceedings have not been initiated by HETL on any understanding that the maintainability of the same needs to be tested in terms of the Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, ("CBR") for seeking review of the MYT Order. HETL, have on the contrary initiated the present proceedings on the stand that no Order save the Order dated September 8, 2004 is applicable to HETL, so far as recovery of electricity charges are concerned. Counsel further prayed that till the admissibility hearing in the present matter is not concluded, a direction may be issued to MSEDCL not to charge any amount pertaining to ASC and IASC, in future energy bills.

18. The Commission adjourned the admissibility hearing of the matter granting time to HETL to file written submissions on the maintainability of the present proceedings under Regulation 85(a) of the CBR so far as they relate to seeking review of the MYT Order.

19. HETL submitted a rejoinder in response to MSEDCL's Counter Affidavit on September 28, 2007 where it has stated that the State Government has prescribed a concessional rate for power loom industry, as published through MSEDCL's Commercial Circular No. 42 dated August 19, 2006. The bills for the power loom consumers should have been raised at the rate of Rs. 1.60 per kWh from August 2006 but MSEDCL is charging HETL at Rs 3.40 per kWh.

20. HETL submitted that in its electricity bills dated May 22, 2007 and June 22, 2007, MSEDCL has calculated additional demand charges on the basis of maximum demand during the month without considering the individual maximum demands with the various time zones, which is not in accordance with the Commission's Order dated September 8, 2004.



21. HETL submitted that it was given a Connected Load of 3750 kW with a Contract Demand of 3000 kVA on October 18, 1993. HETL claimed that it has paid all the necessary charges including Service Line Charges (SLC) to the tune of Rs. 34.90 lakh at the time of this load sanction. Later on, HETL enhanced its Connected Load to 6400 kW and Contract Demand to 4900 kVA in July 1994. Thereafter, HETL installed a captive power plant (CPP) in the year 1997 and had reduced its Contract Demand to 1500 kVA. Since June 2006, HETL's CPP had stopped functioning, so it has requested for enhancement of Contract Demand to 3000 kVA and Connected Load to 9560.95 kW. HETL submitted that at this instance, MSEDCL had once again asked for payment of SLC. HETL cited the Commission's Order dated September 8, 2006 in Case No. 70 of 2005 in the matter of approval of MSEDCL's Schedule of Charges, where in the Commission had rejected MSEDCL's proposal to recover SLC from prospective consumers except in case of consumers requiring dedicated distribution facility. HETL contended that it was hence, incorrect on the part of MSEDCL to ask once again for payment of SLC.

22. HETL further submitted that MSEDCL proposed to sanction the enhanced Contract Demand of 4900 kVA on a dedicated express feeder. However, HETL had not specifically requested for dedicated express feeder. HETL also contended that the express feeder was proposed by MSEDCL in order to enable MSEDCL to justify the demand for SLC.

23. HETL further submitted that MSEDCL, through its letter dated December 15, 2006 had sanctioned the increase in the Contract Demand to 3000 kVA subject to payment of some charges as mentioned in its letter. HETL contended that the demand for such charges made by MSEDCL is illegal and hence, from the letter it should be inferred that Contract Demand of 3000 kVA is deemed to have been sanctioned to HETL and MSEDCL should calculate the additional demand charges and ASC on the basis of enhanced Contract Demand of 3000 kVA only. Also, the physical (actual) increase in Contract Demand to 3000 kVA has not been implemented due to reasons solely attributable to MSEDCL.

24. HETL submitted that its CPP unit had stopped functioning with effect from June 2006 and during the reference period from January 2005 to December 2005, used for calculation of ASC; HETL was using its own captive power. The power used from MSEDCL was minimal and more in the nature of transmission losses, and due to temporary breakdown or minor emergency load. The average monthly consumption for the reference period works out to 80,129 units only. HETL requested the Commission to take note of HETL's special circumstances and specify a different method for computation of ASC as it has done in case of lockouts, strikes, seasonal units, etc.

25. HETL further submitted that in the context of computation of ASC charges, it should be treated at par with new consumers as per the clause (b) on page 195 of the Commission's Order dated May 18, 2007 in Case No. 65 of 2006 or alternatively, HETL should be given the benefit of clause (g) on page 196 of the above mentioned Order, considering sanction letter of MSEDCL dated December 15, 2006.



26. HETL further submitted that retrospective implementation of the Commission's Order passed on May 18, 2007, from May 1, 2007, is detrimental to the interests of HETL in the view of exceptional circumstances of the case as mentioned above.

27. At the second hearing held on October 16, 2007 Shri. Setalwad vehemently argued that the maintainability of HETL's case should not be tested only as per the requirements of Regulation 85(a) of the CBR. The extent to which the present matter relates to review of the MYT Order may be tested in terms of the said Regulation. Shri. Setalwad further submitted that the present Petition also seeks specific clarification from the Commission as to whether HT industrial consumers having a CPP should be required to pay electricity charges as per the tariff determined under the MYT Order, or as per the combined Order dated September 8, 2004 passed by the Commission in Case No. 55 and 56 of 2003. Per Contra, Smt. Deepa Chawan argued that the direction of the High Court, Bombay in the said Order, for adjudication of a dispute by the Commission, was pursuant to the voluntary submission of the Petitioners in the said Writ Petition for referring the said matter before the Commission, so far as settlement of the ASC and IASC components of disputed bills are concerned.

28. HETL and MSEDCL both confirmed that HETL have paid to MSEDCL 50% of the said disputed amount as directed by the High Court, Bombay.

DECISION WITH REASONS:

29. Having heard the parties and after considering the material placed on record, the Commission is of the view as under:

30. The Parties have made several conflicting submissions and contentions on several issues that have been raised under this Petition. In addition, HETL has also filed another Petition before the Commission, numbered as Case No. 77 of 2007, wherein some of the same issues have also been agitated, based either on the same rationale or varying rationale. The Commission has dealt with the issues and contentions of the Parties as raised in the Petition and arguments before the Commission under this Case No. 42 of 2007, without any reference to the issues and contentions raised in Case No. 77 of 2007. A separate Order is being issued in that matter.

31. Further, the Commission has framed certain issues as elaborated below, followed by the Commission's ruling on each of the issues:

- a) Does HETL's Petition amount to a Review Petition against the Commission's MYT Order for MSEDCL for the first Control Period from FY 2007-08 to FY 2009-10 in Case 65 of 2006 dated May 18, 2007? Whether the Petition filed by HETL is admissible under Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004, as regards Review of the Commission's Orders? What is the import of the Judgment of the Honourable High Court allowing the Petitioners to approach the Commission for seeking the necessary relief?
- b) Whether HETL is exempted from paying tariff as determined by the Commission in its MYT Order dated May 18, 2007? Whether the Commission's Order for CPPs in Case 55 and 56 of 2003 dated September 8, 2004 has



specified any energy charge that can be applicable in case of HETL? Whether HETL is eligible for getting subsidised tariff applicable for power looms? Which is the appropriate Forum for agitating this issue?

- c) Whether the bills raised by MSEDCL for May 2007 including demand for Debit Bill Adjustment and levy of ASC and IASC are bad and illegal? Which is the appropriate Forum for agitating this issue?
- d) Whether there is any need to modify the provisions of the Commission's Tariff Order in the context of benchmark consumption for levy of Additional Supply Charges (ASC)? Is HETL eligible for being considered either on par with new consumers or as a case of lockout, strike, seasonal industry, etc., or as a case of increase in Contract Demand?
- e) Whether MSEDCL has levied the Additional Demand Charges (ADC) for months where HETL has exceeded the Contract Demand, in accordance with the Commission's Order for CPPs in Case 55 and 56 of 2003 dated September 8, 2004? What should be the base Contract Demand for computing the excess demand and ADC? Which is the appropriate Forum for agitating this issue?
- f) Whether MSEDCL's claims for payment of additional Service Line Charges, and Additional Security Deposit at different points in time, while sanctioning the increase in Contract Demand for HETL, are justified? Which is the appropriate Forum for agitating this issue?

32. The Commission now proceeds on its findings on each of the issues framed above:

Admissibility of HETL Petition

33. HETL's prayers effectively amount to seeking a review of the MYT Order issued by the Commission, since HETL has sought that the MYT Order should not be made applicable to HETL. The admissibility of any Review Petition has to be tested against the provisions of Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, which stipulates as follows:

"85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him 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, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."

34. The Commission's jurisdiction can be invoked in the context of an Order passed by the Commission, either under Review or in case any clarification is being sought due to implementation difficulties. In case of review, the Petition has to be filed within the specified period of 45 days from the date of issue of the Order. Even in case clarification is being sought, the Petition would have to be filed within a similar period.



However, HETL has filed the Petition more than six months after the passage of the Commission's Operative Order dated April 27, 2007, and more than five and a half months after the passage of the Commission's detailed Multi-Year Tariff (MYT) Order dated May 18, 2007 for MSEDCL for the first Control Period from FY 2007-08 to FY 2009-10, including tariff determination for FY 2007-08, and has not sought condonation of delay in submission of the Petition. Thus, there has been an inordinate delay on the part of HETL in filing the Petition. HETL has also not made any case for admissibility of the Petition under the review jurisdiction of the Commission, as no case has been made for justifying grant of review on account of any error apparent on the face of the record or on account of any new evidence that has come to light subsequently or for any other sufficient reasons. As regards the Judgment of the Honourable High Court in this regard in Writ Petition (Ldg) No. 1452 of 2007, dated July 26, 2007, the High Court held as under:

“Learned Counsel for the Petitioner, without prejudice to his rights and contentions to urge various pleas raised in the present Writ Petition, wishes to withdraw this petition. However, he submits that the Petitioner would pay a sum of 50% of the disputed amount which according to him is about Rs. 49 lakhs. In the circumstances, having heard Counsel for Respondent No. 2, we direct the Maharashtra Energy Regulatory Commission to hear the Petitioner and pass and appropriate order expeditiously, in the event that the Petitioner files his claim before the Commission within two weeks and pays 50% of the disputed amount within two weeks. In that event further demand which is the subject matter of the present matter will not be enforced except upon the final order to be passed by the Commission...”

35. In view of the above, since the Commission has been directed by the Honourable High Court to hear the Petitioner and pass an appropriate order, the Commission has considered the Petition filed by HETL on merits and jurisdiction on specific issues, as detailed subsequently. It should be noted that the Commission draws its powers from the various provisions of the Electricity Act, 2003, its Regulations, and decisions of the High Court and Supreme Court in other matters. The Commission is of the view that High Court's Order dated July 26, 2007 has entitled HETL to raise its claims before the Commission. However, the Commission can only decide on issues that are within the jurisdiction of the Commission. The Hon'ble Supreme Court has in its judgment dated 14.08.2007 in Civil Appeal No 2846 of 2006 held that the Commission will have no jurisdiction to decide on billing disputes between the consumers and licensees. As per the said judgment of the Supreme Court, the Commission has jurisdiction to adjudicate on disputes between generating companies and licensees and as between licensees but not between consumers and licensees because the EA 2003 has made specific provisions under Section 42(5),(6),(7) for the redressal of such disputes and grievances by the consumer grievance redressal forums with further representation to the Electricity Ombudsman. In this view of the matter, Hon'ble High Court's Order dated July 26, 2007 cannot be taken to empower the Commission with jurisdiction, which it otherwise does not have. Hence, even though all issues raised by the Petitioner have been heard, the Commission has passed a specific order only on matters that are within its jurisdiction.



Tariff Applicable for HETL

36. HETL has claimed that the tariff determined by the Commission in the MYT Order in Case No. 65 of 2006 dated May 18, 2007, is not applicable for HETL, and HETL is liable to pay electricity charges to MSEDCL as per the Commission's Order dated September 8, 2004 in Case No. 55 and 56 of 2003 in the matter of 'Power Purchase And Other Dispensation In Respect Of Fossil Fuel Based Captive Power Plants'. MSEDCL has countered this argument and has stated that the above-said Commission's Order is applicable to CPP consumers only for levying Additional Demand Charges in case of recorded demand exceeding the Contract Demand in case of planned and unplanned shutdown, and not in respect of energy charges.

37. A careful reading of the Commission's CPP Order dated September 8, 2004 in Case No. 55 and 56 of 2003 reveals that no electricity charges have been indicated in the Order that could be applicable for consumption from the grid by CPP consumers like HETL. The Commission agrees with MSEDCL's submission in this regard that the above-said Order is applicable to HETL only to the extent of computation of Additional Demand Charges in case of recorded demand exceeding the Contract Demand. Furthermore, the Commission's MYT Order is applicable to all industrial consumers to the extent of consumption from the grid and standby Contract Demand, irrespective of whether they are having CPP or not. Moreover, HETL has admitted that after the closure of its CPP in July 2006, it has been consuming electricity from the grid and paying for the same at industrial tariff. Hence, there is no merit in HETL's submission that the tariff determined by the Commission in the MYT Order in Case No. 65 of 2006 dated May 18, 2007, is not applicable for HETL. HETL is liable to pay tariff in terms of the MYT Order in Case No. 65 of 2006 dated May 18, 2007. The contention that electricity charges should be levied as per the Commission's CPP Order dated September 8, 2004 in Case No. 55 and 56 of 2003 is not sustained.

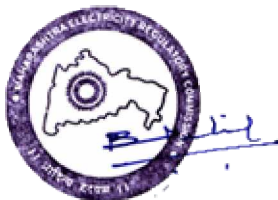
38. HETL has also submitted in an additional submission that it is eligible for the subsidised tariff announced by the Government of Maharashtra for power looms as implemented by MSEDCL through its Commercial Circular No. 42 dated August 19, 2006, and should be charged at Rs. 1.60 per kWh from August 2006, rather than Rs. 3.40 per kWh being charged by MSEDCL.

39. MSEDCL's Commercial Circular No. 42 dated August 19, 2006 states,

"...Now the State Government on dated 17/08/2006 in the Cabinet Meeting has taken a policy decision to extend subsidy in tariff to power loom consumer at the rate of 160 p/u with effect from April 2006.

In this regards you are requested to issue the bills to power loom consumers at the rate of 160 p/u from the billing month of August '06, if the bills for the month of August '06 are not issued, otherwise from the month of September '06 and the difference due to change in concessional rate to be recovered from the consumer for the month of April 06 and May 06 in present billing cycle and balance in next billing cycle.

All the concerned are requested to note the guidelines as above. Further requested to allow the Powerloom consumers (LT & HT) to pay energy bills at



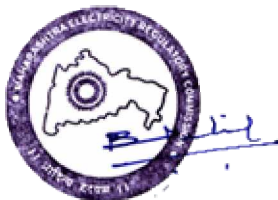
the rate of 160 p/u and the difference amount shall be recovered as instructed above...”

40. The above Commercial Circular indicates that the subsidy is applicable for both, LT and HT power loom consumers. HETL is engaged in the business of manufacturing cotton, blended and acrylic yarn, and in its own words, is a textile mill having power looms and has spinning mills and weaving mills. Thus, HETL is an integrated textile mill and is therefore, not eligible for the subsidised tariff applicable for power looms. More importantly, HETL’s submission that it should be charged subsidised tariff at Rs. 1.60 per kWh rather than the HT industrial tariff of Rs. 3.40 per kWh, directly contradicts its own submission under Prayer (a) in its original Petition, wherein HETL has submitted that it is liable to pay only base energy charges at the rate of Rs. 3.40 per kWh and ASC and IASC charges should not be levied on HETL, by virtue of it being a CPP consumer. HETL has even computed the amount payable by multiplying the consumption by Rs. 3.40 per kWh and has only contested the differential amount payable towards ASC and IASC.

41. However, the Commission is of the view that the applicability of subsidised tariff or otherwise is a billing dispute. The Hon’ble Supreme Court has, in its judgment dated 14.08.2007 in Civil Appeal No. 2846 of 2006, held that the Commission will have no jurisdiction to decide on billing disputes between the consumers and licensees. As per the said judgment of the Supreme Court, the Commission has jurisdiction to adjudicate on disputes between generating companies and licensees and as between licensees under Section 86(1)(f) of the EA 2003 but not between consumers and licensees because the EA 2003 has made specific provisions under Section 42(5),(6),(7) for the redressal of such disputes and grievances by the consumer grievance redressal forum with further representation to the Electricity Ombudsman. HETL may seek the desired relief under the appropriate grievance redressal mechanism, in case it desires to agitate the matter further. Also, since the provisions of MSEDCL’s Commercial Circular in this regard are essentially based on the GoM’s subsidy dispensation, this could be taken up by HETL with the GOM as this issue is within the purview of GoM and not the Commission.

Legality of ASC and IASC Bills raised by MSEDCL

42. HETL has submitted that it is not liable to pay the ASC and IASC levied by MSEDCL and it is liable to pay for its entire consumption during the period from May 21, 2007 to June 16, 2007 at the base rate of Rs. 3.40 per kWh applicable for HT industrial consumers connected on non-express feeders. HETL has also contested the levy under Debit Bill Adjustment by MSEDCL on account of the purported retrospective implementation of the Commission’s MYT Order. MSEDCL replied that the initial bill raised on HETL for this period was based on the Commission’s Operative Order dated April 27, 2007, which had to be subsequently revised in accordance with the Commission’s detailed MYT Order dated May 18, 2007. The reference period for the benchmark consumption for ASC was accordingly changed from January to December 2006, to the average consumption from January to December 2005, as a result of which, the ASC amount had to be adjusted appropriately.



MSEDCL submitted that it has levied ASC rate on the ASC consumption, and the base energy charges on the remaining consumption.

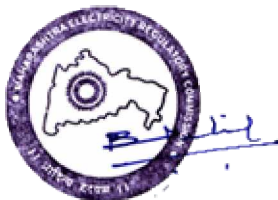
43. Firstly, from the explanation submitted by MSEDCL, it appears that MSEDCL has billed the ASC and IASC in the correct manner. Further, HETL's submission that the Commission's MYT Order dated May 18, 2007 has been applied retrospectively with effect from May 1, 2007, is incorrect. The Commission had issued the Operative Order in this matter on April 27, 2007, wherein the tariff applicable for various categories with effect from May 1, 2007 was specified. The detailed MYT Order was issued on May 18, 2007, however, it is incorrect to state that this Order has been given retrospective effect, since the revised tariffs were effective from May 1, 2007. The detailed MYT Order elaborated on the issue of benchmarking for the purpose of charging incentive and disincentive on ASC, and hence, MSEDCL had to adjust the amount accordingly, which appears to have been done under the head 'Debit Bill Adjustment'.

44. Secondly, this submission of HETL directly contradicts Prayers (b), (c) and (d) of HETL's Petition, wherein HETL has stated that it is liable to pay at the rate specified in the Commission's CPP Order.

45. In view of the above, the Commission is of the view that there is no merit in HETL's submission in this regard. However, the issue as to whether MSEDCL has billed the ASC, IASC and Debit Bill Adjustment correctly in case of HETL is nothing but a billing dispute. HETL may seek the desired relief under the appropriate grievance redressal mechanism, in case it desires to agitate the matter further.

Levy of Additional Supply Charges by MSEDCL

46. HETL has submitted that there is a need to modify the provisions of the Commission's Tariff Order in the context of benchmark consumption for levy of Additional Supply Charges (ASC), since during the reference period from January 2005 to December 2005, HETL's CPP was operational, and its consumption from MSEDCL was non-existent. HETL has submitted that due to the fact that HETL's CPP has not been functional since June 2006, HETL is meeting its entire requirement from MSEDCL grid, and the consideration of the average consumption during the reference period from January 2005 to December 2005 as the benchmark consumption is leading to very high ASC. HETL has suggested that the Commission needs to treat such CPP consumers separately under the ASC regime, and the benchmark consumption for such cases should be modified. HETL has suggested that it could be considered at par with either new consumers or as a case of lock-out, strike, seasonal industry, etc., where the benchmark consumption has been specified differently and is based on the average consumption during the recent past six months or the six months after completion of one year of stabilisation, in case of new consumers. HETL has also suggested that in the alternative, HETL could also be considered as a case of increase in Contract Demand (which has been sanctioned by MSEDCL, though not effected on account of non-payment of additional bills raised by MSEDCL, which have neither been accepted nor paid by HETL), and the benefit of change in reference period to a period after the increase in Contract Demand should be allowed to HETL.



47. On the other hand, MSEDCL has submitted that HETL cannot be included under the dispensation applicable for new consumers or lock-out, strike, seasonal industry, since HETL was clearly not such a case.

48. The Commission has elaborated on the concept of Additional Supply Charges (ASC) in its Tariff Orders dated October 20, 2006, Multi-Year Tariff Order dated May 18, 2007, and the applicability of ASC has been clarified through Clarificatory Orders issued by the Commission from time to time. The basic concept of ASC was that consumers who are benefiting from reduction in load shedding should contribute towards the expenses on costly power purchase undertaken by MSEDCL to ensure that such consumers are not subjected to load shedding, after the non-costly power has been equitably allocated to all categories and regions within MSEDCL licence area. Further, the Commission has incorporated a mechanism of incentive and disincentive within the ASC regime, to act as a deterrent to consumers from increasing their consumption with respect to specified benchmark consumption. The benchmark period has been specified as the average monthly consumption during the period from January 2005 to December 2005, and certain exceptions have been provided for new consumers, industrial units that were either sick or under lockout during the above reference period, consumers whose Contract Demand has increased either during the reference period or after the reference period, etc. In all these cases, the reference period has been specified differently.

49. In the case of HETL, its consumption was admittedly negligible during the reference period from January 2005 to December 2005, on account of its CPP being functional at that time. Subsequently, due to the non-functioning of the CPP since June 2006, the entire demand of HETL's plant has been shifted to MSEDCL. Such a shift from CPP mode to grid consumption has directly caused an increase in MSEDCL's energy requirement, which has resulted in increasing the requirement of additional costly power purchase from available sources. Hence, in accordance with the principle of ASC and benchmarking concept, HETL has to be charged at ASC rate for the base percentage of ASC consumption in accordance with the ASC matrix, as well as the consumption in excess of the benchmark consumption. As regards HETL's request to be considered as a new consumer or an industrial units that was either sick or under lockout during the above reference period, or a consumer whose Contract Demand has increased, the same cannot be accepted as the said necessary event should have actually occurred, which is not so in the case of HETL. Even the increase in Contract Demand that has not been effected due to various reasons cannot be considered to modify the benchmark consumption. The very fact that HETL has suggested these options leads the Commission to believe that HETL has no specific basis to be eligible for any dispensation other than that already specified by the Commission through its various Orders. Hence, the Commission rejects HETL's submissions in this regard, and opines that no change is required to be made to the benchmark consumption for levy of ASC during the period under consideration.



Levy of Additional Demand Charges by MSEDCL

50. HETL has submitted that MSEDCL has not levied the Additional Demand Charges (ADC) for months where HETL has exceeded the Contract Demand, in accordance with the Commission's Order for CPPs in Case 55 and 56 of 2003, dated September 8, 2004. HETL has added that MSEDCL has determined the ADC payable by considering the highest recorded demand for the entire duration in hours, where the recorded demand is higher than the Contract Demand, even though the quantum of excess demand over the Contract Demand has varied over the month. On the other hand, MSEDCL has submitted that the ADC has been charged in accordance with the above referred Order of the Commission. HETL has also made an alternate prayer that the ADC should be computed by considering the increased Contract Demand of 3000 kVA, which has not been effected by MSEDCL due to non-payment of certain additional amounts demanded by MSEDCL, which are not acceptable to HETL.

51. The Commission's Order in the matter of Power Purchase and Other Dispensation in Respect of Fossil Fuel based Captive Power Plants (CPP Order) in Case 55 and 56 of 2003, dated September 8, 2004, provides as follows: (refer Page 53 of the Order)

“Commission's Ruling

3.38 *Applicability of Additional Demand Charges shall be as follows:*

- *The Additional Demand Charges should be charged to only those CPP Holders whose Captive Power Plants are synchronised with the grid.*
- *In line with the MERC Tariff Orders, HT consumers having captive generation facilities synchronised with the grid will pay Additional Demand Charges of Rs.20 per kVA per month only on the Standby component, and only on the quantum, if any, in excess of the consumer's Contract Demand.*

3.39 *For exceeding the Contract Demand (over and above the standby component, if applicable), the CPP Holder would be levied penal charges as provided in Table 11.*

Table 11
Penal Additional Demand Charges for Exceeding Contract Demand plus Standby

<i>Particulars</i>	<i>Excess Drawal in case of Planned Shutdown of CPP</i>	<i>Excess Drawal in case of Unplanned Shutdown of CPP</i>
<i>Penal Additional Demand Charges</i>	<i>1.5 times Demand Charges (on monthly basis) in force</i>	<i>2.0 times Demand Charges (on hourly basis) in force</i>

3.40 *The Penal Additional Demand Charges for exceeding Contract Demand under unplanned shutdown shall be linked to the reasonably closest possible duration of actual shutdown of the CPP. However, in order to make this “implementable”, the penal charges would be in terms of “hour-basis” as provided in Table 12.*



Table 12
Mechanism for Penal Additional Demand Charges for Exceeding Contract Demand
plus
Standby during Unplanned Shutdown of CPP

<i>Un-planned Shutdown Duration: Illustrative Cases</i>	<i>Calculation Methodology for Penal Charges</i>	<i>Remarks</i>
<i>Case 1: 3 Hour</i>	<i>Penal Charges = [2.0 times Demand Charges (for month in kVA)/(30 * 24)]*3</i>	<i>For 3 hours, the penal charges per hour are multiplied by 3</i>
<i>Case 2: 2 Days (48 Hours)</i>	<i>Penal Charges = [2.0 times Demand Charges (for month in kVA)/(30 * 24)]*48</i>	<i>For 48 hours, the penal charges per hour are multiplied by 48</i>

Note: In case of the odd-units of duration it would be rounded-off to the closest unit of selected time-duration. To implement this, it is necessary to have ToD meters installed at the CPP Holders end

3.41 Higher Penal Additional Demand Charges for unplanned shutdown (2 times normal Demand Charges) shall be levied to discourage incidences of unplanned shutdown.”

52. Firstly, irrespective of HETL’s claim that it had disputed the levy of additional charges by MSEDCL as a pre-condition for release of the additional Contract Demand, the fact remains that the release of the additional Contract Demand has not been effected. Hence, the computation of Additional Demand Charges has to be done with respect to the actual effective Contract Demand of HETL, and there is no question of considering any deemed Contract Demand equivalent to the Contract Demand sought for by HETL and sanctioned by MSEDCL subject to certain payments, while doing this computation.

53. Secondly, from the explanation provided by the Parties, it appears that MSEDCL has billed the Additional Demand Charges in the correct manner. Normally, for any HT consumer, the excess demand is charged on a monthly basis for the difference between the highest demand recorded during the month and the Contract Demand, however, in case of CPP consumers, the Commission has given a special dispensation of charging the excess demand on an hourly basis. The excess demand charges have to be computed for the total hours of excess demand. The issue here is whether, the amount of excess has to be computed for each instance, and charged accordingly, or whether the total hours of excess demand should be treated as being at the highest level of excess. From the illustration given in Table 12 of the Commission’s CPP Order in Case 55 and 56 of 2003, dated September 8, 2004, it is clear that the ADC has to be computed for the total hours of excess demand at the highest level of excess demand, i.e., difference between the highest demand recorded during the month and the Contract Demand, else, the illustration would have been given differently. Hence, the Commission does not find any merit in HETL’s submissions in this regard. However, the issue as to whether ADC has been computed and charged correctly in case of HETL is nothing but a billing dispute. HETL may seek the desired relief under the appropriate grievance redressal mechanism, in case it desires to agitate the matter further.



Levy of Service Line Charges & Additional Security Deposit by MSEDCL

54. HETL has submitted that MSEDCL's claims for payment of additional Service Line Charges (SLC) and Additional Security Deposit (ASD) at different points in time, while sanctioning the increase in Contract Demand for HETL, are illegal and are different methods of charging SLC for the increase in Contract Demand, which has not been permitted by the Commission. On the other hand, MSEDCL has submitted that SLC was levied for the increase in Contract Demand that was sanctioned in August 2006, which was legally permitted at that point in time, since the Commission's Order on MSEDCL's Schedule of Charges was issued in September 2006.

55. The Commission's Order dated September 8, 2006 on MSEDCL's Schedule of Charges provides as under:

"6.4 Commission's Ruling

The Commission totally rejects MSEDCL's proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of Licensee. The Commission, therefore directs that the cost towards infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination.

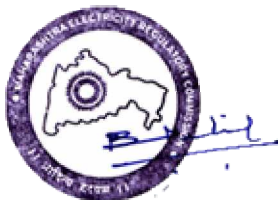
...

Applicability & Validity:

The entire Schedule of Charges as approved by the Commission shall be applicable with effect from September 8, 2006 and will continue to remain in force till further orders."

56. The above Order issued by the Commission on MSEDCL's Schedule of Charges thus, specifies that SLC should not be charged, except in case of dedicated distribution facility. Further, since the demand for SLC has been raised by MSEDCL prior to the issue of the above-said Order by the Commission, the Commission is of the view that SLC could have been charged by MSEDCL. However, whether in the particular instance of HETL, the demand for SLC is legitimate and whether the quantum of SLC sought by MSEDCL is justified or not, or whether HETL had requisitioned for dedicated distribution facility, depends on the specific case of HETL, which is nothing but a grievance, and may be agitated by HETL if desired under the appropriate grievance redressal mechanism, which will have the jurisdiction to go into these aspects.

57. As regards the demand for Additional Security Deposit by MSEDCL for effecting the increase in Contract Demand sanctioned in June 2007, the legal validity of the same has to be verified with respect to the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, which specifies as reproduced below:



“11. Security Deposit

11.1 Subject to the provisions of sub-section (5) of Section 47 of the Act, the Distribution Licensee may require any person to whom supply of electricity has been sanctioned to deposit a security in accordance with the provisions of clause (a) of sub-section (1) of Section 47 of the Act.

11.2 The amount of the security referred to in Regulation 11.1 above shall be an equivalent of the average of three months of billing or the billing cycle period, whichever is lesser. For the purpose of determining the average billing under this Regulation 11.2, the average of the billing to the consumer for the last twelve months, or in cases where supply has been provided for a shorter period, the average of the billing of such shorter period, shall be considered:

...

11.3 Where the Distribution Licensee requires security from a consumer at the time of commencement of service, the amount of such security shall be estimated by the Distribution Licensee based on the tariff category and contract demand / sanctioned load, load factor, diversity factor and number of working shifts of the consumer.

11.4 The Distribution Licensee shall re-calculate the amount of security based on the actual billing of the consumer once in each financial year.

...

11.6 Where the amount of security re-calculated pursuant to Regulation 11.4 above, is higher than the security deposit of the consumer, the Distribution Licensee shall be entitled to raise a demand for additional security on the consumer.

Provided that the consumer shall be given a time period of not less than thirty days to deposit the additional security pursuant to such demand.

”

58. Thus, the Commission’s Supply Code Regulations provide for MSEDCL seeking Additional Security Deposit, in case of a shortfall in the Security Deposit of HETL with MSEDCL. However, whether in the particular instance of HETL, the demand for Additional Security Deposit is legitimate and whether the quantum of Additional Security Deposit sought by MSEDCL is justified or not is a billing dispute and HETL may seek the desired relief under the appropriate grievance redressal mechanism, in case it desires to agitate the matter further.

Accordingly, HETL’s Petition in Case No. 42 of 2007 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P. B. Patil)
Secretary, MERC