

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case Nos. 44 of 2006 and 45 of 2006

In the matter of
Review of Load Management Charges imposed by the Commission through the Tariff
Order for Reliance Energy Limited (REL) for FY 2006-07
in Case No. 25 of 2005 and 53 of 2005

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

ORDER

Dated: November 30, 2006

The Commission issued the Order in Case No. 25 of 2005 and 53 of 2005 on the Annual Revenue Requirement (ARR) Petition of Reliance Energy limited (REL) for FY 2005-06 and ARR & Tariff Petition for FY 2006-07, on October 3, 2006.

2. While pronouncing the aforesaid Order, the Commission being acutely conscious of the impending demand-supply gap, stipulated that in addition to the tariffs specified for recovery of the ARR, REL would also levy a Load Management Charge and Load Management Rebate, as an economic signal to inculcate the habit of energy conservation, taking into account the power supply position. The relevant portion of REL's Tariff Order (Pages 113 to 115 of Order) are reproduced below:

“The State of Maharashtra is passing through a phase of acute power shortage, and even Mumbai city, which so far has been spared of load shedding, is likely to face power shortages in the coming summer months. In the absence of additional capacity in the region and prevailing constraints of transmission corridor availability, there is an urgent need for energy conservation and load management by all power intensive consumers, in the short-term as well as the long-term. In order to achieve this, the Commission has adopted the principle of economic signals for high consumption consumers, in order to inculcate the habit of energy conservation.

- (i) *All the residential and commercial consumers consuming more than 300 units per month henceforth, and all industrial consumers (irrespective of their level of consumption) in the REL License area will have to reduce their monthly consumption to a level of 80% of their consumption in the corresponding month in the past year (January 2005 to December 2005). A “Load Management Charge” shall be applicable for the consumption exceeding the 80% limit at the rate of additional 100% of the highest tariff chargeable to the respective category, and will be charged in the energy bill of the consumer in that month.*



- (ii) *The money collected through the levy of this “Load Management Charge” has to be maintained in a separate fund to be used for energy conservation and Demand Side Management (DSM) measures.*
- (iii) *Any reduction in the monthly consumption below the 80% limit prescribed on a consumption in the corresponding month in the past year (January 2005 to December 2005) will be incentivised with a “Load Management Rebate” at the rate of 50% of the normal chargeable rate to the kWh units in the tariff slab applicable to the reduction in the number of units, vis-à-vis the benchmark consumption of 80% of the consumption in the corresponding month of the previous years, by adjusting the bill accordingly. This would be funded by the fund mentioned in paragraph ‘ii’ above, calculated in the energy bill of the consumer for that month.*
- (iv) *In case of residential and commercial consumers having consumption greater than 300 units per month henceforth, and all LT/ HT industrial and HT commercial consumers who have already reduced their consumption in the corresponding months in the last year due to the load regulation measures introduced by the Commission in its Order in Case No. 4 of 2005, the load management target will be at the same level as that of the corresponding month last year, and further reduction to 80% of the consumption in the previous year is not mandatory in such cases.*
- (v) *This monthly consumption reduction target will not be applicable for new consumers and in case of change in occupancy during the last one year for the existing consumers.*
- (vi) *As regards the essential services, it is desirable that they should also try to reduce their monthly consumption, however, in case of failure to reduce the consumption to a level of 80% of their consumption in the corresponding month in the past year (January 2005 to December 2005), “Load Management Charge” as well as “Load Management Rebate” will not be applicable for the operational installations of following essential services:*
- Railways*
 - Water Supply and Sewerage systems operated by Government/local authorities*
 - Telephone exchanges*
 - Defence Establishments*
 - Ports and Harbours*
 - Meteorological observatories*
 - Hospitals*
 - News Agencies*
 - TV and Radio Stations*
 - Posts & Telegraphs*
 - Airports*
 - Atomic energy establishments*
- (vii) *In case of the above essential services, the restriction of reducing the monthly consumption to 80% of their consumption in the corresponding month of the past year will however, be applicable for the attached residential colonies and the “Load Management Charge/Rebate” shall be applicable as mentioned in paragraphs ‘(i)’ to ‘(v)’ above”*



3. The Commission also issued a Clarificatory Order in Case Nos. 25 of 2005 and 53 of 2005 and Case Nos. 22 of 2005 and 56 of 2005, on November 9, 2006, as follows:

“The applicability of LMC and LMR in the following instances is clarified as follows:

- 1. If the industrial premises were under ‘lock-out’ or qualify under ‘sick industry’ definition during the corresponding period in the last year, then the reference period for comparison of consumption for levy of Load Management Charge/Rebate will be the last bill period.*
- 2. If the sanctioned load/contract demand has been increased, or if the nature of the connection has changed, or the consumer categorization has changed after October 1, 2005, then the reference period for comparison of consumption for levy of Load Management Charge/Rebate will be the last bill period after the respective change.*
- 3. If the consumption during the corresponding month in the previous year is either zero or less than 50% of the average consumption during the past 12 months (average consumption to be computed by excluding the zero consumption months), then the reference period for comparison of consumption for levy of Load Management Charge/Rebate will be the last bill period.*

The Tariff Orders of the Commission (Case 25 and 53 of 2005 and Case 22 and 56 of 2005) state that:

(v) “This monthly consumption reduction target will not be applicable for new consumers and in case of change in occupancy during the last one year for the existing consumers.”

It is clarified that the above clause is applicable for change in lessee/tenant in case of leased/rented flats or change in ownership, even in cases where the consumer name continues to be in the name of the original owner, provided the current lessee/tenant produces a lease agreement or leave and license agreement or property agreement, respectively, documenting the above change, when asked to do so by the licensee.

The Distribution Licensees are directed to give effect to these clarifications with retrospective effect, wherever applicable, and adjust the consumers’ bills for the specified months accordingly, through adjustment of future bills.”

4. Subsequently, on November 17, 2006, Netmagic Solutions Pvt. Ltd. (NSPL), a consumer of REL, filed a Review Petition before the Commission, on the levy of Load Management Charge (LMC) through the REL Tariff Order in Case No. 25 of 2005 and 53 of 2005. The grounds for review as stated by NSPL are:

- a. The consumers were taken by surprise with regard to the levy of LMC, and consumers were not given an opportunity to study the LMC and its implications.
- b. LMC is very excessive and will result in steep increase in consumer bills.
- c. LMC imposes an unreasonable and unjust burden and penalizes consumers who are unable to reduce their electricity consumption due to bonafide requirements of occupation and industry.
- d. In line with normal business practice, Netmagic Solutions has executed certain short-term and long-term contracts with its customers, and no provision for escalation in prices was contemplated in these contracts, keeping in view the



Commission's tariff philosophy of ensuring that no consumer category should face a tariff shock.

- e. Increase in energy charges by levying LMC, which is intended to create a fund/reserve, would make business in Mumbai uncompetitive.
- f. The present LMC rate is higher than the LMC charged in April and May 2005 at the rate of Re 1 per kWh.
- g. The Commission should review and reconsider imposition of LMC, on account of "mistake or error apparent on the face of the record" and for "other sufficient reasons", in accordance with Regulation 85(a) of MERC (Conduct of Business) Regulations.

5. NSPL prayed that the Commission should modify the Order by deleting the provision regarding LMC.

6. On November 21, 2006, Veena Dalvai Industrial Estate Premises Co-op. Society Ltd. (VDI), filed a Review Petition before the Commission on the REL Tariff Order in Case No. 25 of 2005 and 53 of 2005, with the following prayers:

- a. Withdraw the Load Management Charge imposed on all consumers including the industrial consumers and direct REL to refund the LMC to those consumers who have already paid the same;
- b. Withdraw the new eligibility criteria of 15 HP for LTP-2 consumers and restore it to the old criteria of 50 HP and consequently withdraw huge demand charge made applicable, and further direct REL to refund the said charges to those consumers who have already paid the same, or alternatively, direct REL to give such affected consumers 90 days notice and seek their actual Contract Demand before putting them under LTP-2 category and withdraw the demand charge and power factor penalty imposed earlier;
- c. Withdraw the power factor penalty imposed in view of reclassification of category from LTP-I to LTP-2 and further direct REL to refund the said charges to those consumers who have already paid the same;
- d. Interim Relief: Pending the final hearing of the Review Petition, the Commission may be pleased to restrain REL from issuing bills to the members of the Petitioner society to recover the said LMC, demand charge and PF penalty, and further restrain REL from recovering LMC, demand charge and PF penalty from the members of the Petitioner society and other similarly affected consumers;
- e. Direct REL to pay the entire cost of the Petition including fees paid to the Commission.

7. In this Order, the Commission has restricted itself to the issue of levy of LMC addressed in the aforesaid Petitions filed by NSPL (Case No. 44 of 2006) and VDI (Case No. 45 of 2006). Though, VDI did not file the Review Petition within the time limit of 45 days as specified in Regulation 85 of the MERC (Conduct of Business) Regulations, the Commission has condoned such delay. This Order does not deal with the prayers made by VDI with regard to matters other than the levy of LMC and the Commission will issue a separate Order with regard to the prayers made by VDI other than that concerned with the levy of LMC.

8. In its Review Petition, VDI submitted that the bills received by its Members from REL for the month of October 2006 are significantly higher than previous bills, and one of the reasons for the increase is the levy of LMC, in accordance with the Commission's Tariff



Order dated October 3, 2006, in Case 25 and 53 of 2005. The grounds for review as stated by VDI are:

- a. Neither the Commission nor REL gave adequate publicity to the Order for compulsory saving of 20% and the LMC;
- b. The Commission has no authority to impose LMC under S.85 of EA 2003;
- c. The restriction on power consumption is bound to lead to reduction in production by industrial consumers and consequent loss to the State Exchequer;
- d. While the penalty of not saving 20% is 100%, the incentive offered by way of rebate in case of saving more than 20% energy is only 50%, which is unfair, unjust and inequitable;
- e. The restriction on power consumption upto 80% for industrial consumers is a retrograde step and deserves to be withdrawn, notwithstanding the impending power shortage;
- f. The levy of LMC will force several industrial consumers to either close down their production or force them to shift their production unit to other places like Diu and Daman, where electricity is available at cheaper rates;
- g. Levy of LMC has caused a tariff shock to members of the Petitioner society as well as other consumer categories including residential and commercial category and there are wide spread protests against such harsh penalty in the name of LMC;
- h. Imposition of LMC on all industrial consumers and those residential and commercial consumers consuming more than 300 units per month will allow unjust enrichment by REL, though the Commission has stipulated the purpose for which this collection is to be used.

9. The notice for the combined hearing on Case No. 44 of 2006 and Case No. 45 of 2006 was issued on November 22, 2006, to the Petitioners, REL, TPC and authorised Consumer Representatives. The hearing held on November 27, 2006, in the Commission's office, was attended by Mumbai Grahak Pachayat (MGP), a consumer representative organisation authorised on a standing basis under the EA 2003, and representatives of TPC, besides the officials of REL and Counsel representing the Petitioners, viz., NSPL and VDI.

10. Shri. Kamlesh Kharade, Counsel for NSPL, stated that NSPL is a LTP-II consumer of REL. He submitted that there was a steep increase of approximately 40% in the bill for the month of October 2006, as compared to the bills for the month of August and September 2006. Counsel explained that this steep increase was primarily due to the levy of LMC as directed by the Commission in its Order. Counsel submitted that though the Commission's Order was passed on October 3, 2006, the impact thereof was felt only on receipt of the electricity bill for the month of October 2006. This steep increase has resulted in a severe tariff shock to the consumers.

11. Counsel for NSPL added that the exemption given to new consumers from levy of LMC is discriminatory in nature, and contended that this discrimination will give some of its business competitors a competitive advantage. Counsel contended that payment of such excessive LMC would cause huge losses to NSPL, and perhaps, the only option left would be to wind up and relocate to some other State where the tariffs are reasonable. On a large scale basis, industrial production in Mumbai would be seriously hindered, which would have a severe impact on the State economy, if several industrial consumers such as the Petitioner were to stop their businesses in Maharashtra and relocate somewhere else.



12. Counsel for NSPL further submitted that they were not heard by the Commission before passing the Tariff Order dated October 3, 2006, particularly with reference to the levy of LMC. Given that the financial impact on NSPL is approximately Rs. 50 Lakh per annum, the Commission ought to have given an opportunity to NSPL to be heard prior to levy of LMC. Counsel contended that there is no information regarding the need for levying LMC. Counsel submitted that due to the aforesaid reasons, the Commission ought to review the Tariff Order dated October 3, 2006, as sufficient reasons exist and also there are mistakes that are apparent on the face of the record of the said Order and the provisions therein with respect to levy of LMC be deleted or suitably modified.

13. Shri. Shirish Deshpande, Counsel for VDI, submitted that VDI is a registered co-operative society comprising 161 industrial and commercial consumers having their industrial galas at Jogeshwari (West), Mumbai. Counsel submitted that as far as admission of the matter pertaining to levy of LMC was concerned, the Review Petition filed by VDI could be admitted by the Commission under Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 as sufficient reasons exist that would justify admission of the matter and also due to discovery of new and important evidence, and proceeded to explain the reasons for the same.

14. Counsel for VDI submitted that the levy of LMC under the impugned Order dated October 3, 2006, contradicts the Commission's consistent tariff philosophy of not giving tariff shock to consumers, as the levy of LMC has resulted in a tariff shock. Counsel submitted that the direction to impose LMC is contrary to Section 61(d) of the EA 2003, which mandates the Commission to safeguard the interest of consumers and ensure the recovery of costs of electricity in a reasonable manner. Counsel submitted that imposition of LMC is unreasonable. Therefore, the Commission ought to review its Order dated October 3, 2006, and either withdraw the directions pertaining to LMC or devise a solution by balancing the interests of all the stakeholders, including consumers, and modify the impugned Order to the extent it pertains to levy of LMC. Counsel submitted that though the Commission's intent of bridging the ongoing demand-supply gap is laudable, the method adopted, i.e., levy of LMC, should be reviewed. Counsel submitted that though there is a need to send an economic signal to consumers for curtailing consumption, the levy of high LMC is undesirable, and consumers should be insulated from any kind of tariff shock.

15. Explaining how the Review Petition satisfies the scope of review under Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, Counsel for VDI submitted that a new and important fact/matter has been discovered inasmuch as, VDI has found out there was, as such, no proposal from REL pertaining to imposition of LMC at the time of submission of petition for determination of ARR. Therefore, as no public notice and public hearing was held with respect to imposition of LMC, the due process of law has not been followed.

16. On merits, Counsel for VDI submitted that the exemption granted to new consumers from levy of LMC violates Article 14 of the Constitution, as the constitutional right of consumers, of equality before the law, has been denied through the discriminatory imposition of LMC.

17. Counsel submitted that after the issue of the Tariff Order dated October 3, 2006, the levy of LMC has not been given due publicity and prior notice to consumers was not provided by the Commission and REL. In fact, any stray news as regards levy of LMC must have gone unnoticed in the background of news concerning recovery of rebates given to consumers in



the past by REL to the tune of Rs. 350 Crore. Counsel submitted that though Section 45(2)(b) of the EA 2003 requires adequate notice to be given to the consumers on the subject of imposition of LMC, REL has not taken any steps to educate its consumers to save energy in order to avoid payment of higher bills due to imposition of LMC.

18. Counsel for VDI also contended that the Commission ought to have made the effective date for imposition of LMC two to three months later than the effective date of the Tariff Order in order to safeguard the interest of consumers. Counsel stated that consumers should have, thus, been given due notice to save energy and avoid payment of LMC. The imposition of a penalty without adequate notice to avoid the said penalty is unlawful and unreasonable. Counsel submitted that the intention behind imposition of LMC should not be to pressurise consumers or allow unjust enrichment to the distribution licensee. Adequate publicity is necessary in order to send an economic signal for the objective of LMC to be achieved as desired.

19. Counsel for VDI also raised doubts as to whether the Commission is empowered or legally authorised to impose any charge/penalty through LMC as a part of tariff under S.61 of EA 2003. Counsel submitted that even if it is argued that LMC is not a part of tariff, the Commission is not empowered to levy the same. Therefore, levy of LMC should be withdrawn as the Commission has no authority to introduce LMC.

20. Counsel for VDI further submitted that the Commission has directed that monthly consumption should be reduced to a level of 80% of consumption in the corresponding month in the past year. However, no rationale for the reduction target of 80% has been given in the impugned Order, which could have been 90% or 70% also. In such a case, the impugned Order may be termed as arbitrary. Counsel submitted that the impugned Order has other mistakes as there is no incentive for those consumers who save upto 15%. These consumers also have to pay LMC for not being able to save 20%. There is no means or gadget by which such savings could be planned or measured by consumers. Moreover, extra consumption is sought to be penalised at the rate of additional 100% of the highest tariff chargeable to the respective category, but reduction in monthly consumption is incentivised at the rate of 50% of the normal chargeable rate to the kWh units in the tariff slab applicable to the reduction in the number of units. Counsel submitted that hence, the impugned Order is opposed to public policy.

21. Counsel added that the direction to impose LMC will have a huge social impact as it would curtail industrial production and consequent economic growth in Mumbai. There would be unemployment due to factories being wound up, relocated to other States, etc. This cannot be the objective behind the economic signal that the imposition of LMC is required to send.

22. Counsel contended that the amount expected to be recovered through the imposition of LMC is totally disproportionate to the desired results. Moreover, the Commission has not maintained any statistics regarding the amount that is expected to be recovered through the levy of LMC.

23. Dr. Ashok Pendse, submitted on behalf of Mumbai Grahak Panchayat, that the Hon'ble Appellate Tribunal for Electricity (ATE) has held in Appeal No. 158 of 2006 that LMC may be imposed under Section 23 of the EA 2003 and not as tariff. Thus, the requirements with respect to conducting of public hearing and previous publication would not be required while the Commission directs imposition of LMC. The shortfall of 300 MW in



supply, i.e., 10% of the total energy requirement in Mumbai, is during the peak hours from 12:00 hrs to 16:00 hrs and that too in the months of April, May, June and October only. Therefore, if industrial consumers reduce consumption during those peak hours, the power crisis can be minimized and LMC may not be required to be imposed. Naphtha based power of 300 MW is available in the market @ Rs. 7/- per kWh. Dr. Pendse submitted that by his estimation, two lakh residential consumers of REL have contributed to 17% of revenue from LMC, while sixty five thousand commercial consumers of REL have contributed upto 20% of revenue from LMC, and twenty thousand industrial consumers of REL have contributed upto 61% of revenue from LMC.

24. Dr. Pendse submitted that if the utility is in a position to purchase naphtha power at Rs. 7/- per kWh for the months when power shortfall is acute, LMC need not be imposed and recovery of power purchase may be done as pass through under FAC. Thus, the Commission may impose an additional energy charge and need not impose LMC. In the alternative, if the Commission considers that the said proposal is not feasible, LMC may be imposed. However, LMC should be imposed only for certain months of the year.

25. Shri. J.D. Kulkarni submitted on behalf of TPC that the increase in the consumers' bills due to the imposition of LMC is high and it would cause hardship to many consumers. Secondly, despite all efforts by the Utilities to educate consumers on energy conservation, there has not been much response from the consumers. However, since the consumer of Mumbai is willing to pay more, power may be purchased from Kawas. There is no critical need to impose LMC to the extent to which it has been provided for in the impugned Tariff Order. REL has collected approximately Rs. 18 Crore and TPC has collected about Rs. 6 Crore through levy of LMC in April and May 2005 to invest in R & D.

26. On behalf of REL, Shri. R.R. Mehta submitted that REL has given sufficient media coverage to the imposition of LMC arising out of the impugned Tariff Order. Immediately, upon issuance of the Order, consumers were requested to refer to the official website of the Commission and that of REL, to be acquainted with the said Order. A press release was also given to cover the subject. However, the impact of LMC on consumers is not same and would vary depending on consumer category. The customer-care executives of REL, who were available round the clock to answer any query of consumers, had responded to several queries pertaining to LMC.

27. Shri. Mehta submitted that the concept of LMC is not new to consumers, and the electricity bills issued by REL have often contained messages on the imposition of LMC for the objective of reduction in consumption. REL has even conducted campaigns in schools or increasing awareness about energy conservation. A joint advertisement was issued together with TPC and BEST in the year 2005, after LMC was introduced for the first time.

28. Shri. Mehta contended that though the Mumbai consumer may be willing to pay additional tariff, with reference to submissions advanced by Dr. Pendse, it would not be feasible as the distribution network of REL is not laid in a manner where the consumer can be isolated easily. Therefore, from an operational perspective, exceptional supply may not be practical.

29. Shri. Mehta submitted that the economic signal with respect to levy of LMC was harsh and had given rise to a law and order situation, resulting in damage to REL property. For the month of October 2006, there has been a steep increase of 30% to 40% over the last bill, for consumers who have been charged LMC.



30. Counsel for VDI made a prayer that pending the final adjudication of Case No. 44 & 45 of 2006, the portion of the impugned Tariff Order dated October 3, 2006, which pertains to imposition of LMC on consumers, be stayed.

31. The Commission's views on some of the issues raised by the Petitioners are given below:

a. The Commission has exempted new consumers from the levy of LMC, as there is no base line consumption data available, against which the consumption in the current months can be compared with. It will be unfair to compare the consumption of the previous owner/tenant/lessee as the case maybe, with the consumption of the new owner/tenant/lessee, for determination of the LMC. Therefore, this does not amount to discrimination in favour of new consumers.

b. The Petitioners have submitted that they were not heard before the impugned Order was issued, particularly pertaining to levy of LMC, and that the consumers were not aware of the Commission's intention to levy LMC and hence, this qualifies under new evidence which was not within the knowledge of the Petitioner. On the contrary, the Commission has been mindful of the need for energy conservation in the Mumbai license area since early 2005, and had issued an Order levying LMC for a period of two months in April and May 2005, in Case No. 4 of 2005, vide Order dated May 4, 2005, under S.23 of the Electricity Act, 2003 (EA 2003). Since then, the Commission has been constantly monitoring the demand-supply situation in the Mumbai license area. As the licensees, viz., TPC, REL and BEST, did not come forward to provide any solution to the projected demand-supply gap of around 250 to 275 MW in the months of April and May 2006, the Commission suo-motu initiated the process of inviting comments and suggestions from all stakeholders in the city of Mumbai who are supplied electricity by REL, BEST and TPC, under Case No. 46 of 2005. The public notice was given on February 14, 2006, with the situation explained briefly and comments invited from interested stakeholders. The public hearing on the matter was held on February 27, 2006, and 64 persons participated in the public process, and submitted comments and suggestions either in writing or during the hearing. Based on the data received from the licensees and the comments and suggestions received from the stakeholders, the Commission issued an Order on March 2, 2006, wherein the Commission held as under:

e) *"The shortage in the city of Mumbai is expected to continue for some time to come, till such time as either additional generation capacity is set up or additional power is available from outside the State, and the transmission corridor issues are resolved.*

f) *The Commission hence, stipulates the following mandatory load regulation targets*

i) *All residential and commercial consumers consuming more than 300 units per month and all industrial consumers (irrespective of their level of consumption) in the license areas of TPC, REL and BEST will have to reduce their monthly consumption to a level of 80% of their consumption in the corresponding month in the past year.*

ii) ...



- iv) *In case the consumers do not reduce their consumption to the desired levels, punitive action in the form of temporary disconnection may have to be considered.*
- v) ...
- g) *The Commission will take a review after one month, in the first week of April 2006, to assess the situation. If the load is reduced due to the introduction of the load regulation measures, and/or additional supply becomes available and the transmission corridor is also made available as submitted by MSETCL, then the need for undertaking load shedding in the license areas of TPC, REL and BEST may not arise.*
- h) *The Commission directs TPC to explore all the possible sources of power, and co-ordinate with PGCIL and MSETCL for the transmission corridor.*
- i) *The Commission directs TPC to submit the details of the hourly generation from Bhira pumped storage station over the last one year. The Commission directs TPC to explore the possibility of any additional generation from Bhira unit during peak hours in the pumped storage mode.*
- j) *The Commission directs TPC to monitor the overall demand-supply position in the Mumbai license area closely and submit a report within one month from the date of issue of this Order, showing the impact in terms of savings in load and energy as a result of the load regulation measures.*
- k) *The Commission directs the three Licensees, viz. REL, BEST and TPC to prepare a rotational load shedding plan for their license areas, in the event the demand-supply gap is not mitigated, and load shedding becomes inevitable. The load shedding plan, which should be formulated based on feeder-wise control, should be submitted to the Commission within one month of issue of this Order.*
- l) ...”
- c. Subsequently, on June 17, 2006, the Commission issued another Order in Case No. 46 of 2005, wherein it stated that
- “Appropriate economic signals will be given in the form of levy of Load Management Charges (LMC) in the Tariff Orders of REL and TPC, along similar lines as given in the Tariff Order for BEST for FY 2005-06 [Case No. 4 of 2004].”*
- d. There is no doubt that the Commission is legally empowered to impose LMC, as held by the Hon’ble Appellate Tribunal for Electricity (ATE) in its Order dated October 19, 2006, in Appeal No. 158 of 2006, on the Appeal filed by Vidarbha Industries Association for refund of LMC collected during the months of May, June and July 2005. The ATE has held as under:

“On a consideration of the Part VII of the Act and in particular Sec. 61 to 64, we hold that the levy and collection of load management charges will not take part the character of tariff nor it forms part of the cost of power, generation or transmission or distribution by the respective utility.

...



In the circumstances, we hold the contentions of the learned counsel for the appellant, that load management charge forms part of the tariff and that it is an increase in tariff schedule, cannot be sustained. It, therefore follows that there is no requirement at all for the Regulatory Commission to follow section 64 of The Electricity Act 2003 before ordering or imposing load management charge and recovery thereof.

...

In the light of above pronouncement, there is no doubt that levy of the load management charge under Section 23 of The Electricity Act 2003 is a regulatory measure, which the Regulatory Commission is empowered to levy and recover. We hold that the Section 23 of The Electricity Act 2003 confers the power to regulate equitable distribution of power etc. and it also confers the power to collect load management charges by way of the regulatory measure.”

32. Based on facts presented and submissions made by the Petitioners in the Review Petition/s and during the hearing, and the Commission’s analysis of the issues as discussed above, the Commission hereby issues the following Order:

33. As mentioned earlier, the Commission has been stressing the need for energy conservation in the short run to bridge the gap between demand and supply in the Mumbai license area since early 2005, and had issued an Order levying LMC for a period of two months in April and May 2005, in Case No. 4 of 2005, vide Order dated May 4, 2005, under S.23 of the Electricity Act, 2003 (EA 2003). Since then, the Commission has been constantly monitoring the demand-supply situation in the Mumbai license area.

34. However, despite the Commission’s Order, the consumers did not respond by regulating their consumption, and the demand and consumption have been increasing. Subsequently, on June 17, 2006, the Commission issued another Order in Case No. 46 of 2005, wherein it stated that:

“Appropriate economic signals will be given in the form of levy of Load Management Charges (LMC) in the Tariff Orders of REL and TPC, along similar lines as given in the Tariff Order for BEST for FY 2005-06 [Case No. 4 of 2004].”

35. It is only when the consumers received the bills for the month of October that the consumers seem to have become aware of the implications of the Commission’s Order on load regulation, and hopefully, the consumers have also become more aware of the need for energy conservation.

36. The Commission has made lot of efforts to disseminate the need for energy conservation and load regulation by individual consumers, and has even held public hearing on the matter. There is no denying that Mumbai city is heading for load shedding in future if urgent steps are not taken, both in the short-term and long-term, to mitigate the increasing demand-supply gap, either by sourcing additional supply or by reduction in demand. Hence, the Commission firmly believes that load regulation is one of the tools that need to be used to restrict the demand, and every consumer needs to contribute towards this effort of energy conservation, to ensure that the city of Mumbai continues to enjoy the privilege of uninterrupted power supply.



37. The Commission also clarifies that the primary objective of introduction of LMC was to send an economic signal to the consumers that energy conservation is the need of the hour, and any collection of funds is only incidental. Moreover, the Commission had clearly indicated that the net amount collected through LMC would be used for energy conservation and DSM purposes and is not intended to be set off against the Licensee's ARR, which is being recovered separately through tariff. However, it appears that the consumers are still not really aware of the need for energy conservation and the measures to be taken to achieve energy conservation. As a consequence, the introduction of LMC is causing hardship to consumers as the overall bill of the affected consumers has increased significantly, and also significant additional amount is being collected from consumers.

38. Levy of LMC is one of the approaches for attaining the objective of load regulation, which has been adopted by the Commission. There are no obvious solutions, and in the absence of any data or feedback from Licensees, the Commission levied LMC using its best judgement, in the hope that it will convey the message of energy conservation to all consumers. Though the per-capita consumption in India is low, there is a lot of wastage that is taking place, which needs to be curbed.

39. The Commission holds that sufficient reasons exist for review of the Order dated October 3, 2006 in Case No. 25 of 2005 and 53 of 2005. In view of the fact that levy of LMC has caused unintended hardship and severe economic penalties, the Commission has reviewed the aforesaid Order and in supercession of the direction contained therein to levy LMC, directs REL to discontinue the levy of LMC and LMR in all future bills. In cases where LMC/LMR has already been billed and/or collected, this amount should be adjusted in the subsequent bills of the consumers. In cases where the bills have already been issued by REL to consumers for whom LMC/LMR is applicable, and payment is due, REL will neither insist on payment of the LMC component of the bill, nor give credit for the LMR component, and will consider payment of total bill amount less LMC (or plus LMR) as full payment of bill. Further, amount collected under LMC should not be adjusted against any other dues.

40. Though the ATE has ruled that as LMC is not part of the tariff, there is no requirement to undertake a regulatory process as envisaged under Section 64 of the EA 2003 for levy of LMC, however, the Commission believes that the overall objective of energy conservation can be achieved only through public participation and sensitisation of consumers towards the urgency of the matter. Hence, the Commission may initiate separate regulatory proceedings under S.23 of the EA 2003 to address the issue of load regulation and energy conservation for the license area of Mumbai.

41. REL also need to come forward with appropriate strategies to mitigate the demand-supply shortfall in the short-term and long-term, based on consumer category-wise consumption patterns and load curves and potential for energy conservation. REL should submit the same within four weeks of issue of this Order.

42. In the meantime, REL should submit details of category-wise revenue earned through levy of LMC as well as LMR given, for the months of October and November 2006, for the bills issued till date. This data should be submitted to the Commission within one week of issue of this Order.



43. With the above observations, the Commission disposes of the Petitions filed by NSPL (Case No. 44 of 2006) and VDI (to the extent it relates to levy of LMC in Case No. 45 of 2006).

Sd/-
(S.B.Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



Secretary, MERC