

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai - 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case Nos. 37, 38 & 39 of 2006

In the matter of Petitions filed by Maharashtra Industrial Development Corporation (MIDC) seeking review of (i) ARR and Tariff Petition of TPC's Order dated 3.10.2006 passed in Case Nos. 12 & 56 of 2005, (ii) MSPGCL's Order dated 7.09.2006 passed in Case No. 48 of 2005 and MSEDCL's Order dated 29.09.2006 passed in Case No. 54 of 2005 and (iii) ARR and Tariff Petition of REL's Order dated 3.10.2006 passed in Case Nos. 25 & 53 of 2005 for Grant of special benefits for procurement of power as a SEZ Developer.

Dr. Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: 22nd December, 2006

The Maharashtra Industrial Development Corporation, the Petitioners herein, have sought a review of the following Orders passed by the Commission whereunder the Annual Revenue Requirements and Tariffs have been determined for Tata Power Company Limited ("TPC"), the Maharashtra State Power Generation Company Limited ("MSPGCL"), the Maharashtra State Electricity Distribution Company Limited ("MSEDCL") and Reliance Energy Limited ("REL"):

- (1) Order dated 3rd October 2006 passed in Case Nos. 12 & 56 of 2005 (in the matter of Annual Revenue Requirement (ARR) Petition of TPC Limited for FY 2005-06 and ARR & Tariff Petition for FY 2006-07);
- (2) Order dated 7th September 2006 passed in Case No. 48 of 2005 (in the matter of Approval of MSPGCL's Annual Revenue Requirements for FY 2005-06 & FY 2006-07, and Determination of Tariff for FY 2006-07);
- (3) Order dated 29th September 2006 passed in Case No. 54 of 2005 (in the matter of Approval of MSEDCL's Annual Revenue Requirements for FY 2004-05, FY 2005-06 & FY 2006-07, and Determination of Tariff for FY 2006-07); and



(4) Order dated 3rd October 2006 passed in Case No.s 25 & 53 of 2005 (in the matter of Approval of REL's ARR for FY 2005-06 and ARR and Tariff for FY 2006-07).

2. The Petitioners have filed three separate Petitions on 8th November, 2006 seeking review of the aforesaid Orders. In these Petitions, TPC, REL and MSEDCL together with MSPGCL have been named as Respondents separately. The Petitioners have contended that the Commission, while passing the aforesaid Orders, has not considered and factored in the fiscal/ tax exemptions that would be available to the consumers within the SEEPZ, a Special Economic Zone ("SEZ") in terms of the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006 and the Foreign Trade Policy and particularly, to the Petitioners who are a statutory corporation under the Maharashtra Industrial Development Act, 1961 as developers of SEEPZ SEZ. It has been contended that had the Commission considered such fiscal/ tax exemptions, the consumers within the said SEZ area could have benefited from the cost of power generated, transmitted and distributed for earmarked supply to the SEZ and which could have been reduced had the fiscal/ tax exemptions been claimed by the utilities as appropriate. The Petitioners have contended that the units in SEEPZ suffer financial loss since the utility(ies) responsible for generating, transmitting and distributing power to the SEZ area do not claim such fiscal benefits. Despite the availability of these fiscal benefits, which impact the cost of fuel for electricity generation and also reduces capital cost of distribution system flowing on to the distribution licensee, the Petitioners would be charged with the same tariff based on the aforesaid impugned Orders as are charged for units outside the SEZ. Citing benefits such as drawback/ DEPB, CST exemption, discharge of EP on suppliers, it has been contended that such benefits accruing to the supply from domestic tariff area to SEZ that are treated as physical export, should also be transferred to SEEPZ SEZ electricity tariffs. Therefore, it has been prayed that the Commission may review the aforesaid Orders and determine a separate and different tariff, or in the alternative fix bulk supply tariff under the Electricity Act, 2003 ("EA 2003") considering the geographical location of SEEPZ and also on the basis of the purpose for which power is required. It has been submitted that cross subsidy cess on supply of electricity to SEZ should not be imposed. Lastly, it has been submitted that just like the developers of SEZs in other States enjoy the status of deemed distribution licensee under the EA, 2003 or receive bulk supply from distribution licensees, similar treatment should be given to the Petitioners, or in the alternative, the status of franchisee should be given to them.

3. On the issue of maintainability of the Review Petitions besides the above referred contentions, the Petitioners have submitted that they have received recently on 18th September, 2006 a letter dated 5th September, 2006 issued by the Ministry of Power and Office Memorandum dated 25th September, 2006 also issued by the Ministry of Power. Under these correspondences, it has been contended that the Petitioners have been apprised that the Petitioners are not deemed distribution licensees under the EA, 2003. It is the contention of the Petitioners that the said letter and Office Memorandum are the discovery of new and important matter or evidence which was not within the



knowledge of the Petitioners while the aforesaid Orders from which review has been sought were passed. Therefore, all the more, the Petitioners have discovered at a later stage that the Commission should have issued a separate tariff/ bulk supply tariff particularly, when the Petitioners cannot be conferred with the status of deemed distribution licensee under the EA, 2003 so as to avail of benefits that would flow to them (indirectly through MSEDCL) due to special allocation of power from unallocated quota of NPTC stations (pooled) in the region. The Petitioners have contended that in view of their submissions, the Review Petitions as filed should be allowed in terms of the Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004. The Petitioners have filed a separate application praying for condonation of delay of around 14 days, with regard to the review sought from the aforesaid Order dated 7th September, 2006.

4. Since, all the aforesaid Petitions filed on 8th November, 2006 are substantially identical in nature with same prayers sought therein, a combined admissibility hearing was held in the matter on 6th December, 2006 in the presence of consumer representatives authorised on a standing basis under the EA, 2003. The Petitioners reiterated their averments in the Petitions and further submitted that they were, until receipt of the said letter dated 5th September, 2006 from the Ministry of Power, under the impression that power for distribution by them would be allocated in terms of the Ministry of Power's Notification No. 23/43/2001-R&R dated 19th August, 2003. It was also contended by the Petitioners that the utilities would need to approach the Board of Approval and other regulatory machinery under the SEZ Act in order to have the fiscal/ tax exemptions flow to their activity of power distribution/ generation and, thereafter, pass it on for the benefit of its consumers in the SEZ area, subject to the approval of the Commission. The Petitioners also submitted that special benefits that would accrue to a distribution licensee would be in the form of 'deemed exports', which is applicable to SEZ and cannot be availed of by consumers in areas outside the SEZ.

5. While it has been acknowledged by the Petitioners during the hearing that the Review Petitions as filed are pre-mature and are not maintainable, the Petitioners prayed that, in the alternative, necessary directions be issued to the utilities to initiate necessary steps to avail the fiscal/tax exemptions provided for under the SEZ Act with effect from 1st April, 2007. The Petitioners contended that the Commission may issue directions to the utilities to the effect that the fiscal exemptions on fuel charges that are available to them under the SEZ Act should not be claimed by the licensee from the Petitioners and the consumers in the SEZ area, as the case may be, while the ARR for the ensuing financial year is submitted for approval.

6. It has been suggested by Shri. Nikit Abhyankar, on behalf of Prayas (Energy Group), that there are multiple options available to the Petitioners, viz. (a) setting up of CPP, (b) availing open access, etc. Besides, the Petitioners may also approach the Government to avail direct subsidies. Shri. S.L. Patil on behalf of Thane Belapur Industries Association suggested that it is for the Petitioners to initiate discussions with the utilities to optimize the subsidies offered by the Central Government. The issues that



are involved may not be resolved before the Commission at this juncture, and need to be addressed by and between the Petitioners and its electricity supplier. It was also suggested that the Petitioners should ascertain as to whether any other concessions have been notified in respect of specially designated areas, apart from special economic zones, in which case such benefits in respect of specially designated areas may also be availed of. The draft Maharashtra SEZ Bill which is due for enactment will bestow large-scale benefits to SEZ Developers, so far as supply of electricity is concerned.

7. Having heard the parties and after considering the material placed on record, the Commission is of the view that the aspects brought about by the Petitioners in the three Review Petitions filed by them were not put in issue while the aforesaid Orders from which review has been sought, were passed. The Review Petitions, as filed, are not maintainable under Regulation 85(a) of the Commission's Conduct of Business Regulations, 2004 as neither the letter dated 5th September, 2006 nor Office Memorandum dated 25th September, 2006 issued by the Ministry of Power necessitates review of the Orders from which review has been sought as the tariffs that have been formulated, as regards the Petitioners, have been done on the basis that they are consumers of the distribution licensee under the EA, 2003 which is a fact that has not changed after the passing of the aforesaid Orders. Moreover, the Petitioners have not established before the Commission that they have been supplying electricity as deemed distribution licensee nor have they applied for determination of tariff under Section 64 of the EA, 2003. Why the Petitioners should be given preferential treatment as opposed to the duty of universal service obligation on distribution licensees and how the SEZ Act impinges on the EA, 2003 or whether in the absence of a special dispensation in the EA, 2003 the special benefits that would accrue to distribution licensee under the SEZ Act should be passed on to consumers situated within the SEZ area are aspects which have not been put in issue before the Commission while the aforesaid Orders were passed. In view thereof, the Commission observes that the three Review Petitions as filed are pre-mature. However, during the public process determining the ARR and tariffs for next year, the Petitioners are at liberty to make appropriate submissions regarding its proposal/ demand as an interested party. Such due process of law would need to be followed by giving opportunity of being heard to consumers and public at large since fixation of separate tariff for Special Economic Zones would impinge on the tariffs of other consumer categories. In the meanwhile, the Petitioners are also at liberty to interact with its distribution licensee as it is for the distribution licensee to take up these issues (fiscal/ tax exemptions) in its Petition setting out the ARR and tariff structure for the ensuing fiscal periods. The Petitioners may initiate the process of interaction with the distribution licensee (being the taxable entity) regarding the modalities of claiming fiscal/ tax exemptions under the SEZ Act. However, no such direction can be issued to the distribution licensees, as sought for by the Petitioners.

8. The Commission acknowledges that, though, the present Review Petitions have been filed keeping in view larger public interests, it would not be appropriate for the Commission to admit the Petitions as filed.



9. In view of the above, the Commission is unable to sustain the contentions advanced by the Petitioners that there have been discovery of new and important matter or evidence so as to necessitate a review of Orders dated 3rd October, 2006 (in Case Nos. 12 & 56 of 2005), 7th September, 2006 (in Case No. 48 of 2005), 29th September, 2006 (in Case No. 54 of 2005), and 3rd October, 2006 (in Case Nos. 25 & 53 of 2005). The Commission holds that the Review Petition is not maintainable since no grounds for review are made and accordingly by this combined Order dismisses the Review Petitions numbered as Case Nos. 37, 38 and 39 of 2006, as not maintainable.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Malini Shankar)
Secretary, MERC