

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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Case No. 139 of 2011

In the matter of

Review Petition of MSEDCL in respect of Order dated 12th September 2010 in Case No. 111 of 2009 for withdrawal of load factor incentive to consumers who exceeds contract demand (during off-peak hours i.e. 22.00 to 6.00) and pay meager penalty.

Shri V.P. Raja, Chairman

Shri Vijay L. Sonavane, Member

Maharashtra State Electricity Distribution Company Ltd.,

Prakashgad,

Bandra (East), Mumbai – 400 051.

..... Petitioner

Through The Chief Engineer (Commercial).

Present during the hearings:

For the Petitioner:

Shri. Ankush Nale, Superintending Engineer MSEDCL

ORDER

Date: 25th January 2012

Maharashtra State Electricity Distribution Company Limited ('MSEDCL') filed a Petition before the Commission on 23rd September, 2011, under Regulation 85 of MERC (Conduct of Business) Regulations, 2004 seeking review of Tariff Order dated

12th September 2010 in Case No. 111 of 2009 for withdrawal of Load Factor Incentive to the consumers who exceed contract demand.

2. MSEDCL, in its Petition has prayed as follows:

“

a. The Hon'ble commission may be pleased to condone the delay in filing the review Petition

b. The Hon'ble Commission may be pleased to admit the Review Petition;

c. The Hon'ble Commission may permit review of the Order dated 12th September, 2010 passed by the Hon'ble Commission in Case No. 111 of 2009.

d. Accordingly the Hon'ble Commission may be further pleased to withdraw load factor incentives to consumers who exceed contract demand (during off peak hours i.e. 22.00 to 6.00)

e. Accordingly the Hon'ble Commission may be further to amend the last para of the load Factor Incentive Provisions Of Clause 5.8 Of Order 12.09.2011 As Under

*In case the billing demand exceeds the contract demand in any particular month, then the load incentive will not be payable in that month.(The billing demand definition excludes the demand recorded during the non-peak hours i.e. 22.00 hours to 6.00 hours and therefore, even if the maximum demand exceeds the contract demand in duration, load factor incentives **would not** be applicable. However, the consumer would be subjected to the penal charges for exceeding the contract demand and has the applicable penal charges).*

f. The Hon'ble Commission may pass such further & other Orders as the Hon'ble Commission may deem fit & proper keeping in view of the facts & circumstances of the Present Petition.”

3. MSEDCL in its Petition, submitted as follows:
- i. It is submitted that delay in filing the review Petition was occasioned because post Tariff Order dated 12th September 2010, MSEDCL had to study the entire issue and work out the financial impact of incentives offered to the consumers.
 - ii. MERC in its Tariff Order dated 12th September 2010, stipulated Load Factor Incentives applicable for consumers under HT-I and HT-II category. While stipulating the Load Factor Incentives, the Commission has clarified that in case billing demand exceeds the contract demand in any particular month then the Load Factor Incentive will not be applicable in that month.
 - iii. The Commission has further clarified that the billing demand definition excludes the demand recorded during the non-peak hours i.e. 22.00 hrs to 6.00 hrs and therefore, even if the maximum demand exceeds the contract demand in that duration, Load Factor incentives would be applicable. However, the consumers would be subject to the penal charges for exceeding contract demand.
 - iv. It is submitted that HT consumers who are exceeding contract demand during non peak hours are penalized for the portion exceeding contract demand. However these consumers even though they exceed contract demand they avail benefits of load factor incentive and TOD tariff. The amount of demand penalty thereby becomes negligible as compared to the amount of incentive of load factor and TOD Tariff. It is submitted that during FY 2010-11, consumers have availed benefits of Rs. 62.25 Cr as Load Factor Incentive as against the demand penalty of Rs. 3.26 Cr recovered from the consumers.
 - v. MSEDCL further submitted that more than 90% of consumers who are availing Load Factor Incentive are continuous industries and are intentionally exceeding the contract demand at night. Some of these consumers are repeatedly exceeding the contract demand during off peak hours so as to avail Load Factor Incentive as well as ToD Tariff, which is against the philosophy of providing Load Factor Incentive.
 - vi. It is submitted that as per the Tariff Order, rebate of Rs. 0.85/ kWh is available under ToD Tariff for consumption during off peak hours i.e. 22.00 to 06.00 hrs.

The ToD Tariff has been designed so that the consumers are incentivized to shift their consumption to off peak hours and thus reduce the burden on the system during peak hours. However, some consumers for getting extra benefits from ToD Tariff are deliberately exceeding the contract demand. This further reflects in increasing Load Factor incentive and thereby these consumers avail double benefits even after exceeding contract demand.

vii. It has been observed that many consumers (preferably steel producers) have continuous process plants and would work round the clock irrespective of whether incentives are provided or not. Thus, these consumers are getting incentives without taking extra initiative of managing the demand. Instead these consumers are misusing this exemption for exceeding contract demand during off-peak hours for getting maximum benefit of Load Factor / TOD Incentives thereby causing loss of revenue to MSEDCL.

4. The Commission, vide Notice dated 17th October 2011, fixed a hearing in the matter on 25th November 2011 and directed the Petitioner to serve a copy of the Petition on the Authorized Consumer Representatives.

5. Accordingly, the hearing in the matter was held on 25th November 2011. During the hearing Shri. Ankush Nale, Superintending Engineer MSEDCL gave a brief presentation on the issues mentioned in the Petition.

6. Having heard the Petitioner and after considering all the documents available on record, the Commission is of the opinion that before considering the issue of review of Load Factor Incentives as prayed by the MSEDCL it will be more appropriate to understand the background behind Load Factor Incentive. The same has been explained below:

a. MERC vide its Tariff Order dated 10th March 2004 in Case No. 2 of 2003 has introduced Load Factor Incentives for consumers under HTP-I and HPT-II category with the objective of reducing the costs of high consumption industrial consumers and also ensuring that these consumers will be retained by MSEDCL. The relevant portion of the Tariff Order is reproduced below:

"29.2 General Tariff Design Principles

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*The Commission is of the opinion that the MSEB faces a threat from movement of consumers having very high consumption to captive generation, under the provisions of the Electricity Act, 2003 (EA 2003). The ERC Act, 1998, as well as the EA 2003 provide for differentiation between consumers on the basis of their load factor, while determining their tariff. Hence, in order to incentivize such high consumption consumers who also contribute a steady load to the MSEB system, the Commission has introduced a Load factor incentive for consumers having Load Factor above 75% based on contract demand. Consumers having load factor over 75% upto 85% will be entitled to a rebate of 0.75% on the energy charges for every percentage point increase in load factor from 75% to 85%. Consumers having a load factor over 85 % will be entitled to rebate of 1% on the energy charges for every percentage point increase in load factor from 85%. The total rebate under this head will be subject to a ceiling of 15% of the energy charges for that consumer. **The Commission is of the opinion that the load factor rebate will enable the high consumption industrial consumers to reduce their costs, and will also ensure that these consumers are retained by the MSEB.**” (emphasis added)*

- b. In next year’s Tariff Order dated 20th October 2006 in Case No 54 of 2005, the Commission has ruled regarding restricting Load Factor Incentives for the cases where billing demand does not exceed contract demand as follows:

“The Commission has introduced this incentive to reward consumers contributing a steady load to the MSEDCL system, and to incentivize such consumers to remain with the MSEDCL. In cases, where the billing demand exceeds the contract demand, the MSEDCL’s system is subjected to stress and load management will become more difficult. Hence, in case the billing demand exceeds the contract demand in any particular month, then the Load Factor incentive will not be payable in that month.”

- c. However, as the definition of billing demand does not include demand recorded during off peak hours, in Tariff Schedule approved as a part of the same Order dated

20th October 2006, the Commission added following conditions for Load Factor Incentives:

“2) The billing demand definition excludes the demand recorded during the non-peak hours i.e. 22.00 hrs to 06.00 hrs and therefore even if the maximum demand exceeds the contract demand in that duration, load factor incentives would be applicable.

3) However, the consumer would be subjected to the penal charges for exceeding the contract demand and has to pay the applicable penal charges.”

d. Thereafter in all subsequent Tariff Orders i.e. Tariff Order dated 18th May 2007 in Case No 65 of 2006, Tariff Order dated 20th June 2008 in Case No 72 of 2007, Tariff Order dated 17th August 2009 in Case No 116 of 2008 and Tariff Order dated 12th September 2010 in Case No. 111 of 2009 the Commission has maintained same conditions for availing Load Factor Incentives.

7. Having stated the background behind the Load Factor Incentive, it has become necessary to establish whether sufficient grounds exists for the grant of review under Regulation 85 of MERC (Conduct of Business) Regulations, 2004 as sought for by MSEDCL. The said Regulation 85 of MERC (Conduct of Business) Regulations 2004 is reproduced below:

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him 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, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

8. The above provision stipulates 45 days for filing review whereas MSEDCL has filed the present review Petition on 23rd September 2011 i.e. after a year of issuance of Tariff Order dated 12th September 2010. There is immense delay which cannot be condoned especially when the reason given for condonation is that the Petitioner required time to study the impugned order. Surely, it cannot take a year to study a tariff order. There is no merit in the explanation provided by the Petitioner justifying the delay. The petition is liable to be dismissed on this ground. Also, from the background explained in para 6 above it can be seen that introducing Load Factor Incentives and related conditions is the considered decision of the Commission and the decision of the Commission cannot be attributed as mistake or error apparent on face of record. No mistake or error has been pointed out within the scope of being "*apparent on the face of record*". Moreover, an error cannot be found out by detailed reasoning in a review petition. A review petition cannot be an appeal in disguise.

In view of above findings, the present review Petition deserves to be dismissed and is hereby dismissed as not maintainable.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman