

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case Nos. 152, 153 and 154 of 2008

In the matter of

**Extension of applicability of Tariff Orders of RInfra-G, T and D, TPC-G, T and D
and BEST Undertaking till issuance of new Tariff Orders.**

Shri V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: April 15, 2009

In accordance with Regulation No. 17 of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005, the Commission has initiated the Annual Performance Review (APR) process for FY 2008-09 under MYT framework, truing up for FY 2007-08 and determination of ARR and tariff for FY 2009-10 in the following cases:

- (i) Brihanmumbai Electric Supply & Transport Undertaking (BEST Undertaking) in Case No. 118 of 2008,
- (ii) The Tata Power Company's Generation Business (TPC-G) in Case No. 111 of 2008,
- (iii) TPC's Transmission Business (TPC-T) in Case No. 112 of 2008,
- (iv) TPC's Distribution Business (TPC-D) in Case No. 113 of 2008,
- (v) Reliance Infrastructure Ltd.'s Transmission Business (RInfra-T) in Case No. 119 of 2008,
- (vi) RInfra's Generation Business (RInfra-G) in Case No. 120 of 2008 and
- (vii) RInfra's Distribution Business (RInfra-D) in Case No. 121 of 2008.

2. The APR is under process and the Public Hearings have been completed in all these Cases. The respective Orders will be passed shortly.



3. The tariffs specified in earlier Orders for BEST Undertaking in Case No.73 of 2007, TPC-G in Case No.68 of 2007, TPC-T in Case No.67 of 2007, TPC-D in Case No.69 of 2007, Reliance Energy Limited's Transmission Business (REL-T) in Case No.64 of 2007, REL's Generation Business (REL-G) in Case No.65 of 2007 and REL's Distribution Business (REL-D) in Case No.66 of 2007, were in force till March 31, 2009.

4. RInfra submitted a Petition under affidavit before the Commission on March 30, 2009, seeking continuation of levy of existing tariff by RInfra-G,T and D from April 1, 2009 onwards until Tariff Orders for FY 2009-10 are issued.

5. TPC also submitted a Petition under affidavit before the Commission on March 30, 2009, with a request to permit TPC-G, TPC-T and TPC-D to continue to levy their respective tariffs till the new Tariff Orders are issued, and to continue provisional tariff of Unit No.8 of 250 MW at Trombay as approved by the Commission in the Tariff Order in Case No. 68 of 2007 dated April 2, 2008.

6. Similarly, BEST Undertaking also submitted a Petition under affidavit before the Commission on March 31, 2009, with a request for continuation of billing as per existing Tariff Order, upto the issuance of Tariff Order in Case No. 118 of 2008, and to allow the BEST Undertaking to make up any loss of revenue due to the new tariff that may be determined in the forthcoming Tariff Order for FY 2009-10 by including the losses while truing up of accounts for FY 2008-09.

7. Considering the urgency of the matter and the similarity of issues raised by the aforesaid Utilities , the Commission decided to hear all the above three cases together, and a notice dated April 2, 2009 was issued for holding a hearing on April 8, 2009, in order to hear the aforesaid Utilities and Consumer Representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003 to represent the interest of consumers in the proceedings before the Commission. During the hearing, the Utilities reiterated their written submissions, with RInfra clarifying that it was seeking extension of tariff for RInfra-G, RInfra-T and RInfra-D. Thane Belapur Industries Association, One of the authorised Consumer Respective, in its written submission has submitted that they have no objection regarding continuation of bills raised as per the prevailing tariff, till issuance for new Tariff Orders.



8. Shri N. Ponrathnam, an Intervener in the capacity of being a consumer of electricity, submitted that there is sharp reduction in the price of all inputs, i.e., raw material, fuel, labour, Taxes and Government duty. Therefore, the tariff should be reduced significantly. He also made the following submissions:

- a. Reliability Charges is neither in the Electricity Act, 2003 nor Tariff Regulations;
- b. TPC should meet the entire requirement of BEST as per its licence condition and hence, BEST should not purchase any costly power from any source other than TPC;
- c. There should be reduction in the FAC since the fuel costs have reduced;
- d. There should be reduction in the taxes and Government duties, though these may not be within the Commission's jurisdiction.

9. Shri. N. Ponrathnam also submitted that keeping in view the principles contained in Article 14 of the Constitution of India there should be uniformity of tariff across categories. He also submitted that the Commission has rationalised the tariff categories to a large extent under its previous Tariff Orders. However, further rationalisation is required.

10. Shri N. Ponrathnam alleged that there are irregularities in the licence area of RInfra-D in the context of bills that are raised by RInfra-D. He also pointed out that there has been a change of name from Reliance Energy Limited to Reliance Infrastructure Ltd. He suggested that the Commission should undertake a thorough audit of RInfra's accounts.

11. Having heard the Parties, the Commission is of the view as under:

(i) As regards Shri. Ponrathnam's submission that the tariff should be reduced, by removing/reducing the Reliability Charges, FAC charges, taxes and duties, the Commission is of the view that such a relief cannot be sought within the ambit of the present proceedings which pertain to extension of the applicability of the existing tariffs. There is no re-determination of tariffs under the present proceedings. However, the issues as raised by the Intervener could be dealt with while formulating the tariff for FY 2009-10. The present Petitions filed by the Utilities - are seeking continuation of the tariffs as existing as on 31.3.09. No changes can be made to the existing tariff structure or category-wise tariff through this Order.



(ii) For the aforesaid reasons, the issue of alleged irregularities in the licence area of RInfra-D in the context of bills raised by RInfra-D and change of name from REL-D to RInfra-D cannot be taken up under the present proceedings.

(iii) The Commission is of the view that the Utilities are authorised to charge only that tariff which is determined and approved by the Commission in accordance with the provisions under Part VII (Tariff) of the Electricity Act, 2003 (“EA 2003”). In the event the tariffs that are in force till March 31, 2009 are not extended till the revised tariffs are determined for FY 2009-10 under the APR framework, the Utilities will be forced to be liable to penal consequences under different provisions of the EA 2003 in case the tariffs as existing as on 31.3.09 are charged beyond 31.3.09 without being extended through an Order of this Commission. Moreover, it cannot be the case that after a certain date, there will be no tariff applicable, leading to a situation of free or no supply of power or supply at an arbitrary tariff rate, Utilities may choose to charge.

(iv) Therefore, till such time the revised tariffs are determined for FY 2009-10 under the APR Orders, the tariffs as existing as on 31.3.09 are required to be extended. Once the revised tariffs are determined for FY 2009-10, appropriate adjustments would be made as per the revised tariff rates applicable from the date of the respective Orders. **The Commission is of the view that sufficient reasons exist for granting permission to the Utilities to charge tariffs as per their respective aforesaid Tariff Orders. Accordingly, the Commission extends the applicability of the aforesaid Tariff Orders for the Utilities with effect from April 1, 2009, till the revised tariffs are determined for FY 2009-10 under the APR framework and Order issued thereunder.** Under-recovery or over-recovery, vis-à-vis the approved revenue requirement for FY 2009-10, if any, or financial implications and adjustments, caused solely on account of the continuance of the existing tariffs for the period till the revised tariffs are determined for the period under FY 2009-10 under the APR framework shall be trued up in the next APR. This will be in line with the judgment dated September 19, 2007 of the Hon’ble Appellate Tribunal for Electricity in Appeal No. 70 of 2007 wherein it inter alia held as under:

“7.Therefore the cost of supply has to be met out of revenue earned by sale of electricity. In case the MYT tariff comes into effect a month later than the day on which it was expected, the required annual revenue minus the revenue realized in that month will have to be recovered in the remaining months of that period. In such a situation, the increased cost of the new period



will have to be distributed over the remaining period of the MYT. The other way of fixing the tariff, in case of a delay, would be to distribute the ARR over the entire tariff period so that some amount of revenue for the delayed period remains under-recovered. Here again the under-recovered amount has to be recovered in order to maintain the viability of the licensee.....”

While submitting the data for truing up, the Utilities should submit revenue data separately for the period from April 1, 2009 till tariffs are determined for the balance period for FY 2009-10.

Ordered accordingly.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC