

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 30 of 2008

In the matter of
Petition of Sagareshwar Sahakari Soot Girni Ltd., seeking review of Clarificatory
Order dated 17.12.2007 to the extent of applicability of ASC and
determination of bench mark consumption.

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

Sagareshwar Sahakari Soot Girni Ltd.
Kadegaon, Tal: Kadegaon
Dist: Sangli.

... Petitioner

Versus

Maharashtra State Electricity Distribution Co. Ltd.,
Through it's S.E. (TRC)
5th Floor, Prakashgad, Bandra (East),
Mumbai – 400 051.

... Respondent

ORDER

Dated: September 29, 2008

M/s. Sagareshwar Sahakari Soot Girni Ltd., filed a Petition on 27.5.2008 under the provisions of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking a review of the Commission's Order dated 17.12.2007 to the extent of applicability of ASC and determination of benchmark consumption, read with Clarificatory Orders dated 24.8.2007 and 11.9.2007 so far as they relate to the applicability of Additional Supply Charges ("ASC").

2. It is averred in the Petition that the impugned Order dated 17.12.2007 creates imparity and discrimination amongst the consumers of same category and causes grave injustice to the Petitioner. It is averred in the Petition that the Petitioner was not a party to Case No.26 of 2007 which has culminated into the said Order dated 17.12.2007, and as such to drive home its point, has submitted that it was not aware of the said Order dated 17.12.2007 till it received MSEDCL's energy bill. Thus, as per the Petitioner, this



Petition is filed within time. It is averred that in case the Commission finds a delay, the same be condoned. The Petitioner has also filed an application seeking condonation of delay, along with its Petition.

3. The Petitioner has prayed as under:

“a) Review and modify the clarificatory order dated 17-12-2007 to the extent of its applicability of ASC and determination of Bench-mark consumption by suitably amending/or by inserting following example/clarification

“That while calculating the Benchmark consumption due effect be given to the number of days during which the unit is closed due to holidays, breakdown of machinery, maintenance or for any other like reason. For example if a unit is closed for 10 days then the daily average consumption be calculated by dividing the recorded consumption by number of working days and thereafter the Benchmark consumption be calculated by multiplying the average daily consumption by 30.”

Or

That while calculating the Benchmark consumption of consumer's whose contract demand is increased, the benchmark consumption should be equal to the average of three months consumption during which the consumer's recorded MD is more than 75% of his contract demand.

b) All other just and equitable reliefs be granted for the effective adjudication of the subject matter involved in this petition and for its implementation.

c) That MSEDCL be directed to not to deduct the captive wind mill generation while calculating the benchmark consumption and for charging of A.S.C.”

4. A hearing was held on 16.7.2008. Shri S.C. Karandikar, Advocate appeared for the Petitioner. Shri Abhishek Khare, Advocate along with Shri. Ravi Prakash, Advocate appeared for the Respondent. Counsel for the Petitioner submitted that the present petition has similar issues as those in Case No. 21 of 2008 (in the matter of Petition of Ban-Bro Metals Pvt. Ltd., seeking review of Clarificatory Order dated 17.12.2007 to the extent of applicability of ASC and determination of bench mark consumption). Shri. Ravi Prakash also submitted that the arguments made by the Petitioner were the same as those made by the Petitioner in the Ban-Bro matter and that the Respondents would adopt the same stand which they had taken in the Ban-Bro matter. Shri. Ravi Prakash argued that firstly, the review petition was time barred; secondly, that there was no just and sufficient cause for the Commission to consider the Petition and thirdly, that tariff fixation was a duty statutory in nature and whether it would be open and advisable to get into the exercise again after hearing, for individual difficulties. The Commission observed that the Hon'ble Appellate Tribunal for Electricity (ATE) had recently issued a Judgment in the matter of M/s Eurotex Industries Ltd., wherein the particular clause in the Commission's Orders relating to benchmark consumption in cases of increase of



Contract Demand, has been modified by the ATE. Accordingly, it is expected that MSEDCL would have implemented the same not only for Eurotex, but also for all other similarly placed consumers. In such a case, the Petitioner's grievance may have been addressed already. Shri Ravi Prakash submitted that he would need to seek instructions from his client, in order to respond to this observation. Shri Ravi Prakash requested that one month's time may be granted to MSEDCL for submitting its say in the matter. The Commission granted time of one month to MSEDCL for filing the necessary submission.

5. The case of the Petitioner, briefly stated, is that the Respondent has deducted units generated by the wind mill set up by the Petitioner while calculating the benchmark consumption which has resulted into excess and wrongful levy of ASC, essentially because it is unjust to deduct the same. The Petitioner's Contract Demand was 1445 kVA, which was increased to 1595 kVA in the month of May 2005. The Petitioner's recorded Maximum Demand (MD) in May, June and July 2005 was more than 1196 (75% of 1595 kVA) and hence, the benchmark consumption should have been 933170 units. However, the Respondent calculated benchmark consumption on the basis of its average consumption during the months of January 2005 to December 2005 which comes to 892622 units. For this, the Respondent has claimed that the increase in Contract Demand is less than 25%. The Petitioner's Contract Demand increased from 1595 kVA to 1800 kVA in September 2006. The Petitioner's recorded MD in September, October and November 2006 was more than 1350 kVA (75% of 1800) and hence, the Respondent calculated the benchmark consumption as 985788 units.

6. The Petitioner's grievance is with respect to the billing undertaken by the Respondent based on incorrect interpretation of the Commission's Orders dated 10.10.2006, 24.8.2007, 11.9.2007, and 17.12.2007. The Petitioner's Contract Demand increase from 1495 to 1595 kVA was less than 75%, therefore no effect was given. However, while giving effect for the increase from 1495 to 1800 kVA, the Respondent adopted the consumption in November 2006 as benchmark consumption, being the consumption in the month of the third occasion of utilizing at least 75% of the increased Contract Demand. The Petitioner has submitted that the billing period of November 2006 is of 31 days but there was no production activity on 7 days (4 days due to weekly staggering day and 3 days due to Diwali Vacation), which resulted into less consumption during November 2006. The Petitioner also submitted that it cannot be the intention that when more than one criteria is available for calculation of Benchmark consumption, the highest consumption should be adopted for levy of ASC.

7. The Petitioner also submitted that the Commission did not consider a case wherein the consumption of a consumer in a particular month is less due to strike, breakdown, holidays, closure of unit due to any reason, which will lower the average consumption. Therefore, no clarification to that effect was incorporated into any of the Clarificatory Orders. Even if the average monthly consumption of the Petitioner is calculated on the basis of the following formula the Benchmark consumption changes to 12,32,235 units.



Total Units consumed in Nov. 2006 x 30

Number of working days in Nov. 2006

i.e.

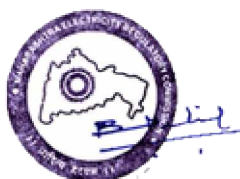
985788 / 24 = 46942 x 30 = 12,32,235

Thus, the Benchmark consumption of the Petitioner comes to 12,32,235 units which should be used by the Respondent for charging ASC. However, the Respondent has not considered and is not ready to accept the factual position regarding the closure of unit and strictly adheres to the total consumption recorded in the billing period of November 2006.

8. The Petitioner submitted that it is discriminatory that in case of the consumers whose Contract Demand remains unchanged, the Benchmark consumption is calculated on the basis of average consumption during January 2005 to December 2005. In other words these consumers get benefit of average of 12 months, which takes care of the occasional fall or rise in consumption but in case of consumers such as the Petitioner the consumption of a particular month only is taken into consideration, which is wrong, unjust, unreasonable and unfair.

9. The Petitioner has also submitted that determination of Additional Supply Charge by the Commission under its Tariff Order dated 20.10.2006 is not in accordance with the Tariff Policy notified by the Government of India. The Petitioner further submits that the Commission has wrongly estimated losses in the said Tariff Order. The net out come of the Petitioner's submission is that, although, the Tariff Policy provides that consumers may pay a tariff which reflects "efficient costs" and accordingly, will have the right to get uninterrupted 24 hours supply of quality power, the Petitioner is paying higher cost due to inefficient working of MSEDCL. It is the Petitioner's contention that forcing unwilling consumers to pay Additional Supply Charge is inconsistent with the Tariff Policy and the Electricity Act, 2003.

10. Having heard the Parties and after considering the materials placed on record, the Commission is of the view that the present case is squarely covered by the Commission's Order dated 5.8.2008 passed in Case No. 21 of 2008. The Commission is of the view that due public involvement has been ensured in all proceedings relating to tariff determination before the Commission, since Consumer Representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003, are given notice of the hearings and proceedings. Further, due public notice of the Public Hearings conducted at six locations in the State was given, and several stakeholders participated in the regulatory process. These proceedings have culminated into the aforesaid Tariff Order. Clarificatory Orders are part of the said proceedings. In view thereof, the Commission does not sustain the argument that the Petitioner being not individually served the notice regarding the hearing of Case No. 26 of 2007, there was no opportunity for the Petitioner to plead its case. Moreover, Tariff Orders and Clarificatory Orders are not open to all types of permutations, combinations and situations involving a specific consumer, as contended and put forth by the Petitioner. The Tariff Orders and Clarificatory Orders thereunder are generic in nature and cannot take into account all types of eventualities and all types of problems of individual consumers.



11. The Commission is of the view that due to isolated cases of consumers' individual billing grievances, orders passed by the Commission would not be liable to be reviewed and as such, these isolated billing grievances do not amount to mistake or error in the order.

12. 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. In case, as contended by the Petitioner, there is a grievance relating to wrong calculation of bench mark consumption by MSEDCL, which culminates into an incorrect bill, it may be a fit case for the Petitioner to approach the concerned Consumer Grievance Redressal Forum of MSEDCL as the said forum will have the jurisdiction to decide and redress a grievance in respect of any case involving non-compliance of any order of the Commission or any action to be taken in pursuance thereof within the jurisdiction of the said forum. The Commission will have no jurisdiction to entertain a case involving a billing dispute between a consumer and a distribution licensee. All other contentions raised by the Petitioner against the very validity of Additional Supply Charge determined under the Order dated 20.10.2006, may, if at all, be a subject matter of appeal and cannot be admitted under review proceedings. The grounds for the maintainability of review have not been satisfied when tested with the requirements of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

13. However, it should be noted that in Appeal No. 135 of 2007 filed by M/s Eurotex Industries and Exports Limited before the Hon'ble Appellate Tribunal for Electricity (ATE), the Appellant therein had prayed that the benchmark period should be considered after a minimum period of six months after increase in the Contract Demand, and the linkage to the third month in which the Billing Demand has exceeded the Contract Demand should be removed. In its Judgment dated May 12, 2008, the ATE held as under:

“20. So far as the applicability of the condition of increase in contract demand by 25% is concerned, the Appellant quantifies the condition as increase in the contract demand in its case is to the extent of 63.33 percent (increase from 3000 KVA to 4900 KVA). Further, the modification of the clause by introducing “third occasion of the consumer utilizing at least 75% of the increased sanctioned load/contract demand” will invariably be achieved in the third month after increasing the contract demand because the monthly maximum demand in each of the three months could be achieved without reaching the system stabilization. This leads to denial of the opportunity to Appellant for achieving optimum level of energy consumption and thereby making it difficult to claim ASC incentives for reduction in energy consumption as per the scheme. The expanded system to reach the maximum



demand of 75% of the contract demand has still not reached the plateau of steady operation as it is within the given period of stabilization of six months. The two conditions are unequal insofar as the time period allowed for stabilization is concerned. Also, if the same time period is allowed in both the options for fixing the reference period "after six months" there is no relevance of the condition of "whichever is earlier" mentioned in the original clause 7.4(g) of the tariff order dated 18 May 07. Further, since the billing is based on both maximum demand and as well as energy consumption it appears reasonable and fair that second option of the clause 7.4(g), needs to be appropriately modified.

21. In view of the above we modify Clause 7.4(g) of the Tariff Order dated 18 Mar 07 to read as under:

*"In the 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 billing period after six months of the increase and the sanctioned load / contract demand **OR** the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in sanctioned load/contract demand."*

22. We also direct the first respondent to refund and adjust against future billings, the amount of energy charges and other incidental charges paid by the Appellant on the basis of the benchmark units fixed in the third month (i.e. June 2006) and additional supply charges be calculated accordingly."(**emphasis added**)

14. Since the ATE has modified the relevant paragraph of the impugned Clarificatory Order, MSEDCL has to revise the bills of all similarly placed consumers and accordingly refund/adjust the amount of energy charges and ASC, with effect from May 1, 2007. The Commission notes with dismay that despite taking one month's time to appraise the Commission regarding the status of compliance of ATE's Judgment dated May 12, 2008, MSEDCL has not filed its written submissions in this matter.

With the above observations, the Review Petition filed in Case No. 30 of 2008 is hereby disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC