

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 42 of 2008

In the matter of
Petition by Maharashtra State Electricity Distribution Company Ltd. seeking
review of Order dated June 20, 2008, in the matter of Annual Performance
Review for FY 2007-08 and tariff determination for MSEDCL for FY 2008-09
in Case No.72 of 2007.

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

ORDER

Dated: December 10, 2008

The Maharashtra Electricity Regulatory Commission (Commission), in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and after taking into consideration all the submissions made by Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), all the objections, responses of MSEDCL, issues raised during the Public Hearing, and all other relevant material, issued the Operative Order dated May 31, 2008 and detailed Tariff Order dated June 20, 2008 in Case No. 72 of 2007 on the Annual Performance Review for FY 2007-08 and determination of tariff for wheeling of electricity and retail sale of electricity for MSEDCL for FY 2008-09.

2. MSEDCL filed a Petition on affidavit (numbered as Case No. 42 of 2008) on July 21, 2008 under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, seeking a review of the aforesaid Order dated June 20, 2008 passed in Case No. 72 of 2007. MSEDCL filed an addendum to the above-mentioned Petition on August 7, 2008, and requested the Commission to include the same in the Review Petition.
3. MSEDCL, in its Review Petition, made the following prayers:



- a. *“MSEDCL requests the Hon’ble Commission to review the double accounting of ASC revenue in its Order to mitigate the shortfall in its revenues*
- b. *MSEDCL requests the Hon’ble Commission to review the refund of ASC revenue in its Order*
- c. *MSEDCL requests the Hon’ble Commission to review the Interest expenses and AAD in its Order*
- d. *MSEDCL would like to submit that since the financial numbers are frozen after the completion of public hearing process, therefore, we request that no further public hearing be carried out*
- e. *MSEDCL would like to submit that the Tariff for FY 2008-09 should be revised on urgent basis”*

4. MSEDCL, in its Review Petition, raised the following issues:

i) **ASC double-counting and recovery through ASC**

MSEDCL submitted that it has been charging Additional Supply Charges (ASC) to its consumers since October 2006. MSEDCL submitted that the Commission, has vetted the ASC charged over the period from October 2006 to April 2007, and has estimated the over recovery of ASC charges as Rs. 697.67 Crore for the period from October 2006 to March 2007. MSEDCL added that it has also submitted ASC over-recovery computations for the period from May 2007 to December 2007 to the Commission for vetting. MSEDCL submitted that the excess recovery has happened because MSEDCL has not purchased the quantum of costly power envisaged at the time of the Tariff Orders for the respective years, whereas the ASC has been recovered through the tariffs in accordance with the approved ASC matrix. MSEDCL submitted the summary of ASC over-recovery as shown in the Table below:



Table 1: ASC under/over recovery over the period from October 2006 to April 2007

(Rs Crore)

Month	Costly Power purchase - MERC	ASC Recovered	InASC Recovered	Total ASC Recovered	Under/ Over Recovery - MERC	Remarks
a	b	c	D	c+d	e=b-c-d	
Oct-06	204.51	235.25	40.1		-70.84	As per MERC vetting order Oct-Dec06
Nov-06	297.07	360.72	88.28		-151.93	
Dec-06	318.26	355.77	43.25		-80.76	
Jan-07	244.41	402.93	-26.39		-132.13	As per MERC vetting order Jan-Apr 07
Feb-07	182.32	406.74	34.72		-259.14	
Mar-07	275.68	337.27	-58.72		-2.87	
Sub Total	1522.25	2098.68	121.24	2220	-697.67	
Apr-07	162.35	368.19	-118.27		-87.57	

MSEDCL submitted that the Commission, in the detailed APR Order for FY 2007-08 and Tariff Order for FY 2008-09 dated June 20, 2008 in Case No. 72 of 2007 directed MSEDCL to refund the ASC over-recovery to the consumers on one-to-one basis in such a manner that the consumer at least pays the base energy charge applicable for the respective category for the entire consumption. MSEDCL added that the Commission has opined in the APR Order that the surplus amount is to be used to offset the expenditure on non-costly power purchase. The Commission has stated that the exact additional amount available to MSEDCL would be known only after MSEDCL undertakes the exercise of refund of excess ASC to the relevant consumers on one-to-one basis. In the APR Order, the Commission has estimated that the additional amount available to MSEDCL for setting off against the base ARR of FY 2006-07 and FY 2007-08 as Rs. 427 Crore and Rs. 768 Crore, respectively.

MSEDCL submitted that the Commission has set-off this part ASC over-recovery against non-costly power considering it as a surplus amount, although it has been already included in the revenue from existing tariff, considered by the Commission as



Rs. 18863 crore and Rs. 17822 crore in FY 2006-07 and FY 2007-08, respectively. MSEDCL explained that the revenue of Rs. 18863 crore in FY 2006-07 includes the total ASC revenue of Rs. 2220 recovered in FY 2006-07 (refer Table 1 above). Consequently, the part over-recovery of ASC has also been considered twice, viz., in the revenue as well as an over-recovery to set-off the revenue requirement, while computing the ARR and revenue gap, as shown in the Table below:

Table 2: Revenue Gap for FY 2006-07 and FY 2007-08 as per APR Order

(Rs. Crore)

Particulars	FY 2006-07 Audited	FY 2006-07 Approved After Truing Up	FY 2007-08 Approved after Provisional Truing up
Annual Revenue Requirement from Retail Tariff	19832	19076	19964
Revenue from existing tariff	18863	18863	17822
Subsidy from Government of Maharashtra			1829
Part of ASC over recovery set-off against non-costly power		427	768
Total Revenue	18863	19290	20419
Revenue Gap for the year	969	-214	-756

MSEDCL submitted that since the Commission has set-off the estimated over-recovery of Rs. 427 crore and Rs. 768 crore in FY 2006-07 and FY 2007-08, respectively, against the non-costly power purchase by considering the same as revenue, the double-counting by the Commission has resulted in effectively reducing MSEDCL's revenue requirement and hence, revenue gap for FY 2008-09, by Rs. 1195 crore (Rs. 427 crore + Rs. 768 crore).

MSEDCL requested the Commission to review the double accounting of ASC revenue in its Order under the heads of "error apparent" and "for any other sufficient reasons", and requested the Commission to revise the tariff for FY 2008-09 to enable MSEDCL to mitigate this shortfall of Rs 1195 Crore. MSEDCL added that if this provisioning of Rs 1195 Crore is not allowed in the tariff, then MSEDCL would not



be able to meet its committed expenditure liabilities, which would ultimately lead to forced shortfall in payments by MSEDCL to MSPGCL and MSETCL, and may consequentially result in shortfall of power generation in the State. MSEDCL added that if the provisioning of Rs. 1195 crore is not allowed, then MSEDCL would face a grave liquidity crunch and day-to-day working of the organisation would collapse, leading to unsatisfactory service to consumers. MSEDCL added that since the financial numbers have been frozen after the completion of the public hearing process, no further public hearing be held before passing on the desired relief to MSEDCL.

ii) **Refund of excess ASC recovered from selected consumer categories**

MSEDCL submitted that the Commission while carrying out the truing up of FY 2006-07 and provisional truing up of FY 2007-08 has computed revenue surplus of Rs 214 Crore and Rs 756 Crore for FY 2006-07 and FY 2007-08, respectively. MSEDCL added that if the effect of double accounting as discussed in Issue (i) above is removed, then the revenue deficit for FY 2006-07 works out to Rs 213 Crore as compared to revenue surplus of Rs 214 Crore computed by the Commission in the APR Order, as shown in the Table below:

Table 3: Revised Revenue Gap computed by MSEDCL for FY 2006-07 after removing double counting error

(Rs Crore)		
Particulars	Formula	FY 2006-07
Total MERC approved Aggregate Revenue Requirement	a	19076
Revenue from Existing tariff as per Audited A/c	g	18863
Revenue Gap	k=a-g	213

MSEDCL added that if the true up of costly and non-costly ARR for FY 2006-07 is done separately, after considering the double counting error [as discussed in Issue (i)] then the revenue gap for non-costly ARR increases to Rs. 484 Crore from Rs 213 Crore, whereas the ASC refund works out to Rs. 271 Crore for FY 2006-07, as shown in the Table below:

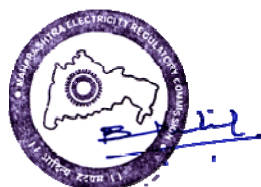


Table 4: Revised Revenue Gap computed by MSEDCL for FY 2006-07 by considering non-costly ARR and costly ARR separately

(Rs Crore)

Particulars	Formula	FY 2006-07
True up of Non-Costly ARR		
Total MERC approved ARR	a	19076
MERC approved Costly Power Purchase	b	1522
Non Costly ARR	c = a - b	17554
ASC revenue as considered by MERC	d	2220
Part Over Recovery set off against non-costly power	e	427
ASC revenue after adjustment of base tariff	f = d - e	1793
Revenue from Existing tariff	g	18863
Non-Costly Revenue	i = g - f	17070
Revenue Gap for Non Costly Power	j = c - i	484
True up of Costly ARR		
MERC approved Costly Power Purchase	b	1522
Costly ASC revenue after adjustment of base tariff	f	1793
ASC Refund	h = b - f	-271

MSEDCL submitted that the ASC refund of Rs 271 Crore for FY 2006-07 and similarly for FY 2007-08, has thus already been passed on to all consumers in the form of reduction in ARR and Tariff for FY 2008-09. MSEDCL submitted that hence, if over recovery of ASC after setting off part ASC over-recovery against non-costly power needs to be refunded back to the consumers, then provision for such refund needs to be provided in the tariff.

MSEDCL requested the Commission to review the issue of refund of ASC over-recovery as detailed above under the heads of “error apparent” and “for any other sufficient reasons”.



iii) **RLC Refund**

MSEDCL submitted that the Commission has directed MSEDCL to refund Regulatory Liability Charges (RLC) of Rs.500 Crore in FY 2008-09 to specified consumer categories on one-to-one basis, and has included the same in the computation of the total Revenue Requirement, while determining the revised tariffs. However, the Commission has considered the revenue by taking into consideration the annual sales, whereas, MSEDCL will be able to collect only Rs 420 Crore in the period from June 2008 to March 2009, since the revised tariffs are applicable prospectively. Thus, if MSEDCL has to refund Rs. 500 crore towards RLC, then MSEDCL would incur a shortfall of Rs 80 Crore pertaining to RLC refund. MSEDCL requested the Commission to allow RLC refund to the extent of revenue collected from the revised tariff, rather than Rs. 500 crore, as specified in the APR Order.

MSEDCL requested the Commission to review the quantum of RLC refund as detailed above under the heads of “error apparent” and “for any other sufficient reasons”.

iv) **Consideration of Opening Loan Balance for computation of Interest and Advance against Depreciation (AAD)**

MSEDCL submitted that the Commission, while approving the interest on term loans for FY 2006-07, has considered the opening loan balance of Rs. 1602 Crore, which is in line with the closing loan balance of FY 2005-06 as considered in the Tariff Order of FY 2006-07 dated October 20, 2006. MSEDCL submitted that in the Tariff Order for FY 2006-07, the closing loan balance figure for FY 2005-06 was provisional. MSEDCL added that subsequent to the issue of Tariff Order for FY 2006-07, the Commission has undertaken the final true up for FY 2005-06 in the MYT Order dated May 18, 2007, based on audited accounts of FY 2005-06, and in the MYT Order, the Commission had approved the actual audited weighted average loan balance for FY 2005-06, excluding Rs. 1300 Crore of REC short-term loan. MSEDCL requested the Commission to consider the closing loan balance for FY 2005-06 as approved in the MYT Order rather than the Tariff Order for FY 2006-07, where the figures were provisional. MSEDCL submitted that the difference in the interest expenses on term loan for FY 2006-07, after excluding the short-term REC loan works out to Rs. 47 Crore, as shown in the Table below:



Table 5: Difference in Interest Expenses due to Opening Loan balance being considered incorrectly, as computed by MSEDCL

(Rs. Crore)

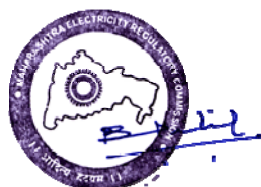
Particulars	FY 2006-07 Tariff Order	APR Petition	APR Order	Dis-allowance	Without Short Term REC Loan	Dis-allowance
Interest on Long term loans	116	314	154	-160	201	-47
Opening Balance of Loan	1602	3653	1602	-2,051	2353	-751
Closing Balance of Loan	1508	3775	2053	-1,721	2687	-634

MSEDCL added that if the total repayment of the term loan is considered in line with the opening loan balance for FY 2006-07 as considered in the MYT Order (as closing loan balance of FY 2005-06), the total repayment works out to be higher than the approved depreciation for FY 2006-07, whereas the requirement of AAD has been computed as zero by the Commission in the APR Order. MSEDCL submitted that this requires consideration of Rs. 14 Crore towards AAD for FY 2006-07 as shown in the table below;

Table 6: Difference in AAD due to Opening Loan balance being considered incorrectly, as computed by MSEDCL

(Rs. Crore)

Particulars	FY 2006-07 Tariff Order	APR Petition	APR Order	Dis-allowance	Without Short Term REC Loan	Dis-allowance
Total Repayment of loan	94	608	263	-345	380	-117
Depreciation	352	371	366	-5	366	0
AAD		237	0	-237	14	-14



MSEDCL requested the Commission to review the Interest expenses and AAD as detailed above under the heads of “error apparent” and “for any other sufficient reasons”.

5. Subsequently, MSEDCL filed an Addendum Petition to its Review Petition on August 7, 2008, and requested the Commission to include the same in the Review Petition. In the Addendum Petition, MSEDCL suggested that the recovery of the amount of Rs. 1195 crore pertaining to double counting error, could be undertaken by an alternative approach of levying ‘Proportionate Surcharge’ or ‘FAC’ or any charge as deemed fit by the Commission to all consumers except agricultural consumers and LT-1 domestic – BPL consumers, in order to recover the full amount in the remaining months of FY 2008-09.

6. MSEDCL made the following Prayers in the Addendum Petition, in addition to the Prayers made in the Review Petition:

*“1. Allow the amount pertaining to Double Accounting error to be fully recovered through “Proportionate Surcharge” or “FAC” or any other charge as deemed fit by Hon’ble Commission in the remaining months of FY 2008-09.
2. After the recovery of amounts as per prayer (1) above, under/over recovery, if any needs to be trued up at the end of the year.”*

7. MSEDCL made the following submissions in the Addendum Petition:

- a. Proportionate FAC concept is currently being used in Jharkhand State.
- b. Rationale for excluding certain categories

MSEDCL submitted that it has continued the tariff philosophy adopted by the Commission in its APR Order dated June 20, 2008, wherein the Commission has retained the tariff for agriculture category and LT-1 - BPL category at the same levels, based on certain rationale. MSEDCL added that FAC (under different names) is levied to all categories except Agriculture and Domestic (Rural and BPL domestic) in Jharkhand and Chhattisgarh. Similarly, in Andhra Pradesh, FAC is not applicable for agriculture consumers. MSEDCL submitted the relevant extracts of the applicable Orders of SERC to substantiate its proposal. Accordingly, MSEDCL has proposed not to levy FAC on agricultural and LT 1 domestic – BPL consumers.



- c. MSEDCL added that after the recovery of amount pertaining to double accounting error as mentioned above, under/over recovery, if any, needs to be trued up at the end of the year.
- d. MSEDCL proposed that the 'Proportionate Surcharge (PS)' or FAC or any other charge shall be proportionate to the base tariff as explained in the illustration below:

Surcharge assumed for the month	=	Rs.171 Crore
Assumed Monthly Total Revenue (excluding agriculture and BPL category)	} =	Rs.1550 Crore
Ratio of PS to Total Revenue	=	11%

Accordingly the ratio so derived can be directly applied on the base slab-wise tariff of each class of consumer category (except Agriculture Consumers and LT I Domestic -BPL consumers) to arrive at PS for respective consumer category, as explained in the Table below:

Table 7: Simulation Table for PS levy taking monthly PS percentage of Monthly Revenue for main tariff categories

Categories	Assumed Billing Rate (Rs/kWh)	PS (Ps/kWh)	Assumed Monthly Sales (MU)	PS (Rs. Cr)
	a	b=a*11%	c	d=b x c
LT I - Domestic*	3.00	33.10	969	32.07
LT II - Non Domestic *	6.27	69.17	178	12.30
LT V - LT Industrial*	4.12	45.45	414	18.83
LT-VI - Street Light	2.77	30.56	64	1.96
Temporary Connection	12.10	133.49	17	2.22
HT I-Continuous (Express Feeders)	4.65	51.30	1,107	56.79
HT I-Non Continuous (Non-Exp Feeders)	4.45	49.09	764	37.49



Categories	Assumed Billing Rate (Rs/kWh)	PS (Ps/kWh)	Assumed Monthly Sales (MU)	PS (Rs. Cr)
	a	b=a*11%	c	d=b x c
HT I Seasonal	5.59	61.67	10	0.61
HT III Railways	4.70	51.85	106	5.51
HT VI Residential & Comm Complexes*	3.74	41.26	41	1.71
Mula Pravara Electric Co-op Society	2.25	24.82	56	1.39
Total		45.86	3,726	171

Note: * - PS for different sub categories will be in proportion to slab-wise tariff based on consumption.

8. The Commission, vide its Notice dated July 25, 2008, scheduled a hearing in the matter on August 13, 2008, at 15:00 hours in the Commission's office, and directed MSEDCL to serve a copy of their Petition along with accompaniments to the four authorised Consumer Representatives.

9. Section 94 (3) of the Electricity Act, 2003 provides that "*The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.*" Vidarbha Industries Association, Prayas Energy Group, Mumbai Grahak Panchayat, and Thane Belapur Industries Association represent the interest of the consumers in various proceedings before the Commission. These Consumer Representatives are authorised by the Commission on a standing basis under Section 94 (3) of the Electricity Act, 2003. In the hearing held on August 13, 2008, three of the four authorised Consumer Representatives, viz., Shri. R B Goenka, of Vidarbha Industries Association (VIA), Shri. Shantanu Dixit of Prayas, and Dr. S L Patil of Thane Belapur Industries Association (TBIA), were present during the hearing to give their suggestions and / or objections. Apart therefrom, the notices put up by the Commission in its website are accessible by the public at large. During the hearing, Shri. Amit Mittal of IMACS represented MSEDCL, along with Shri. Arijit Ghosh, Director Finance, MSEDCL.



10. MSEDCL made a Presentation during the hearing to explain the contentions in the Review Petition. MSEDCL submitted that the Review Petition was admissible under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, since no Appeal has been preferred against the Tariff Order, and the issues raised in the Review Petition could be admitted under the grounds of 'error apparent on the face of the record' and 'for any other sufficient reasons'.

11. MSEDCL reiterated the submissions made in its written Petitions during its presentation. MSEDCL submitted that it has assumed that if the amount of Rs. 1195 crore due to MSEDCL, on account of double counting of the ASC refund, is recovered over the balance 7 months of the year, it would amount to Rs. 171 crore per month, which has been spread over different consumer categories in the illustration given in the Petition, such that the Proportionate Surcharge is 11% of the base energy charges of the respective category. MSEDCL added that the impact of Rs. 61 crore on account of error in computation of interest on long-term loan and AAD, due to incorrect opening loan level being considered, should also be allowed to be recovered in the same manner as proposed for the double-counting error amounting to Rs. 1195 crore.

12. Shri. Shantanu Dixit of Prayas submitted that in case there is a double-counting error as averred by MSEDCL, then the same would have to be allowed, since it would not have been the intention of the Commission to affect the liquidity of MSEDCL. However, it appeared from the submissions of MSEDCL that the issue of double-counting of ASC refund and the actual ASC refund would be set off against each other, and hence, there may not be any need to give any additional relief to MSEDCL. Shri. Dixit submitted that the Commission in its Order has assumed that the costly power purchase would be utilised to reduce the load shedding for selected consumer categories. However, even though the projected quantum of costly power has not been procured, the load shedding to these categories has not been increased. In other words, the non-costly power has been diverted to the ASC paying consumers, to maintain the load shedding at the same levels. This in turn, implies that the consumers who are not paying ASC have been deprived of the benefit of reduced load shedding at the expense of the consumers paying ASC. As per the Commission's Order, the non-costly power was to be shared equally between all consumers and costly power was to be used to mitigate load shedding for ASC consumers. Thus, to that extent, the ASC consumers have already been benefited through reduction in load shedding, and hence, there is no need to refund the excess ASC recovered on a one-to-one basis to



the consumers who have paid ASC. The ASC refund should be undertaken at the time of ARR determination. Moreover, since the effect of double counting has been offset by the over-recovery of ASC and relief through reduction in load shedding, there is no need to allow any tariff revision on account of the double-counting error. Shri. Dixit submitted that as regards the other issues related to RLC refund and amount on account of interest and AAD, the same could be adjusted at the time of the truing up process, since the amounts involved were small. Thus, there is no need to disturb the Tariff Order at this stage.

13. Shri. R B Goenka of VIA submitted that the tariff has been determined by the Commission by considering only the non-costly power purchase and ARR, since the costly power purchase was considered separately and the entire expenditure on costly power purchase was recovered through the ASC levied on selected consumer categories. Shri. Goenka submitted that in its APR Petition, MSEDCL had indicated the revenue with existing tariffs at around Rs. 18000 crore by considering only the non-costly power, however, now MSEDCL was claiming that the revenue included revenue on account of sale of units procured from non-costly as well as costly sources. Further, MSEDCL is now claiming that the revenue includes the amount of ASC refund.

14. Shri. Goenka submitted that while issuing order on ASC, the Commission has repeatedly stated that over/under recovery has to be refunded or recovered from the consumer on one-to-one basis, which has not been done by MSEDCL, despite over-recovering amounts from consumers for a long time. Moreover, now MSEDCL is attempting to adjust the amount of over-recovery against the non-costly power purchase or revenue requirement, which is injustice to those consumers from whom ASC charges have been recovered. MSEDCL should first refund ASC on one-to-one basis to all the consumers from whom excess ASC has been collected, and should not adjust the over-recovery against the low cost tariff. As regards RLC refund, MSEDCL is attempting to delay the refund every time, by some means or the other. Earlier, MSEDCL claimed that RLC refund could be given only if the amount is allowed to be recovered through the ARR. Now that the Commission has adjusted the amount of RLC refund against the ARR, MSEDCL is claiming that the number of months remaining in the year is lower; hence, refund cannot be given. Thus, they are depriving the consumers of their legitimate dues, while at the same time, undertaking capital expenditure on single phasing, which has not been approved by the Commission. Shri. Goenka submitted that the Commission should not allow any



additional recovery on this account at this stage, and if required, the same may be considered at the time of truing up. As regards MSEDCL's request that the under-recovery should be allowed under FAC, the Commission should not allow the same without undertaking a public hearing on this issue because it will have a great impact on the tariff. Moreover, the consumers should be charged FAC based on fuel cost variation only.

15. Dr. S L Patil of TBIA submitted that the tariffs have been determined on the basis of non-costly ARR only, and the excess ASC collected by MSEDCL had to be refunded. Dr. Patil submitted that the tariffs should not be revised at this stage, because it has been accepted by the consumers after due regulatory process, and moreover, the 11% increase sought by MSEDCL was very huge.

16. Shri. Dixit submitted that there was no need to refund ASC at this stage, and hence, there was no need to make any changes to the tariff to overcome the effect of double counting, since the impact of double counting was around Rs. 1200 crore, while the amount of ASC refund is around Rs. 1000 crore, and can thus be offset against each other. Shri. Dixit added that rather than going into the very complex exercise of identifying the exact quantum of refund for each consumer who has paid ASC, the excess ASC amount could be adjusted in the ARR itself, since the computations would require a comparison of the time of power purchase, quantum of UI energy, which is classified as non-costly power irrespective of the rate, etc.

17. Shri. Goenka submitted that he did not agree with Shri. Dixit's contention that there was no need to refund the excess ASC on a one-to-one basis. He added that while non-costly power has been utilised to reduce the load shedding for ASC paying consumers, they have actually been charged at ASC rates, and hence, they should get the refund for the difference, else it would amount to depriving such consumers of their legitimate rights.

18. MSEDCL reiterated its submissions as regards the double counting error and the ASC refund and submitted that the two issues are separate and cannot be set off against one another as proposed by the Consumer Representatives. Further, the refund of excess ASC collected by MSEDCL has already been done through the ARR itself. MSEDCL added that it has commenced giving RLC refund from the previous month itself.



19. Having heard the Parties and after considering the materials placed on record, the Commission rules as under:

20. The admissibility of the Review Petition has to be seen with reference to Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, which stipulates as under:

“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.”

Further, as established by several Judgments of the Honourable Supreme Court, the review jurisdiction is very limited, and for review to be granted under the grounds of ‘error apparent on the face of the record’, the error has to be apparent and capable of being established without having to go into detailed analysis and computations.

i) ASC double-counting and recovery through ASC

MSEDCL submitted that the Commission has set-off the estimated ASC over-recovery of Rs. 427 Crore and Rs. 768 Crore in FY 2006-07 and FY 2007-08, respectively, against non-costly power considering it as a surplus amount, although it has been already included in the revenue from existing tariff considered by the Commission as Rs. 18863 crore and Rs. 17822 crore in FY 2006-07 and FY 2007-08, respectively. MSEDCL submitted that the double-counting by the Commission has resulted in effectively reducing MSEDCL’s revenue requirement and hence, revenue gap for FY 2008-09, by Rs. 1195 crore (Rs. 427 crore + Rs. 768 crore). MSEDCL requested the Commission to review the double accounting of ASC revenue in its Order under the heads of “error apparent” and “for any other sufficient reasons”, and requested the Commission to revise the tariff for FY 2008-09 to enable MSEDCL to mitigate this shortfall of Rs 1195 Crore. In its Addendum Petition, MSEDCL



proposed that the shortfall of Rs. 1195 crore be allowed to be recovered through a Proportionate Surcharge or FAC over the remaining months of the year, and proposed that the BPL category and agriculture category be exempted from payment of this Proportionate Surcharge.

The Commission has to first establish whether there has been any double-counting error in the consideration of this ASC revenue by the Commission as averred by MSEDCL, after considering all submissions made by MSEDCL in this regard during the course of the regulatory process undertaken by the Commission. The Commission has dealt with the treatment of revenue for FY 2006-07 and FY 2007-08 separately, since the issues are different, as FY 2006-07 truing up has been undertaken on the basis of Audited Accounts, while for FY 2007-08, the Commission has considered the revenue based on MSEDCL's submissions in this regard.

FY 2006-07

On the one hand, the Commission has considered that MSEDCL has excess ASC recovery of Rs. 427 crore in FY 2006-07, after setting off the expenditure on account of non-costly power purchase in this year made towards mitigating load shedding for ASC paying consumers. The Commission has added that the exact quantum of excess ASC available with MSEDCL would be known only after MSEDCL undertook the ASC refund on a one-to-one basis, and adjusted the revenue from base tariffs against the expenditure on non-costly power purchase for each consumer. The Commission has deducted this assessed surplus of Rs. 427 crore from the revenue requirement of FY 2008-09, while determining the revenue gap for FY 2008-09, based on which, the revised category-wise tariffs for FY 2008-09 have been determined.

On the other hand, while undertaking the final truing up for FY 2006-07 based on MSEDCL's audited accounts, the Commission has considered the total revenue in FY 2006-07 as Rs. 18863.78 crore. Analysis of Schedule-2 [Element-wise Analysis of Revenue] of the Audited Accounts of MSEDCL for FY 2006-07 (which was included as Annexure 8 of MSEDCL's APR Petition that was published during the regulatory process undertaken by the Commission), reveals that MSEDCL's total revenue of Rs. 18863.78 crore in FY 2006-07, includes revenue from Additional Supply Charges of Rs. 1339.60 crore.



Based on the above treatment of expenses and revenue at the time of final truing up for FY 2006-07, it appears that MSEDCL's contention that the revenue from levy of ASC has been double-counted for FY 2006-07, is correct.

However, it is necessary to understand MSEDCL's various submissions on this issue, as detailed below:

- a. MSEDCL has repeatedly submitted that it has collected excess revenue from levy of ASC which has not been refunded to the consumers for want of certain clarity on the matter. The specific queries and MSEDCL's reply dated May 6, 2008, to the Data Gaps dated April 29, 2008 have been elaborated below:

“Query No 3: *The following details should be submitted for FY 2006-07 and FY 2007-08 on a monthly basis, in the context of ASC*

- a. *Over-recovery from ASC vis-à-vis the expenditure on costly power purchase*
- b. *Refund of ASC undertaken by MSEDCL*
- c. *Amount of ASC recovery set-off against expenditure on non-costly power purchase, in months where the costly power purchase is nil/negligible*

Reply:

3a).The table showing over/ under recovery of ASC for the period from October 2006 to December 2007 is given below:



Month	Costly Power purchase - MERC	ASC Recovered	InASC Recovered	Under/Over Recovery - MERC	Remark	Costly Power purchase - MSEDCL	Under/Over Recovery - MSEDCL	Remark	
a	b	C	D	e=b-c-d	G	F	i=f-c-d	k	
Oct-06	204.51	235.25	40.10	(70.84)	As per	243.38	(31.97)	As per MSEDCL Submission	
Nov-06	297.07	360.72	88.28	(151.93)	MERC	406.19	(42.81)		
Dec-06	318.26	355.77	43.25	(80.76)	vetting order Oct-Dec06	400.34	1.32		
Jan-07	244.41	402.93	(26.39)	(132.13)	As per	262.28	(114.26)	As per MSEDCL Submission	
Feb-07	182.32	406.74	34.72	(259.14)	MERC	307.67	(133.79)		
Mar-07	275.68	337.27	(58.72)	(2.87)	vetting order	289.70	11.15		
Apr-07	162.35	368.19	(118.27)	(87.57)	Jan-Apr 07	272.04	22.12		
May-07	404.16	225.20	-	178.96	As per MSEDCL Submission	404.16	178.96	As per MSEDCL Submission	
June-07	127.63	284.90	-	(157.27)		As per MSEDCL	127.63		(157.27)
July-07	40.38	266.93	-	(226.55)		L	40.38		(226.55)
Aug-07	53.85	292.45	-	(238.60)		Submission	53.85		(238.60)
Sep-07	78.47	301.36	-	(222.89)		ion	78.47		(222.89)
Oct-07	177.26	272.34	-	(95.08)			177.26		(95.08)
Nov-07	153.58	149.70	-	3.88			153.58		3.88
Dec-07	94.42	254.05	-	(159.63)			94.42		(159.63)
Total	2,814.35	4,513.80	2.97	(1,702.42)		3,311.34	(1,205.43)		

The Hon. Commission has issued vetting order for the period from October 2006 to December 2006 and from January 2007 to April 2007. The total over recovery for the mentioned period is Rs.785.24 Crs.



MSEDCL submits that principle of ASC as determined by Hon. Commission provides for recovery of ASC from consumers as per the matrix given in Tariff order dated 20th October 2006 and MYT order dated 18th May 2007. The cost of costly power for the purpose of variation/Incremental ASC determined is Rs.4.00 per unit and above for the sources specified in tariff orders. However, MSEDCL is of different view and considered all sources costing more than Rs.4.00 per unit and above as costly power for ASC and InASC. The same was intimated to the Hon. Commission vide letter no. MSEDCL/CAS/FAC-InASC/07 dated 4th February 2008.

The total over recovery as per MERC orders already vetted and to be vetted for the period from October 2006 to December 2007 will be Rs.1702.42 Crs, however, over recovery as per MSEDCL's principles would be Rs.1205.43 Crs.

*Further, MSEDCL would like to mention that an ASC consumer irrespective of costly power purchase consumes power (including cheap power). For eg. If a HT consumer consumes 100 units in a month, the billing would be done for 76 units at the base tariff and the balance 24 units at ASC rate. However the actual costly power purchase would be less than 24 units. **In such case since the ASC consumer consumes cheap power this amount will have to be considered for deduction from the refund amount of InASC.***

Hon. Commission may kindly consider this factor while determining the refund/over-recovery of Incremental ASC for the period from October 2006 to December 2007.

3b). Refund of ASC undertaken by MSEDCL

Till date MSEDCL has not undertaken refund process for the period from October 2006 to April 2007 and the vetting order for the period May 2007 onwards is yet to receive.



3c). Amount of ASC recovered set-off against expenditure on non-costly power purchased.

MSEDCL has not carried out such adjustments/ there are no such instance where there is no costly power purchased.”

The above submissions of MSEDCL clearly indicate that MSEDCL has over-recovered ASC to the extent of Rs. 697.67 crore in FY 2006-07 over the period from October 2006 to March 2007 as shown in the Table above [Column (e)] (70.84 + 151.93 + 80.76 + 132.13 + 259.14 + 2.87), as approved by the Commission after detailed ASC vetting. Further, in its replies cited above, MSEDCL has requested the Commission to consider the fact that consumers paying ASC have actually consumed non-costly power, and hence, the ASC refund has to be computed after reduction of the expenditure towards non-costly power. MSEDCL has admitted that it has not undertaken any ASC refund process for the period from October 2006 to April 2007. In reply to the Commission’s query regarding whether MSEDCL has set-off the expenditure on non-costly power purchase against the ASC recovered, MSEDCL had submitted that it has not carried out any such adjustments.

Thus, MSEDCL’s submissions as regards ASC revenue, over-recovery, and non-refund of ASC have led to the confusion in this regard as to whether the ASC revenue was included or excluded in the total revenue of Rs. 18863 crore.

However, the fact remains that the ASC revenue has been apparently double-counted, which has resulted in MSEDCL’s revenue requirement for FY 2008-09 being understated by Rs. 427 crore. Accordingly, the Commission accepts MSEDCL’s contention of double-counting of ASC revenue for FY 2006-07, under the grounds of ‘error apparent’.

FY 2007-08

On the one hand, the Commission has considered that MSEDCL has excess ASC recovery of Rs. 768 crore in FY 2007-08, after setting off the expenditure on account of non-costly power purchase in this year made towards mitigating load shedding for ASC paying consumers. The Commission has added that the exact quantum of excess ASC available with MSEDCL would be known only after MSEDCL undertook the



ASC refund on a one-to-one basis, and adjusted the revenue from base tariffs against the expenditure on non-costly power purchase for each consumer. The Commission has deducted this assessed surplus of Rs. 768 crore from the revenue requirement of FY 2008-09, while determining the revenue gap for FY 2008-09, based on which, the revised category-wise tariffs for FY 2008-09 have been determined.

As regards revenue considered for provisional truing-up for FY 2007-08, the Commission has considered the total revenue from existing tariff as Rs. 19651.20 crore, based on MSEDCL's submission on actual revenue of Rs. 16636.16 crore for the period from April 2007 to February 2008 (which was pro-rated to Rs. 17821.97 crore for the complete year), vide its reply dated May 6, 2008 (received on May 8, 2008), and after adding the amount of Rs. 1829.23 crore of State Government subsidy against subsidized tariffs for agricultural and power loom category. This reply of MSEDCL has been submitted vide 'Annexure Point No. 1' submitted along with the reply dated May 6, 2008, to Query No. 1 of Data Gaps dated April 29, 2008. The specific query and MSEDCL's reply have been elaborated below:

“Query No 1, MSEDCL should submit the data on the actual category-wise and slab-wise sales and revenue for FY 2007-08 (April 2007 to March 2008 or till February 2008, as available).

d. Sales and revenue data should be submitted separately for non-costly power and costly power sources

Reply:

Requisite data is attached as Annexure Point no 1.”

Under Annexure Point No. 1, MSEDCL has submitted the following data, separately, for the period from April 2007 to February 2008 (11 months of FY 2007-08)

- Demand (including Bulk Discount, Load Discount, Load Incentive and Ag Zero Bills) and Collection Report - The total revenue billed in the period under consideration was given as Rs. 16636.16 crore
- ASC Report for the period from April 2007 to February 2008 – The total ASC units was given as 5986.6 MU and total ASC revenue was given as Rs. 2542 crore.



From the above submissions made by MSEDCL, it appears that the actual revenue from existing tariff in FY 2007-08 for the 11-month period from April 2007 to February 2008 was Rs. 16636.16 crore, and there is additional revenue on account of ASC to the extent of Rs. 2542 crore. Since the Commission has only pro-rated the actual revenue of Rs. 16636.16 crore for the 11-month period to estimate the revenue from existing tariff for the entire year as Rs. 17821.97 crore under the provisional truing-up exercise, the ASC revenue of Rs. 2542 crore has not been considered. Further, in the Review Petition, MSEDCL has not submitted any additional data to substantiate its contention that the revenue considered by the Commission for FY 2007-08 also includes the ASC revenue. **Thus, based on the data submitted by MSEDCL, the Commission is of the view that there is no double-counting of ASC revenue for FY 2007-08 as contended by MSEDCL.**

However, as regards FY 2007-08, the Commission is of the view that there is no apparent double-counting of ASC revenue for FY 2007-08 as contended by MSEDCL. The error requires to be glaring, and on the face of it should be able to be recognized. If prolonged arguments and complicated analysis is required to be undertaken to establish the error then a review cannot be undertaken on such an error. This is settled law.. The error as contended by MSEDCL as to the double-counting of ASC revenue for FY 2007-08 is not apparent on the face of the record, and is therefore, rejected.

However, if MSEDCL's actual revenue in FY 2007-08 has been lower than that considered by the Commission at the time of provisional truing up, as averred in the Review Petition, the same will be considered at the time of final truing up for FY 2007-08 based on the audited accounts of FY 2007-08.

Treatment of Additional Revenue Requirement

The Commission is of the view that this is not an ordinary situation. The effective revenue shortfall of Rs. 427 crore for FY 2008-09 is therefore being allowed to be recovered in the remaining four months of FY 2008-09, through an Additional Charge (due to double-counting of ASC revenue for FY 2006-07), so that MSEDCL's liquidity is not adversely affected. This would be in effect an amendment to the tariff of FY 2008-09 but as stated above in the present extra-ordinary situation, this is the solution that is called for. It should be noted that had this amount of Rs. 427 crore not been deducted from MSEDCL's ARR for FY 2008-09, the revenue gap for FY 2008-



09 would have been correspondingly higher. The tariff revision would then have been undertaken in such a manner that the total revenue gap is recovered from the revised category-wise tariffs, and to that extent, the category-wise tariffs would have been proportionately higher, such that MSEDCL was able to recover revenue of Rs. 427 crore over the entire year. Accordingly, the Commission has designed the Additional Charge payable by different consumer categories in the remaining four months of FY 2008-09 as specified below, such that MSEDCL recovers the additional amount of around Rs. 427 crore in the remaining four months of FY 2008-09, rather than revising the base tariffs for each category:

Table 8: Additional Charge payable by consumers over the remaining four months of FY 2008-09

Sl.	Consumer Category	Additional Charge (due to double-counting of ASC revenue) (paise/kWh)
	HT Category	
1	HT I Industry	
1.1	<i>Continuous (on express feeder)</i>	26
1.2	<i>Non-continuous (not on express feeder)</i>	24
1.3	<i>Seasonal Industry</i>	30
2	HT II Commercial	42
3	HT III Railway Traction	28
4	HT IV Public Water Works	
4.1	<i>Express Feeders</i>	19
4.2	<i>Non-express Feeders</i>	18
5	HT Agricultural	10
6	HT VI	
6.1	<i>Group Housing Society</i>	18
6.2	<i>Commercial Complex</i>	31
7	HT VII - Mula Pravara Electric Co-op Society	12
	LT Category	
1	LT I – Domestic	
1.1	<i>BPL Category</i>	2
1.2	<i>Other Domestic</i>	
	<i>0-100 Units</i>	12
	<i>101 – 300 Units</i>	23
	<i>301 – 500 Units</i>	32
	<i>Above 500 Units (only balance Units)</i>	37
2	LT II - Non-domestic	
	<i>0-20 kW</i>	20
	<i>20 – 50 kW</i>	33



Sl.	Consumer Category	Additional Charge (due to double-counting of ASC revenue) (paise/kWh)
	<i>Above 50 kW</i>	45
3	LT III - Public Water Works	
	<i>0-20 kW</i>	7
	<i>20 – 40 kW</i>	10
	<i>40 - 50 kW</i>	15
4	LT IV Agriculture	
4.1	<i>Un-metered tariff</i>	
a	<i>Category 1 Zones</i>	Rs. 7.5 per kW per month
b	<i>Category 2 Zones</i>	Rs. 6.0 per kW per month
4.2	<i>Metered Tariff (incl. Poultry Farms)</i>	7
5	LT V Industrial	
	<i>0-20 kW</i>	18
	<i>Above 20 kW</i>	27
6	LT VI Street Light	
6.1	<i>Grampanchayat, A, B & C Class Municipal Council</i>	14
6.2	<i>Municipal Corporation Areas</i>	17
7	LT VII Temporary	
7.1	<i>Other Purpose</i>	72
7.2	<i>Religious</i>	12
8	LT VIII - Advertisement & Hoardings	84
9	LT IX - Crematoriums & Burial Grounds	12

As regards MSEDCL's prayers under the Addendum Petition, viz., to allow the amount of under-recovery on account of the double-counting error to be recovered as a Proportionate Surcharge after exempting BPL category and LT agricultural category, the same are rejected by the Commission, since such prayers cannot be a subject matter of a Review Petition of this nature, and will have to be dealt with separately.

ii) **Refund of excess ASC recovered from selected consumer categories**

MSEDCL submitted that the ASC refund, as directed by the Commission in the APR Order, has already been passed on to all consumers in the form of reduction in ARR and tariff for FY 2008-09, and hence, if over-recovery of ASC needs to be refunded back to the consumers after setting off part ASC over-recovery against non-costly power, then provision for such refund needs to be incorporated in the tariff. MSEDCL requested the Commission to review the issue of refund of ASC over-recovery as detailed above under the heads of "error apparent" and "for any other sufficient reasons".



The Commission, in MSEDCL's APR Order dated June 20, 2008 in Case No. 72 of 2007, has estimated the amount of surplus ASC revenue available with MSEDCL as Rs. 427 crore and Rs. 768 crore for FY 2006-07 and FY 2007-08, respectively, and has stated that the exact amount of ASC refund would be known only when MSEDCL undertakes the exercise of ASC refund on a one-to-one basis as directed by the Commission. The relevant extracts of the above-said Order are reproduced below:

“MSEDCL has been charging Additional Supply Charges (ASC) to its consumers since October 2006. The Commission has vetted the ASC charged over the period October 2006 to March 2007, and has directed MSEDCL to refund the excess ASC recovered from the consumers on one-to-one basis, as directed in the Tariff Order. However, MSEDCL is yet to refund any excess ASC...Hence, the refund has to be undertaken by MSEDCL in such a manner that the consumer at least pays the base energy charge applicable for the respective category for the entire consumption. This will result in MSEDCL having some surplus amount left, which has to be used to offset the expenditure on the non-costly power purchase. The exact additional amount available to MSEDCL for setting off against the base ARR will be known only after MSEDCL undertakes the exercise of refund of excess ASC to the relevant consumers on one-to-one basis, which has to be done for FY 2006-07 immediately. For the purpose of this Order, while truing up the expenses and revenue for FY 2006-07, the Commission has estimated that the additional amount available to MSEDCL for setting off against the base ARR of FY 2006-07 will be around Rs. 427 crore, and has hence considered this surplus to compute the revenue gap for FY 2006-07. The same will be adjusted once the actual amounts are known, at the time of Annual Performance Review for FY 2008-09.”

“Based on the actual revenue earned by MSEDCL through sale of electricity over the period from April 2007 to February 2008, the Commission has proportionately considered the revenue as Rs. 17822 crore. Further, as in FY 2006-07, MSEDCL has also over-recovered ASC to the extent of around Rs. 1005 crore in FY 2007-08 (from April to December 2007, as per MSEDCL submission – yet to be vetted by the Commission), which has to be returned to the consumers on a one-to-one basis, after setting off the base energy charges as discussed earlier in this Order. The exact additional amount available to MSEDCL for setting off against the base ARR will be known only after



MSEDCL undertakes the exercise of refund of excess ASC on one-to-one basis. For the purpose of this Order, while truing up the expenses and revenue for FY 2007-08, the Commission has estimated that the additional amount available to MSEDCL for setting off against the base ARR of FY 2007-08 is around Rs. 768 crore, which has been added to the revenue from sale of electricity. The same will be adjusted once the actual amounts are known, at the time of Annual Performance Review for FY 2008-09...”

This issue is closely related to the issue (ii) discussed above, the revenue considered by the Commission for FY 2006-07 and FY 2007-08, and MSEDCL's various submissions that no refund of ASC has been undertaken till date. If the revenue considered by the Commission includes the ASC revenue, then MSEDCL's contention that the effect of setting-off the assessed surplus of Rs. 427 crore and Rs. 768 crore against the ARR of FY 2008-09, has resulted in the excess ASC already being refunded to all the consumers through the ARR, would have merit. As discussed in issue (ii) above, the total revenue of Rs. 188863 crore considered by the Commission for FY 2006-07 included the ASC revenue, and hence, as regards FY 2006-07, the Commission accepts MSEDCL's contention that it would not have any surplus amount left to undertake the ASC refund on a one-to-one basis. However, as regards FY 2007-08, the Commission has concluded under issue (ii) above that the revenue considered by the Commission under the provisional truing up exercise does not include the ASC revenue. Under such circumstances, MSEDCL's contentions as regards ASC refund for FY 2007-08 are not sustained by the Commission.

However, even for FY 2006-07, the approach of giving ASC refund through the ARR is incorrect, as the refund of excess ASC has to be undertaken on a one-to-one basis in the manner prescribed by the Commission, after adjusting for the respective quantum of non-costly power consumed by the ASC paying consumer, and the exact quantum of total ASC refund has to be computed by MSEDCL by using its billing software, and details of the past bills in this regard.

Given the complicated nature of this issue and the exact quantum of ASC refund not being known exactly, the Commission defers the refund of surplus ASC for the time-being. The direction to MSEDCL to compute the total ASC refund payable by MSEDCL for FY 2006-07 and FY 2007-08 by summing up the refund payable to individual consumers on a one-to-one basis, after setting off the base energy charges as applicable for the respective category for the entire consumption, has been in place



since the issue of the APR Order. MSEDCL is hereby directed to submit a Petition for the Commission's approval indicating the category-wise refund, the total amount required to be refunded, and the amount required to be added to the ARR of the subsequent year for effecting the refund to specific consumers and consumer categories.

iii) **RLC refund**

MSEDCL's revised Petition was admitted by the Commission on March 5, 2008. As per the EA 2003, the Commission is required to issue the Order within 120 days of receipt of the completed Petition. In this case, the Commission issued the Operative Order on May 31, 2008 and the detailed Order by June 20, 2008, which is well within the stipulated timeframe of 120 days.

In its Review Petition, MSEDCL has contended that it would incur a shortfall of Rs. 80 crore, if the entire RLC refund of Rs. 500 Crore is given in FY 2008-09, since MSEDCL will be able to collect only Rs. 420 crore from the revised tariffs, which have been implemented from June 1, 2008, and will be in force for only 10 months of FY 2008-09. MSEDCL requested the Commission to review the quantum of RLC refund under the heads of "error apparent" and "for any other sufficient reasons".

However, this is not a new development or fact, and MSEDCL is well aware that the tariffs are always revised prospectively, and there will be an element of under-recovery of revenue, even in the case of the revised tariffs, as they are usually not implemented with effect from April 1 of every financial year.

Further, there is no 'loss' to MSEDCL under this approach, since the Commission permits truing up of the audited revenue and expenses subject to prudence check, at the end of the year.

The Commission is also of the view that this issue does not qualify for review under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, either under the head of 'error apparent' or 'for any other sufficient reasons'.

Accordingly, the Commission rejects MSEDCL's prayer in this regard.



iv) **Consideration of Opening Loan Balance for computation of Interest and Advance against Depreciation (AAD)**

In its Review Petition, MSEDCL has requested the Commission to re-compute the interest expense on long-term loans for FY 2006-07, by consider the closing loan balance for FY 2005-06 (i.e., which is the opening loan balance for FY 2006-07) as per the MYT Order dated May 18, 2007. MSEDCL has submitted that the interest expense on long-term loans by considering the above opening and closing loan balances and excluding short-term REC loan, is higher by Rs. 47 Crore, as compared to the interest expense allowed by the Commission in the APR Order, after final truing up. MSEDCL further submitted that in line with the above, the total loan repayment for FY 2006-07 is higher than the depreciation approved by the Commission for FY 2006-07, and Advance against Depreciation (AAD) to the extent of Rs. 14 Crore has been disallowed by the Commission while undertaking final truing up for FY 2006-07. MSEDCL has sought review of the Commission's Order in this regard under the grounds of 'error apparent' and 'for any other sufficient reasons', and has requested that the total additional expenditure of Rs. 61 crore (Rs. 47 crore + Rs. 14 crore) should be allowed by the Commission.

In this context, the Commission, in its Order dated June 20, 2008 in Case No. 72 of 2007 has stated:

".....The Commission sought clarification from MSEDCL on the significant difference in opening loan balance between that considered by MSEDCL and as considered by the Commission in the Tariff Order. Upon verification with audited account statements, the Commission observed that opening loan balance as considered by MSEDCL includes short term loan from REC to the extent of Rs 1300 Crore. Since such short-term loans cannot be considered while computing the long-term interest expenses, the Commission has not considered the same under the true-up exercise....."

Also, MSEDCL has not submitted any explanation for the remaining difference between the opening balance of loan considered in MSEDCL's Petition vis-à-vis that considered by the Commission in the Tariff Order for FY 2006-07. In the absence of any explanation for the same, the Commission has considered the opening loan balance and the interest rate in line with the Tariff Order for the purpose of true up. In case MSEDCL submits adequate



justification for the difference between the numbers, then the impact of the same could be considered at the time of APR exercise for FY 2008-09.....”

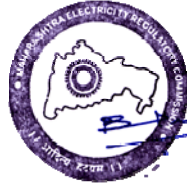
Thus, the above extract clearly shows that the disallowance of Rs. 61 crore, on account of interest on long-term loan and AAD, was on account of non-submission of adequate explanation by MSEDCL in reply to the Commission’s query in this regard. Further, the APR Order already provides that the above disallowed expenses can be considered at the time of the next APR filing, provided MSEDCL submits adequate justification for the same and considers the impact of the same, while submitting the APR Petition for FY 2008-09 and Tariff Petition for FY 2009-10.

Accordingly, there is no need to grant any review of the matter in this regard. Since, MSEDCL has been able to justify the values of opening and closing loan balances considered by MSEDCL in its Petition, the disallowed expenditure i.e., Rs. 61 crore, will be considered at the time of the next APR filing, provided MSEDCL includes the same while submitting the APR Petition for FY 2008-09 and Tariff Petition for FY 2009-10.

With the above observations and rulings, MSEDCL’s Petition in Case No. 42 of 2008 stands disposed of.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P. B. Patil)
Secretary, MERC