

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 34 of 2008

In the matter of
Petition filed by M/s. Lavasa Corporation Ltd. seeking Tariff Classification for
development of Hill Station

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

ORDER

Dated: December 19, 2008

M/s. Lavasa Corporation Ltd. (LCL) submitted a Petition on affidavit before the Commission on June 25, 2008, seeking Tariff Classification for Development of Hill Station pursuant to respective Government Resolution (GR) and Tourism Policy.

2. LCL, under its Petition, prayed as under:

- a) *“The Hon’ble Commission may decide Tariff Classification of Development of Hill Station pursuant to policy of Government of Maharashtra in the light of Notification / GR stated in the Petition.*
- b) *The Commission may be pleased to grant interim relief u /s 95 of the Act as under:*
 - (i) *During the pendency and final disposal of the petition the recovery Bill dated 26th May 2008 for Rs. 3,12,70,595 /- and all consequential actions may kindly be stayed.*
 - (ii) *The notice dated 13th June 2008 keeping hearing u/s.126 of the Act may be stayed.*
 - (iii) *During the pendency and final disposal of the Petition, Respondent No. 1 may be restrained from showing amount as outstanding and adding D.P. Charges in Regular Bills of the Petitioner.*
- c) *During the expected period of fifteen to twenty years of development of the Hill Station, the demand charges shall be based on actual demand.*



- d) *The Commission be pleased to initiate necessary action against MSEDCL (Respondent No. 1) u/s. 142 and 146 of the Electricity Act, 2003.*
- e) *Any other just and equitable reliefs in favour of Petitioner as deem fit by Hon'ble Commission".*

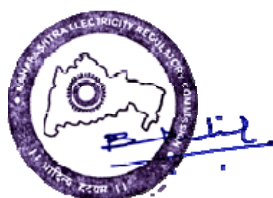
3. LCL, in its Petition, submitted as under:

- (i) LCL is a Company registered under the provisions of the Companies Act and is developing a Hill Station Township over 18 villages of Taluks Mulshi and Velhe of District Pune and is declared as a Hill Station by the Government of Maharashtra (GoM) vide its Notification No. TPS 1800/1004/CR-106/I/2000/UD-13 dated June 1, 2001.
- (ii) LCL is a consumer and is aggrieved by acts of MSEDCL, which has contravened provisions of the Electricity Act, 2003 (EA 2003). LCL stated that pursuant to the notice of MSEDCL in The Times of India dated March 10, 2008 inviting comments/suggestions on the Petition filed by MSEDCL for determination of Tariff for FY 2008-09, LCL approached the Commission as well as MSEDCL and submitted amongst other grounds that LCL is involved in the process of development of Hill Station as per GoM notification, and therefore, tariff for such project may be classified separately. LCL made presentations besides written submission along with documents. On perusal of LCL's written submission, the Commission observed that important legal issues were being raised, which cannot be considered on that platform and directed LCL to approach the Commission independently. During the regulatory process on MSEDCL's Petition in Case No. 72 of 2007, MSEDCL informed LCL by its letter dated April 4, 2008 that the matter is pending before the Commission. LCL submitted that when the issue is pending before the Commission, the act of MSEDCL applying different tariff to LCL amounts to violation of law and more particularly Section 142 of the EA 2003. LCL is aggrieved by the encroachment on the Commission's authority. Therefore, LCL has the legal right to approach the Commission.
- (iii) LCL is in the process of development of Hill Station under special Regulations framed by GoM dated November 26, 1996 for development of tourist resorts/holiday homes/township in Hill Station type areas.
- (iv) The Commission has to classify each consumer category under Section 61 and Section 62 of the EA 2003. Also, LCL earlier approached the Commission in March/April 2008 for classification of tariff. MSEDCL's act



of shifting LCL from HT-VI Commercial to HT XII-O, particularly when the issue is pending before the Commission, calls for action against MSEDCL under Section 142 of the EA 2003.

- (v) The GoM, vide its Resolution No. MTC-0399/C.R.201/Tourism dated April 7, 1999, has granted the status of Industry to the Development of Hill Stations and vide its letter dated June 27, 2001, has also granted in-principle approval for the development of Hill Station by LCL. Therefore, LCL has come into existence prior to EA 2003.
- (vi) The development of the Hill Station comprises wide range of activities such as development of residential apartments, commercial buildings, shopping malls, different categories of hotels, different types of sports facilities, clubs, restaurants, schools providing education in various mediums and at different levels, IT and Bio technology parks, hospitals, etc. Further, the Hill Station being developed by LCL is located in remote, inaccessible and hilly terrain, and therefore, LCL is also required to develop infrastructure like roads, water supply, sewage treatment, water treatment, electricity, etc.
- (vii) The activity of development of Hill Station includes acquiring of land, development of land, developing of infrastructure, roads, sewers, construction of building, bunds, canals, water storage tanks, etc. The Hill Station itself involves substantial investment in infrastructure, which distinguishes Hill Station project from other construction activity or commercial activity. In case of other construction activity, howsoever large it may be, the Construction Company is not required to spend any money on transmission lines, feeder bay, capacitor bay, power receiving station or distribution system. The construction activity is for limited period and is never considered by Government as an industry. The Commission has also considered construction activity for limited purpose only.
- (viii) LCL has signed an agreement with The Tata Power Company Limited and MSEDCL for connection under Open Access for supply of 49 MW of electricity. Initially, MSEDCL has agreed to supply 4.5 MVA of electricity, however, at no point of time has MSEDCL provided any infrastructure for such agreed supply of electricity. The supply of power is entirely through the infrastructure developed by LCL at its own cost.
- (ix) LCL approached the Commission on March 30, 2008 in response to MSEDCL's proposal for determination of Tariff for FY 2008-09. Since, MSEDCL's tariff proposal did not include any separate categorisation for



power supply to Hill Station, LCL approached the Commission and made a presentation in Pune on April 11, 2008.

- (x) MSEDCL, vide its letter dated April 4, 2008, responded to the letter submitted by LCL dated March 30, 2008 and informed LCL that MSEDCL has submitted a Petition before the Commission for tariff revision and the same would be applicable as per the Tariff Order passed by the Commission.
- (xi) MSEDCL has been supplying power to LCL under HT VI category pursuant to the Agreement dated October 3, 2007 executed between LCL and MSEDCL. LCL submitted that in the absence of a specific tariff category for Hill Stations, MSEDCL has classified LCL under HT VI category.
- (xii) On May 7, 2008, MSEDCL conducted a spot inspection at one of its sites in the Hill Station and reclassified LCL under HT XII (Construction) though in the Agreement, the use has been referred to as commercial. Subsequently, a spot inspection report was sent by MSEDCL vide letter dated May 26, 2008 stating that the power is being used for HT XII (Construction) purposes, and made a demand for a sum of Rs.3,12,70,595. Further, MSEDCL also threatened LCL with legal action. LCL, vide its letter dated May 30, 2008, raised an objection against MSEDCL's letter dated May 26, 2008, and brought to the notice of MSEDCL that LCL has specifically mentioned the purpose for supply of electricity as "Hill Town under Development". LCL had also brought to the notice of the MSEDCL that the project has been granted Industry status by the GoM pursuant to its Notification No. TPS/1004/CR/1/2000/UD-13 dated April 7, 1999. Further, LCL informed MSEDCL that as per Regulation 3.4.1 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005, MSEDCL is authorised to apply only the tariff approved by the Commission. LCL also brought to the notice of MSEDCL that HT XII (Construction) tariff is not mentioned in the Tariff Booklet approved by the Commission.
- (xiii) LCL, vide letter dated May 30, 2008, informed MSEDCL that the Flying Squad of MSEDCL failed to consider the aspect that the power usage for Hill Town under Development activity included operational activities like water supply, street light, offices, labour colony, sewerage system, etc. Further, MSEDCL's letter did not reveal the rate and the basis of calculation of the assessed bill of Rs.3,12,70,595. Therefore, through the above said letter, LCL asked MSEDCL to provide the necessary details. Further, LCL also mentioned that HT I tariff is applicable to its activity and the said tariff



has to be levied from the date of connection, and MSEDCL should refund the excess amount collected by MSEDCL, with interest.

- (xiv) MSEDCL raised a bill dated June 5, 2008 for Rs.24,36,680 in which MSEDCL has classified LCL under category HT XII O and load is classified as 'Industrial'. MSEDCL has raised two bills, one for the month of May 2008 where tariff is apparently charged at Rs. 10.50/kWh, i.e., tariff applicable to LT Temporary connection. MSEDCL has also separately raised another bill under Section 126 of EA 2003 levying tariff at Rs. 10.50 /kWh and has claimed difference amount of Rs. 3,12,70,595.
- (xv) LCL wrote a letter to MSEDCL on June 12, 2008 and paid an amount of Rs. 24,366,82 for the month of May 2008 under protest. Further, LCL submitted that bare reading of the facts stated herein above shows that as per proceedings dated April 11, 2008 and as per letter dated April 4, 2008 by MSEDCL, there is a need to determine the tariff category applicable to LCL, i.e., for development of Hill Station.

4. LCL, in its Petition, further submitted as under:

- i) Sections 61, 62 and 86 of the EA 2003, deal with powers and functions of the State Commission to determine tariff for supply of electricity within the State, and only the State Commission can determine the tariff. LCL, already having approached the Commission for specifying the classification applicable to LCL, the act of MSEDCL in changing the tariff category violates the law and hence, there is a case for intervention by the Commission.
- ii) EA 2003 authorises the Commission to differentiate according to the consumer's load, as well as geographical position, nature of supply and purpose for which supply is required. The purpose of supply of electricity to LCL is for Hill Station under development, and the said activity itself is classified as an industry by Government for all statutory purposes as set out in GR. No. MTC-0399/CR/201/Tourism dated April 7, 1999. Therefore, taking into account this aspect along with the geographical location where the activity of LCL is taking place, it is necessary for the Commission to specify a separate tariff classification for LCL.
- iii) In FY 2006-07 as well as FY 2007-08, the Commission has changed the existing categories and sub categories/slabs. For instance, the Commission has combined HTP-I Industries and HTP II Industries into one category, i.e., revised HTP I, apart from this the Commission has revised the tariff.

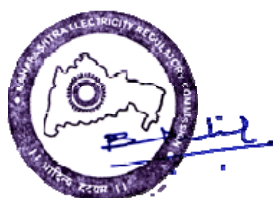


Therefore, classification for tariff purposes is a prerogative of the Commission and MSEDCL has no right to change classification unilaterally. The EA 2003 has provided a mechanism for the same and MSEDCL is required to take recourse of law by approaching the Commission for classification of tariff. Therefore, MSEDCL's unilateral act is against law.

- iv) As per Section 43 of EA 2003, it is duty of MSEDCL to supply electricity to the consumer on receiving application for the same. Further, under Section 45 of EA 2003, the tariff to be levied by MSEDCL for supply of electricity should be fixed in accordance with (a) the methods and the principles as may be specified by the concerned State Commission, (b) published in such manner so as to give adequate publicity for such charges and prices.
- v) As per Sections 62 and 86 of EA 2003, the Commission has to determine the tariff in accordance with the provisions of the EA 2003. LCL is supplied with retail sale of electricity through distribution lines and transmission lines erected by LCL for the purpose of development and running of Hill Station as per GoM Policy. The Commission alone can determine tariff applicable to LCL's Hill Station
- vi) The activity carried out by LCL in this case cannot be called as construction or commercial. Construction is a temporary activity and even the Commission in its earlier Order dated June 16, 2000 in Case No.1 of 1999 has considered connection as temporary only if the usage is limited to one year. If usage is for period more than one year, tariff should be levied as per the Commission's Order. The activity being undertaken by LCL needs to be considered under a separate category and separate tariff needs to be specified, as GoM has granted status of industry to Development of Hill Station. The Commission, while determining tariff classification for FY 2007-08 and FY 2008-09, has not considered the activity of Development of Hill Stations or more particularly projects like LCL separately, as evident from the Commission's Operative Order in Case No.72 of 2007 dated May 31, 2008.
- (vi) The GoM has accorded special status of "Industry" to the project, maintaining of Hill station and several activities therein and hence, LCL cannot be classified under any of the categories determined by the Commission for FY 2007-08 or FY 2008-09.



- (vii) The GoM has announced Tourism Policy in the year 2006 and the said Policy, more particularly Clause (f) on Page 8, while relying on GR. No. – 0399/CR/201/Tourism dated April 7 , 1999 has mentioned as under,
- “...The Tourism project should be eligible for ‘Mega project’ either by way of investment or by way of employment generation...Considering the above, it is proposed that the benefits/incentives of ‘Mega Project’ as envisaged by Industry Department should be made available to tourism projects also (as per table above). A separate proposal would be devised accordingly”*
- (viii) LCL submitted that though LCL entered into an Agreement with MSEDCL in October 2007, under which it was levied tariff under Tariff Category HT VI, i.e., Commercial, in its spot inspection, MSEDCL observed that category applicable is HT XII Construction. Moreover, if at all tariff category of LCL is to be determined, the same will have to be decided by the Commission.
- (ix) In case of LCL or for that matter in case of any Development of Hill Station under the said Policy, the Promoter Company will have to incur cost of laying, operating and maintaining distribution lines, network cost, transformers and expenses required for transmission of power. The transmission loss, lines losses and O&M expenses will be to the account of the promoters of Hill Station. Therefore, taking into consideration all such aspects, there is a need to specify classification applicable to activity of Development of Hill Station.
- (x) Classification applicable as on date even for 2007-08 and 2008-09 neither provides for Hill Station as a separate category nor is it a part of particular category.
- (xi) The project of LCL was accorded sanction under Government Policy related to Development of Hill Station, which came into effect prior to enactment of EA 2003, hence, the tariff categorisation has to be considered under HT I Industry for Development of Hill Station. Moreover, since 1999, neither the Government of Maharashtra nor the Commission have at any time classified any category as HT XII.
- (xii) On receipt of LCL’s presentation on April 11, 2008 in Case No. 72 of 2007, the Commission observed that a separate Petition is necessary for classifying and pronouncing tariff for Development of Hill Station. It appears that MSEDCL came to know about LCL on April 10, 2008, and thereafter, visited the site and carried out spot inspection. The Spot



Inspection Report and subsequent letter dated May 26, 2008 from MSEDCL, unilaterally classifying LCL under HT XII category is in violation of provisions of the EA 2003, and contravention of the statutory jurisdiction of the Commission.

- (xiii) The development of Hill Station cannot be classified under construction or commercial activity. The Development of Hill Station under GoM policy will have to be classified separately. LCL stated that once GoM has conferred status of industry to LCL, the Commission is bound to classify LCL as an Industry. In case of construction of any other project, the activity of construction is for limited period. Moreover, though the supply of power at the site is by distribution company, the Construction Company or Developer is required to spend huge amounts on overhead transmission lines, undergrounds cables, distribution sub-station, receiving station, and construction of transmission lines from distribution lines to receiving station. Further, electricity supply to construction activity has not been granted Industry status by the GoM. Therefore, Development of Hill Station cannot be termed as Temporary and equated with construction in its ordinary sense as understood by MSEDCL and hence, LCL cannot be classified as temporary customer engaged in construction or commercial activity. The activity of Development of Hill Station and maintenance of Hill Station is a new concept. The existing Hill Stations in Maharashtra were developed by the British Government. Since, the existing Hill Stations are inadequate, the GoM in pursuance of its Policy to provide tourism the status of industry, accorded special sanction for Development of Hill Station project as an industry.
- (xiv) As per Sections 142 and 143 of EA 2003, the Commission is empowered to impose punishment and adjudicate in case of contravention of any provisions of EA 2003. Further, as per provisions of EA 2003, every distribution licensee is authorised to levy charges for supply of electricity only as per the tariff approved by the Commission. In the present case, MSEDCL has contravened the provisions of EA 2003 by imposing charges as per the tariff, which is not in existence and approved by the Commission.
- (xv) Under Section 42 of EA 2003, it is the duty of distribution licensee to develop, maintain and efficiently co-ordinate the economical distribution system for its area of supply and to supply electricity in accordance with the provisions of EA 2003, and in the present case, LCL will have to



undertake most of MSEDCL's activities as governed by the said GoM Policy prior to EA 2003 coming into effect.

- (xvi) The Commission has the authority to ensure compliance by the licensee with the conditions of the licence as per Section 86(1) of the EA 2003. The Commission can specify or enforce standards with respect to quality, continuity and reliability of service by licensees, and the present Petition touches all such aspects. Therefore, there is a case for intervention by the Commission.
- (xvii) LCL submitted that MSEDCL sent a fax to LCL received by LCL Site office on June 13, 2008 at 14:30 hours, calling for a hearing on June 16, 2008 at 15.00 hours at Town Hall, Village Dasve, Taluka Mulshi, Pune. The registered office is at Pune and the corporate office is at Mumbai. Moreover, the next two days were Saturday and Sunday, when the registered and corporate offices of LCL were closed due to weekly holidays, and documents required for the hearing were at Mumbai, Pune and Site office, and legal team of LCL was at Mumbai. Under such circumstances, it was practically impossible for LCL to arrange for the documents and obtain necessary legal advice at such short notice, and hence, LCL immediately replied to the above said fax and requested for postponement of the date of hearing.
- (xviii) LCL stated that the Commission has the sole authority for tariff classification, and therefore, MSEDCL has no authority under law to have any hearing on the tariff applicable to LCL, which has not been approved by the Commission. Therefore, the fax dated June 13, 2008 sent by MSEDCL is illegal and void ab initio and MSEDCL is not empowered to conduct the said hearing. As such, the Commission ought to restrain MSEDCL from conducting such hearing.

5. The Commission, vide its Notice dated June 30, 2008, scheduled a hearing in the matter on July 22, 2008, and directed LCL to serve a copy of its Petition along with its accompaniments to MSEDCL, State of Maharashtra and the four authorised Consumer Representatives.

6. Subsequently, MSEDCL vide its letter dated July 18, 2008, responded to the Petition filed by LCL and submitted as under:

- (i) In accordance with the provisions of EA 2003, LCL is precluded from invoking the jurisdiction of the Commission in respect of the grievances



relating to category under which the electricity charges are to be recovered from LCL. The alternate remedy is provided by the EA 2003. In exercising the powers conferred under Section 181 read with Section 43 of EA 2003, the Commission framed its Regulations in the year 2005. Under the said Regulations, billing disputes ought to be referred to the Consumer Grievance Redressal Forum (CGRF). Billing disputes relating to purported erroneous classification are to be considered by the CGRF, which has been constituted for the redressal of grievances of the consumers under Section 42 of EA 2003 and no other Forum or Authority has jurisdiction.

- (ii) MSEDCL has already initiated action under Section 126 of EA 2003 and in accordance with Section 127 of EA 2003, LCL is precluded from invoking the jurisdiction of the Commission on the issue relating to the action initiated by MSEDCL under Section 126 of the EA 2003, and the alternate remedy provided by EA 2003 requires LCL to espouse their dispute.
- (iii) MSEDCL has high regard for the Commission and the Orders passed by the Commission, and has not violated or disobeyed any of the Orders passed by the Commission.
- (iv) The present Petition is not maintainable and ought to be rejected in limine with costs. MSEDCL submitted that without prejudice to its above contentions, the issues in the Petition are summarised as under:
 - (a) The recovery bill dated May 26, 2008 for Rs. 3,12,70,595/- and consequential action thereon;
 - (b) Notice dated June 13, 2008 under Section 126 of the EA 2003
 - (c) To decide the tariff classification for 'Development of Hill Stations'.
- (v) The facts clearly show that MSEDCL levied the tariff, which is applicable under the Agreement entered into between the Parties as well as per the tariff determined by the Commission. Moreover, any person aggrieved by the Orders including Tariff Orders passed by the Commission has alternate remedy provided by the statute.
- (vi) The briefs facts of the matter are as under:
 - (a) LCL applied on September 4, 2004 for supply of electricity;
 - (b) The Commission's Tariff Order dated May 18, 2007 in Case No. 65 of 2006 and tariff applicable from May 1, 2007 specifies tariff category LT VII.
 - (c) MSEDCL issued its Circular No. 62 on September 10, 2007, which reads as under;



“ to the effect that LT VII tariff would apply to temporary connections for other purposes including construction to HT consumers who were given temporary supply for construction purposes. It is for this reason that the Respondent in compliance of the MERC Order have implemented the Order of the MERC dated 01.05.2007 in toto.”

- (d) LCL entered into an Agreement with MSEDCL on October 16, 2007 wherein Para 8(a) of the Agreement specifically mentions that the tariff schedule HT VI (Commercial) will be applicable to LCL, and under Clause 10 (a), the period of agreement is specified as a maximum period of 2 years.
- (e) On May 7, 2008, MSEDCL's flying squad visited the site of LCL and conducted spot inspection. MSEDCL initiated action in accordance with Section 126 of the EA 2003 and intimated LCL by letter dated May 26, 2008 that the electricity was being used by LCL for construction work and therefore HT XII tariff is applicable, and made a demand for the sum of Rs. 3,12,70,595/-
- (f) MSEDCL raised the bill for the month of May 2008 on June 5, 2008 and levied tariff of LT VII - temporary connection to LCL. The said bill has been issued as per the Commission's Tariff Order applicable from May 18, 2007.

7. At the hearing held in the matter on July 22, 2008, Shri. Abhay S. Nevagi, Counsel, appeared on behalf of LCL. Smt. Deepa Chawan, Counsel, appeared on behalf of MSEDCL.

8. Shri. Nevagi submitted that his case is not that LCL is aggrieved with any Orders passed by the Commission or with any practice of MSEDCL. He submitted that his prayer is that LCL needs to be appropriately classified for tariff purposes (for Development of Hill Station) by the Commission and hence, this case needs to be considered. Shri. Nevagi submitted that the Government has granted certain concessions to LCL, which are not otherwise available under law.

9. Smt. Chawan submitted that LCL has taken temporary supply from MSEDCL for which there is a proper tariff categorisation. She also submitted that the Commission is not bound by any notification under the Maharashtra Regional Town Planning Act as only the Commission has the authority to decide on matters of tariff classification.



10. Smt. Chawan submitted that LCL's first prayer is for tariff classification for 'Development of Hill Station' pursuant to policy of GoM. However, in the second prayer, LCL has sought the grant of interim relief under Section 94 (2) of EA 2003. Smt. Chawan pointed out that the second prayer is totally unconnected with the first prayer of LCL. She submitted that MSEDCL has taken separate action against LCL under Section 126 of EA 2003. Therefore, LCL by making the second prayer is seeking the stay on recovery of bills; notice under Section 126; and for restraint Order against MSEDCL from showing amounts as outstanding and adding Delayed Payment Charges (DPC) in regular bills. Shri. Nevagi submitted that as far as the interim prayers were concerned, the interim reliefs are incidental to the main prayers. Since classification is an issue which needs consideration, the reliefs need to be granted and therefore, have to be considered.

11. Having heard the Parties and after considering the material placed on record, the Commission is of the view that the case as filed will need to be decided within the four corners of the prayers as made, which are as follows:-

a) *"The Hon'ble Commission may decide Tariff Classification of Development of Hill Station pursuant to policy of Government of Maharashtra in the light of Notification / GR stated in the Petition.*

b) *The Commission may be pleased to grant interim relief u /s 95 of the Act as under:*

(i) *During the pendency and final disposal of the petition the recovery Bill dated 26th May 2008 for Rs. 3,12,70,595 /- and all consequential actions may kindly be stayed.*

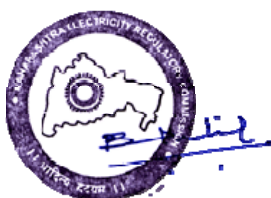
(ii) *The notice dated 13th June 2008 keeping hearing u/s.126 of the Act may be stayed.*

(iii) *During the pendency and final disposal of the Petition, Respondent No. 1 may be restrained from showing amount as outstanding and adding D.P. Charges in Regular Bills of the Petitioner.*

c) *During the expected period of fifteen to twenty years of development of the Hill Station, the demand charges shall be based on actual demand.*

d) *The Commission be pleased to initiate necessary action against MSEDCL (Respondent No. 1) u/s. 142 and 146 of the Electricity Act, 2003.*

e) *Any other just and equitable reliefs in favour of Petitioner as deem fit by Hon'ble Commission".*



12. As regards the first prayer, the Petitioner has made contradictory submissions on this issue. On the one hand, the Petitioner has sought a separate categorisation for 'Development of Hill Stations' under the following grounds:

- a) Pursuant to the Policy of the Government of Maharashtra, since the Government of Maharashtra has, vide its Resolution No. MTC-0399/C.R..201/Tourism dated April 7, 1999, granted the status of 'Industry' to the Development of Hill Stations, and LCL has been granted in-principle approval for development of Hill Station vide GoM's Letter ref: TPS 1800/1004/CR-106/I/2000/UD-13 dated June 1, 2001. Hence, tariff for such projects should be classified separately
- b) The activity of development of Hill Station includes acquiring of land, development of land, developing of infrastructure, roads, sewers, construction of building, bunds, canals, water storage tanks, etc. The Hill Station itself involves substantial investment in infrastructure, which distinguishes Hill Station project from other construction activity or commercial activity. Hence, LCL cannot be classified under either Construction or Commercial category.
- c) EA 2003 authorises the Commission to differentiate according to the consumer's load, as well as geographical position, nature of supply and purpose for which supply is required. The purpose of supply of electricity to LCL is for Hill Station under development, and the said activity itself is classified as an industry by Government for all statutory purposes as set out in GR. No. MTC-0399/CR/201/Tourism dated April 7, 1999. Therefore, taking into account this aspect along with the geographical location where the activity of LCL is taking place, it is necessary for the Commission to specify a separate tariff classification for LCL.
- d) The activity carried out by LCL cannot be called as construction or commercial. Construction is a temporary activity and even the Commission has considered connection as temporary only if the usage is limited to one year. The activity being undertaken by LCL needs to be considered under a separate category and separate tariff needs to be specified, as GoM has granted status of Industry to Development of Hill Station.
- e) The GoM has accorded special status of "Industry" to the project, maintaining of Hill station and several activities therein and hence, LCL cannot be classified under any of the categories determined by the Commission for FY 2007-08 or FY 2008-09.



- f) In case of LCL or for that matter in case of any Development of Hill Station under the said Policy, the Promoter Company will have to incur cost of laying, operating and maintaining distribution lines, network cost, transformers and expenses required for transmission of power. The transmission loss, lines losses and O&M expenses will be to the account of the promoters of Hill Station. Therefore, taking into consideration all such aspects, there is a need to specify classification applicable to activity of Development of Hill Station.

13. On the other hand, the Petitioner has submitted at various places that 'Development of Hill Stations' should be categorised under HT I Industry under the following grounds:

- a) Pursuant to the Policy of the Government of Maharashtra, since the Government of Maharashtra has, vide its Resolution No. MTC-0399/C.R.201/Tourism dated April 7, 1999, granted the status of 'Industry' to the Development of Hill Stations, and LCL has been granted in-principle approval for development of Hill Station vide GoM's Letter ref: TPS 1800/1004/CR-106/I/2000/UD-13 dated June 1, 2001,
- b) LCL stated that once GoM has conferred status of industry to LCL, the Commission is bound to classify LCL as an Industry.
- c) The project of LCL was accorded sanction under Government Policy related to Development of Hill Station, which came into effect prior to enactment of EA 2003, hence, the tariff categorisation has to be considered under HT I Industry for Development of Hill Station.

14. The above summary of issues and grounds raised by the Petitioner clearly reveal that the Petitioner has made contradictory submissions on this issue, and has sought creation of a separate tariff category for Development of Hill Stations, while at the same time, praying that LCL should be classified under HT I Industry. The Commission has analysed whether there is any merit in either of the prayers of LCL in this regard, as discussed below.

15. LCL's prayer that Development of Hill Stations should be classified separately primarily relies on the Government of Maharashtra's Policy in the context of Hill Stations. However, this Prayer has no merit, as GoM's Policy is with reference to reliefs sought to be extended for Development of Hill Stations by the GoM for matters



within its jurisdiction and have no bearing on the categorisation and tariffs determined by the Commission under the EA 2003.

16. Similarly, LCL's prayer that Development of Hill Stations should be classified under HT I Industry also relies on the Government of Maharashtra's Policy in the context of Hill Stations. However, this Prayer also has no merit, as classification under Industry for tax purposes and other purposes by the Government of Maharashtra shall apply to matters within its jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorisation under Industry under other specific laws cannot be applied to seek relief under other statutes.

17. As regards the nature of activities being undertaken by LCL, it is clearly in the nature of construction and development, even though the development activity is envisaged to be undertaken over a fairly long period of time. The activity cannot escape classification under Construction, merely because the duration of the activity is more than one year. Hence, the Commission rules that the tariff category applicable for supply to LCL is HT Temporary, which has the same tariff as that approved for LT VII – Temporary (Others).

18. Further, as regards the nature of electricity supply being sought to be undertaken by LCL within the Hill Station at Lavasa, wherein LCL intends to supply to commercial buildings, multiplexes, clubs, restaurants, IT Parks, Hospitals, etc. the activity amounts to taking bulk supply at single point and supplying further to mixed loads within the Hill Station. In a related context, the Commission's Tariff Order dated June 20, 2008, in Case No. 72 of 2007 states,

“As regards creation of a separate tariff category for supply intended for townships under a Franchisee Agreement or otherwise, to enable the Township Developer or Franchisee to supply to mixed loads within the township, the Commission has already clarified that taking bulk supply at single point and supplying further to individual dwellings is legal only in case of Group Housing Societies, and in case there are other loads, such as commercial, industrial, etc., the same cannot be supplied through the same connection. Separate individual connections will have to be taken for such loads, as it is possible to supply to such consumers after taking supply at single point, only in case the supplier has a distribution licence or has been



appointed as a franchisee by the distribution licensee. In case of franchisee, the consumer remains a consumer of the licensee, and all the obligations and duties of the licensee continue to vest with the licensee. As regards appointment of the franchisee and the tariff for supply to the franchisee at single point by the licensee, the same has to be addressed by the licensee through an appropriate process, as the franchisee, being only an agent of the licensee, is not regulated by the Commission and is an arrangement between the licensee and the franchisee and does not absolve the licensee of its obligations to the consumers of the franchisee area.”

Thus, the Commission has already ruled that it is possible to supply to such consumers after taking supply at single point, only in case the supplier has a distribution licence or has been appointed as a franchisee by the distribution licensee.

19. As regards the second prayer, seeking stay of the recovery Bill dated 26th May 2008 for Rs. 3,12,70,595 /- and notice dated 13th June 2008. The notice and recovery bills issued by MSEDCL are under Section 126 of the EA 2003. This prayer cannot be granted as it is outside the jurisdiction of the Commission because an appeal from a final order made under Section 126 can only be preferred with the Appellate Authority appointed under Section 127. Section 127 provides as under:-

“27. (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.”

Such Appellate Authority will have jurisdiction on such matters and not the Commission.

20. Furthermore, the Petitioner desires that the disputed amount should not be shown as outstanding, which causes the levy of Delayed Payment Charges. In this case, MSEDCL's Flying Squad, based on its assessment, came to the conclusion that the nature of activities being undertaken by LCL amounts to Construction Activity and not Commercial, as classified earlier, and levied a bill of Rs. 3.13 crore on LCL.



If LCL has any grievance regarding the additional bill raised by MSEDCL then the appropriate forum which will have jurisdiction to deal with such a matter would be the concerned Consumer Grievance Redressal Forum (CGRF). The Commission does not have jurisdiction to entertain and try individual billing disputes.

21. As regards the prayer, that the demand charges should be levied based on actual demand for the expected period of fifteen to twenty years of development of the Hill Station, the Commission is of the view that no rationale has been submitted by LCL for this request, either in the Petition or during the Hearing. The Commission is of the view that such a prayer cannot be entertained under a Petition of this nature and has to be sought at the time of the regulatory process undertaken by the Commission on the Tariff Petitions filed by the distribution licensee, since the Commission does not determine tariffs, including the demand charges and their application, outside the tariff determination process.

22. As for the fourth prayer, the first contention under this issue is that MSEDCL violated the law by its action of applying different tariff to LCL when the issue was pending before the Commission. The confusion in this regard appears to have been caused by LCL's wrong interpretation of MSEDCL's reply to the objections and comments filed by LCL during the regulatory process on MSEDCL's APR Petition for FY 2007-08 and Tariff Petition for FY 2008-09. The actual fact is that LCL participated in the Public Hearings being conducted on MSEDCL's Petition, and to that extent, the issue of tariff categorisation and category-wise tariffs was before the Commission. Once the Commission's Tariff Order was issued, the issue of tariff categorisation and category-wise tariffs was no longer pending before the Commission, and MSEDCL had to levy tariffs as determined by the Commission in this Order with effect from June 1, 2008, as directed by the Commission. Hence, the Commission does not find any merit in this contention of LCL. The other contention raised in this context by LCL is that the tariff category HT XII under which, MSEDCL has billed LCL, has not been approved by the Commission and does not form a part of the Tariff Schedule approved by the Commission for MSEDCL. On the contrary, MSEDCL has submitted that it has charged LCL at the rate applicable for LT VII – Temporary. If LCL has any grievance regarding the categorisation by MSEDCL and the bill raised by MSEDCL in this regard, then LCL may seek redressal from the concerned CGRF, which will have jurisdiction to deal with such a matter. The Commission does not have jurisdiction to entertain and try individual billing disputes.



23. As for invoking the provisions of Sections 142 or 143, the Commission is of the view that no case has been made out before it which requires the invocation of the said provisions.

Accordingly, LCL's Petition in Case No. 34 of 2008 stands disposed of.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC