

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 45 of 2007

In the matter of
Petition filed by M/s. Lloyd Steel Industries Ltd., seeking clarification on
Incremental Additional Supply Charges (IASC) charged to the consumers

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

M/s. Lloyd Steel Industries Ltd.
Bhugaon, P O Salukate Taluka & District Wardha 442011 Petitioner

Versus

Maharashtra State Electricity Distribution Company Ltd
Prakashgad, Bandra (E),
Mumbai 400 051. Respondent

ORDER

Dated: September 17, 2008

M/s. Lloyd Steel Industries Limited (LSIL) submitted a Petition under affidavit, before the Commission on September 7, 2007, inter alia submitting that the Maharashtra State Electricity Distribution Company Limited (MSEDCL) has not charged Incremental Additional Supply Charge (IASC) to the consumers in accordance with their energy consumption of the respective month, and has charged IASC based on the energy consumption of the month in which the IASC was refunded to the consumers.

2. LSIL under its Petition prayed as under:
“The Hon’ble Commission is requested to issue clarificatory order directing MSEDCL to charge IASC charges calculated for a particular month based on the corresponding consumption of that month and not on the consumption of the month in which it is billed.”
3. LSI, under its Petition, referred to the Commission’s Tariff Order in Case No. 54 of 2005 dated October 20, 2006, and submitted as under:



- i) The Commission's Tariff Order in Case No. 54 of 2005 provided for Additional Supply Charge (ASC) to be levied on the consumers along with the provision of IASC, depending on variation in rate of costly power purchased by the licensee compared to the rate determined by the Commission under ASC matrix.
- ii) Subsequently, the Commission under its ASC Vetting Report dated May 15, 2007, approved IASC (should be read as negative IASC) to be charged (should be read as refunded) to the consumers for the month of October 2006, November 2006 and December 2006 at the rate of 70.77 Paise/kWh, 157.32 Paise/kWh and 101.32 Paise/kWh, respectively, for consumers having consumption more than 300 units/month as against MSEDCL's calculation of 54 Paise/kWh, 115 Paise/kWh and 66 Paise/kWh, respectively, for the above referred months. There was excess recovery of Rs. 30.74 crore, Rs. 63.65 crore and Rs. 37.51 crore, respectively, for the above-mentioned months. The Commission directed MSEDCL to refund the amount of excess recovery to the consumers on one to one basis in the energy bill for May 2007. IASC calculations were based on the power purchase quantum of MSEDCL during the respective months of October 2006, November 2006 and December 2006.
- iii) Accordingly, MSEDCL has charged IASC for the months of October 2006, November 2006 and December 2006 to the consumers in the months of January 2007, February 2007 and March 2007 respectively, but based on the energy consumption for January 2007, February 2007 and March 2007, instead of the corresponding energy consumption for the months of October 2006, November 2006 and December 2006.
- iv) MSEDCL issued Circular No. 61 dated April 11, 2007 on Fuel Adjustment Charge (FAC) and IASC for the month of January 2007 to be levied in the billing month of April 2007. MSEDCL calculated IASC to be - 40 Paise/kWh (i.e., negative IASC) based on the power purchase for the month of January 2007, however, IASC was refunded to the consumers in the month of April 2007 by computing the amount of refund on the consumption of April 2007, even though the rate was calculated based on consumption of January 2007.
- v) MSEDCL issued Circular No. 63 dated May 11, 2007 on FAC and IASC for the month of February 2007 to be levied in the billing month of May 2007. MSEDCL calculated IASC charges to be 70 Paise/kWh based on the power purchase for the month of February 2007, however, IASC was levied on the consumers by computing the amount of IASC on the consumption of May 2007, even though the rate was calculated based on consumption of February 2007.
- vi) MSEDCL issued Circular No. 65 dated June 14, 2007 on FAC and IASC for the month of March 2007 to be levied in the billing month of June 2007. MSEDCL calculated IASC charges to be -97 Paise/kWh (i.e., negative IASC) based on the power purchase for the month of March 2007, however, IASC was refunded to the consumers in the month of June 2007 by computing the amount of refund on the consumption of June 2007, even though the rate was calculated based on consumption of March 2007.
- vii) MSEDCL issued Circular No. 66 dated July 10, 2007 on FAC and IASC charges for the month of April 2007 to be levied in the billing month of July 2007. MSEDCL calculated IASC charges to be - 237 Paise/kWh (negative IASC) based on the power purchase for the month of April 2007, however, IASC was refunded to the consumers in the month of July 2007 by computing the



amount of refund on the consumption of July 2007, even though the rate was calculated based on consumption of April 2007.

- viii) From all above facts and Order of the Commission, it is clear that the IASC has not been charged correctly to the consumers based on the consumption of the relevant and corresponding month for which it was calculated, and an excess amount of Rs. 7,25,74,028.68 (Rs. 7.26 crore) has been recovered by MSEDCL from the Petitioner.

4. The Commission vide its Notice dated December 13, 2007, scheduled a hearing in the matter on January 8, 2008, and directed LSIL to serve a copy of its Petition along with its accompaniments to MSEDCL and the four authorised Consumer Representatives.

5. Subsequently, MSEDCL vide its letter dated January 7, 2008, responded to the Petition filed by LSIL and submitted as under:

- i) The Commission under its MYT Order (should be read as Tariff Order) dated October 20, 2006 in Case No. 54 of 2005, has not specified any methodology to charge IASC, but has explained the methodology to calculate the IASC.
- ii) Accordingly, MSEDCL has analysed that for any variations in the rate of power purchased from costly sources, the consumers would be charged IASC to recover the cost difference on account of the variation in the power purchased from costly sources, on principles similar to charging of ASC. The fuel cost variations for non-costly power has to be included in FAC formula, while cost variations of costly power would be included in IASC. Hence, by computing ASC as well as FAC on similar principles, ASC as well as FAC was calculated by considering the consumption of the month in which the FAC and IASC was being charged/refunded, as per the MERC (Terms and Conditions of Tariff) Regulations, 2005.
- iii) As per the FAC Formula specified under the MERC Tariff Regulations, FAC is calculated for 2 months before the billing date (i.e., j-2) and charged on the units billed for the jth month, which is 2 months after the month for which FAC has been computed. Similarly, though IASC has been calculated considering the consumption for the months of January to April 2007, the same has been charged based on the consumption from April to July 2007, i.e., the billing month.
- iv) Further, if the calculation submitted by the Petitioner on excess amount recovered is extended till the month of September 2007, the excess recovery will reduce from Rs. 7.25 crore to Rs. 2.70 crore. Thus, the average effect reduces or nullifies the excess amount, as on similar principles, the Petitioner also gets the credit of IASC charged in the month of September 2007.
- v) Hence, even in case IASC is charged on the consumption of the billing month and not on the consumption of the relevant period, the effect of imbalance gets nullified due to billing on a continuous basis of the IASC calculated for the respective month.
- vi) Further, MSEDCL's billing software does not recognise the methodology of charging IASC based on the month of consumption of power and is linked to the consumption in the billing month. In case MSEDCL has to bill IASC on the units consumed for that relevant period and not on the billing month's consumption, necessary changes would be required to be made in the billing software.



6. At the hearing held in the matter on January 8, 2008, Shri. R.B. Goenka appeared for LSIL and Shri. Abhishek Khare, Advocate appeared for MSEDCL.

7. Shri. R.B. Goenka submitted that MSEDCL had levied ASC in the months of October 2006 to December 2006 based on the consumption in the respective months. Consequent to the Commission's Order on ASC vetting dated May 15, 2007 directing MSEDCL to refund excess ASC recovered to the extent of Rs. 131.9 Crore on 'one-to-one' basis to the consumers who had paid the ASC, MSEDCL has refunded the ASC. However, while refunding the ASC, MSEDCL has computed the refund amount on the consumption in the month in which the refund has taken place, rather than the month in which the original ASC has been levied, as a consequence of which, consumers whose consumption has been lower in the month of ASC refund, while new consumers have received refund in the month of refund, even though they might not have contributed to ASC during the period from October 2006 to December 2006. Similarly, for April 2007, the negative IASC has been computed as Rs. 2.37 /kWh, which has been refunded in July 2007 based on the consumption in July 2007, as a result of which, LSIL has not received any refund since no ASC units were consumed in July 2007 by LSIL. Shri. Goenka submitted that the problem was widespread across the State, and even though MSEDCL may be revenue neutral under this exercise, injustice has been done to some individual consumers, who have paid significant amount of ASC, and are entitled to the refund of IASC as well, on the same quantum of units on which ASC has been paid. It was submitted that the anomaly caused by the flawed implementation of the Commission's Order dated October 20, 2006 by MSEDCL should be rectified. Shri. Goenka requested the Commission to issue a Clarificatory Order in the matter directing MSEDCL to refund ASC amount in the correct manner on 'one-to-one' basis.

8. MSEDCL submitted that it has refunded ASC in the same manner as the FAC refund, but admitted that in case of ASC, the refund has to be undertaken on 'one-to-one' basis and the consumption of the month in which the ASC payment has been made should be considered. MSEDCL undertook to discuss the matter with LSIL and devise the framework for ensuring that the ASC refund is undertaken in the manner directed by the Commission.

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

10. Before proceeding to discuss the merits of the submissions made by the Parties, it is necessary to study the Commission's ruling on the issue of Incremental ASC as stipulated in the Commission's Tariff Order dated October 20, 2006 in Case No. 54 of 2005 in the matter of determination of ARR and tariff for MSEDCL for FY 2006-07, and the Incremental ASC Vetting Report dated May 15, 2007, referred to by the Parties. Relevant extract of the above-said Tariff Order dated October 20, 2006 is reproduced below (refer Page 159 of the Order):

"The Commission has considered the power purchase rates for costly power as submitted by MSEDCL in its Petition, for determining the Additional Supply Charge. The Commission therefore, rules that in case of any variations in the rate of purchase from costly sources, MSEDCL shall bill the consumers an



Incremental Additional Supply Charge, to recover the cost of the variation in the power purchase cost from costlier sources on similar principles i.e. 10% of the revised cost would be billed to domestic consumers consuming less than 300 units and the balance cost would be recovered from other consumers. For instance, if the average rate increases from Rs 4.84 per unit to Rs 6.00 per unit then the Incremental Additional Supply Charge for domestic consumers consuming less than 300 units would be Rs 0.12 per unit (60 ps/unit minus 48 ps/unit) and similarly the balance cost to be recovered from other consumers. The Incremental Additional Supply Charge can be positive as well as negative, depending on whether the actual power purchase cost is higher or lower than the rate considered by the Commission for the purpose of determining the Additional Supply Charge. There would be no cap on the Incremental Additional Supply Charge. However, MSEDCL needs to submit the details of Incremental Additional Supply Charge billed to the consumers to the Commission on a monthly basis, for review and necessary action.”

11. Relevant extract of the above-said IASC Vetting Report dated May 15, 2007 is reproduced below:

“7. Based on the Commission’s approval as elaborated above, the Commission has concluded that MSEDCL has prima facie recovered excess amount of Rs. 131.90 Cr under ASC over the three months, as shown in the Table below:

(Rs. Cr)

	<i>October-06</i>	<i>November-06</i>	<i>December-06</i>
<i>Amount Approved by Commission</i>	<i>204.51</i>	<i>297.07</i>	<i>318.26</i>
<i>Amount Recovered by MSEDCL</i>	<i>235.25</i>	<i>360.72</i>	<i>355.77</i>
<i>Excess Recovery</i>	<i>30.74</i>	<i>63.65</i>	<i>37.51</i>

** based on unaudited statement furnished under cover of letter SE/TRC/MYT Tariff Petition/ 17388 dated 10th April 2007*

...

*9. Further, MSEDCL is hereby directed to refund the amount of excess recovery of ASC and IASC on a ‘one to one’ basis to the consumers based on findings of vetting report pertaining to the third quarter of FY 2006-07 in the bill of **May-07**. The details of refund shall be submitted to the Commission by the end of the month.”*

12. From the above extract of the Order and the Incremental ASC Vetting Report, it is clear that the amount of excess recovery as determined by the Commission through the IASC Vetting Report has to be refunded to the consumers on a one to one basis. However, based on the submissions made by the Parties, it has been confirmed that MSEDCL has undertaken the refund of IASC for the period from October 2006 to April 2007 to all consumers as a group, in a manner similar to that done for charging/refund of Fuel Adjustment Cost (FAC) Charge. As a consequence, consumers who have paid ASC on a certain level of ASC consumption have not been refunded the IASC on the same level of ASC consumption. This is clearly incorrect and not in accordance with the Commission’s Orders in this regard. Even though MSEDCL may be revenue neutral in



the whole exercise, justice is not being done to consumers who have paid higher ASC and are entitled to refund of IASC on the same level of ASC consumption.

13. MSEDCL's rationale for undertaking the refund of IASC under the same method as followed for FAC appears to be that the refund of IASC and the levy of FAC were undertaken through the same Commercial Circular. However, FAC charging/refund is not undertaken on a one to one basis, hence, the implication of following the same approach for FAC and IASC is different. The approach followed for levy of FAC is appropriate because the total monthly consumption does not vary significantly from one month to another and moreover, the FAC Formula, viz., $A = C + I + B$, provides for 'B', which is the amount on account of over-recovery or under-recovery of FAC due to the levy of FAC on the consumption of that month. Thus, the FAC Formula has an in-built method of adjusting the over-recovery or under-recovery, which is not the case for IASC refund. The consumer who has paid ASC does not get compensated for over-recovery or under-recovery due to the variation in the ASC consumption in different months.

14. MSEDCL has also submitted during the hearing that the refund of IASC has to be done on a one to one basis by considering the consumption of the month in which the ASC payment was made, and cannot be done in the same manner as FAC. MSEDCL has added that in case MSEDCL has to bill IASC on the units consumed for that relevant period and not on the billing month's consumption, necessary changes would be required to be made in the billing software.

15. It is felt necessary to direct MSEDCL to undertake the necessary changes to its billing software within the next thirty (30) days. MSEDCL is directed to refund the Incremental ASC for the period from October 2006 to April 2007 to all the consumers who have contributed towards ASC, on a one to one basis in the next billing period (October 2008), in accordance with their ASC consumption in the corresponding month from October 2006 to April 2007, rather than the month of refund.

16. In the set of facts placed before the Commission, it was necessary to clarify certain provisions of the Tariff Order dated October 20, 2006 read with the IASC Vetting Report dated May 15, 2007. This Clarificatory Order would apply to all consumers entitled to refund of IASC. However, if any specific consumer has any grievance with respect to the bills issued by MSEDCL, such aggrieved consumer may approach the concerned consumer grievance redressal forum on such billing disputes.

Accordingly, with this Clarificatory Order, LSIL's Petition in Case No. 45 of 2007 stands disposed of.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC