

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case Nos. 51 and 52 of 2006

In the matter of
Petitions filed by Central Railway, C.S.T, Mumbai seeking review of the
Tariff Order dated October 3, 2006 in Case Nos. 12 and 56 of 2005
[numbered as Case No. 51 of 2006] and Tariff Order dated October 20, 2006
in Case No. 54 of 2005 [numbered as Case No. 52 of 2006].

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

ORDER

Dated: 25th January, 2007

Central Railway, Mumbai, through the Chief Electrical Distribution Engineer filed a Petition on November 6, 2006 seeking review of the Commission's Order dated October 3, 2006 in Case Nos. 12 of 2005 and 56 of 2005 i.e., in the matter of Annual Revenue Requirement (ARR) Petition of Tata Power Company Limited ("TPC") for FY 2005-06 and ARR & Tariff Petition for FY 2006-07. The aforesaid Petition has been numbered as Case No. 51 of 2006. Central Railway filed another Petition on December 1, 2006 seeking review of the Commission's Order dated October 20, 2006 in Case No. 54 of 2005 i.e., in the matter of approval of ARR for FY 2004-05, FY 2005-06 & FY 2006-07 and Determination of Tariff for FY 2006-07 of Maharashtra State Electricity Distribution Company Limited ("MSEDCL"). This Petition has been numbered as Case No. 52 of 2006. In both these Petitions, the Central Railways have contended that the tariff applicable to Railway Traction, as specified in the aforesaid impugned Orders is high. The Petitioners have also raised several issues with regard to the components of tariff and calculation of ARR and the methodology adopted for determination of tariff of TPC and MSEDCL.

2. Briefly, in Case No. 51 of 2006, the Petitioners have contended that the average cost of supply of Rs. 3.97/unit should be less than other consumers as TPC do not incur expenditure to maintain transmission lines for the power that is evacuated by the Petitioners. Further, in some cases, the transmission lines/cables are also maintained by the Petitioners and in some cases TPC's Generating/Grid Sub-stations do not have transmission lines spread over a major distance. Therefore, the losses proposed by TPC to the tune of 4.43% are not justified and should be lower than the proposed levels. It has been contended that the cross subsidy burden on the Petitioners has been increased by 12% from the existing tariff instead of reduction as mandated under Section 61(g) of the Electricity Act, 2003 ("EA 2003"). The Petitioners have submitted that the revised average billing rate for the Petitioners at Rs. 4.15



per unit is on the higher side. The Petitioners have submitted that tariff applicable to Railway Traction 22kV should be brought down in line with the tariff charged by Central Generating Agencies such as NTPC and NPC since the Petitioners, being a Central Government body, are entitled to draw power from 15% unallocated Central share of power. Thus, it would have been appropriate to determine the tariff for Railway Traction 22kV on the basis of SEB's cost of purchase of power from the Central Generating Agencies. Central Railways have argued that the scheme of rebate (as applicable to MSEDCL's consumers) of 1% if their consumption exceeds one million units per month should be allowed to continue. The Petitioners have submitted that the principles of "higher the voltage, lower the tariff for HT supply" be applied to Railway traction as well. The Petitioners have submitted that tax on the consumption or sale of electricity should not be charged to the Petitioners as provided in Article 287 of the Constitution of India. Citing that a tariff Order has been issued by the Delhi Electricity Regulatory Commission for Delhi Metro Rail Corporation ("DMRC") wherein Rs. 75/kVA/month has been specified as Demand charge and Rs.2.30/kVAh has been specified as Energy charge, the Petitioners have submitted that the Commission should have specified tariff for the Petitioners on lines similar to that applicable to DMRC as aforesaid. Lastly, it has been submitted that the impact on monthly bill of the Petitioners due to the revision in tariff of TPC when compared with other HT & LT consumers is highest as the increase is to the tune of 12% on Railway Traction 22kV.

3. Briefly, in Case No. 52 of 2006, it has been contended that the tariffs proposed for Railway Traction (HT-II) seem to be moving further away from average cost of supply. Energy Charge of Rs. 3.90/kWh is high considering the additional levy of Additional Supply Charge ("ASC"). Central Railways have requested that the present scheme of rebate of 1% if their consumption exceeds one million units per month, be continued. Also, the Petitioners should not be made to bear or share the costly power purchase, which is supplied to reduce load shedding. It has been argued that short-term power purchase cost should not be allowed in the computation of FAC. It has been further pointed out that the RLC introduced in the Tariff Order for FY 2003-04 @ 50 paisa/ per unit for funding the excess losses should be considered for refund in FY 2006-07. The Commission has rationalised the cross subsidy support of railways from the range of +25% in previous years to less than +20%. Accordingly, the energy charge for HT-Railways has been revised to Rs. 3.90 per unit. This, as per the Petitioners, does not conform with the National Tariff Policy. The Commission has directed MSEDCL to bill ASC to such consumers that are benefiting from the existing load shedding protocol. ASC that is specified for HT-II Railway Traction is 42%. This, as per the Petitioners, does not conform to the EA, 2003 and National Tariff Policy.

4. The Petitioners have contended that in view of the above submissions, the said impugned Orders dated October 3, 2006 and October 20, 2006 ought to be reviewed. A combined admissibility hearing was held with respect to the aforesaid matters in Case Nos. 51 and 52 of 2006 on December 27, 2006. Shri. S.N. Singh, Chief Electrical Distribution Engineer appeared on behalf of the Petitioners. Shri. J.D. Kulkarni, Dy. General Manager appeared on behalf of TPC. Shri. Gaurav Joshi, Counsel appeared for MSEDCL. No one appeared on behalf of consumer representatives authorised on a standing basis under Section 94(3) of EA, 2003. The submissions have neither been made by the Petitioners in the Petitions filed nor during the hearing held, as aforesaid, on the maintainability of the Review Petitions so filed against the requirements and criteria set out in Regulation 85 of the MERC (Conduct of Business) Regulations, 2004. However, in support of the contentions advanced,



it has been submitted that the railway fares at subsidised rates for the benefit of general public, energy efficient mode of surface transport, and its national and social importance, are factors which ought to be considered for allowing the grant of review of the aforesaid impugned Orders.

5. Although, the Petitions have been filed seeking review of two different tariff Orders, a combined Order is issued as both the impugned Orders are applicable to the Petitioners and issues that have been raised are similar in nature affecting the Petitioner as a consumer of TPC and MSEDCL.

6. Having heard the Petitioners, TPC and MSEDCL, and after considering the material placed on record, the Commission is of the view that though the Petitioners have initiated laudable measures of energy efficiency and have the objective of passing on the benefit of lower tariff for Railway Traction to its consumers, they have in effect raised several issues and objections on components of tariff and calculation of ARR of the aforesaid licensees. However, the law does not entitle the Commission to grant a review on these aspects. Although, during the hearing held as aforesaid, the Petitioners contended that certain facts as brought out in the Petitions filed were not considered by the Commission while passing the impugned Orders, it is observed that several of these issues and contentions advanced by the Petitioners were submitted in the form of suggestions and objections in the public hearing held in connection with the impugned Order in Case No.54 of 2005. The same issues have been brought in by the Petitioners in the form of the present Review Petition filed in Case No. 52 of 2006. Further, with regard to the Petition seeking review of the impugned Order passed in Case Nos. 12 of 2005 and 56 of 2005, neither can tariff be re-determined nor can the prayer for adoption of a different tariff determination principle be granted, in a review proceeding. The scope of review does not permit rehearing of the matter and/or passing a fresh decision on the case. The maintainability of the Review Petitions filed by the Petitioners have to be tested against the requirements and criteria set out in Regulation 85 of the MERC (Conduct of Business Regulations), 2004. The scope of review is, accordingly, limited. A perusal of the Review Petition shows that none of the grounds stated therein can strictly speaking be said to fall within the ambit and scope of Regulation 85. A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise”. It may be relevant to note the observation in the case of *State of Madhya Pradesh and another vs. Jaswantpuri and others* AIR 1989 Madhya Pradesh 115 as under:

“4. *Review is a strict legal remedy and not an equitable proceeding. Often it is regulated and controlled by Statute and is limited and confined to such case as the Statute enumerates.....The Supreme Court in Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma, AIR 1979 SC 1047 pointed out that the power of review inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. It cautioned that review is not permissible on the ground that the decision was erroneous on merits. That certainly is province of a Court of appeal.....”*

[Emphasis added in bold].

In M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh AIR 1964 SC 1372, the Supreme Court held as under:



“11.A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

7. On first principles, a review of any Order, direction or decision is permitted under the regulations governing the Conduct of Business of the Commission, only upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by the applicant 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. The Commission is unable to sustain the contentions advanced by the Petitioners since in the present case, the contentions advanced in their Petition are not the discovery of any matter which could have resulted in the determination of ARR and Tariff of the aforesaid licensees in a different manner, nor is there any mistake or error apparent from the face of the record of the said impugned Orders. There is no sufficient reason for the Commission to consider a review as sought for by the Petitioners.

8. In view of the above, the Commission rejects the Petitions filed by the Central Railways seeking review of the Order dated October 3, 2006 in Case Nos. 12 of 2005 and 56 of 2005 and Order dated October 20, 2006 in Case No. 54 of 2005 as being not maintainable being devoid of any grounds permissible to grant review.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman



[Handwritten signature in blue ink]

Secretary, MERC

