

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 150 of 2011

In the matter of
Permission for filing Annual Revenue Requirement and determination of tariff for FY
2011-12 for BEST Undertaking under MERC (Terms & Conditions of Tariff)
Regulations, 2005

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

ORDER

Dated: 30th November, 2011

Brihan Mumbai Electricity Supply & Transport Undertaking (“BEST”), submitted a Petition under affidavit on October 19, 2011 under Section 61 of the Electricity Act 2003, in the matter of seeking permission for filing Annual Revenue Requirement and determination of tariff for FY 2011-12 under MERC (Terms & Conditions of Tariff) Regulations, 2005.

2. The prayers of BEST in the Petition are as follows:-

“

- i) Admit this Petition under Regulation no. 32 & 93 of MERC (Conduct of Business) Regulations, 2004.*
- ii) Allow BEST to file the petition for approval of ARR and determination of tariff for FY 2011-12 under the MERC (Terms and Conditions of Tariff) Regulations, 2005 by invoking the proviso to Regulation 4.1 of MYT Regulations, 2011 in order to exempt the determination of tariff of BEST*

under the Multi-Year Tariff framework till March 31, 2012 (i.e. for a period of 1 year).

- iii) To increase the tariff by 15% (restoration of Tariff of FY 2009-10) immediately as an interim measures to enable BEST Undertaking to recover unrecoverable power purchase cost and difference in approval per unit recovery cost and actual recovery per unit and other losses.)*
- iv) Condone any inadvertent omission/errors and grant the liberty to the BEST Undertaking to add/ change/ modify/ alter this petition and make further submissions as may be required at a future date.*
- v) Pass such further and other orders, as the Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case."*

3. BEST in its Petition submitted as under:

- a) The Commission in its MYT Order dated December 20, 2005 had defined first Control period as three years from FY 2007-08 to FY 2009-10. The Commission vide its email dated December 3, 2009 had directed all utilities to file Tariff Petition for FY 2010-11. BEST filed a Tariff Petition for FY 2010-11 proposing 6.21% increase in existing Tariff. However, BEST stated that the Commission issued Tariff Order reducing earlier tariff by 15% for FY 2010-11. BEST challenged the Tariff Order for FY 2010-11 before the Hon'ble Appellate Tribunal for Electricity and which is pending.
- b) The Commission directed to submit Tariff Petition along with Business Plan before March 31, 2011 after notifying MERC (Multi Year Tariff) Regulations, 2011 for determination of Tariff under second control period from FY 2011-12 to FY 2015-16. BEST could not prepare and file the Business Plan due to lack of clarity on issues like Parallel licensee, Cross Subsidy, Power Purchase Cost, O&M Expenses, Distribution Loss and absence of annual review etc. Therefore, BEST filed a Petition on March 24, 2011 (Case No. 43 of 2011) seeking deferment in implementation of MERC (Multi Year Tariff) Regulations, 2011 for minimum period of one year. The Commission vide its Order dated May 5, 2011 (Case No. 43 of 2011) allowed BEST extension by four months for submission of Business Plan and MYT Petition as per MERC (MYT) Regulations, 2011 on or before August 31, 2011. Further, BEST submitted Business Plan Petition on August 25, 2011. In the submission of Business Plan, various assumptions regarding load forecast, power procurement, Capex schemes and O&M Expenses were made based on the perception of BEST under the prevailing state of circumstances.

- c) BEST submitted that the Commission has already permitted MSEDCL and RInfracore to file Petition for ARR and determination of Tariff for FY 2011-12 under MERC (Terms & Conditions of Tariff) Regulations, 2005, in its Order dated August 23, 2011 and September 2, 2011 respectively.
- d) Further, the Power Purchase Cost and the Fuel Adjustment Charges (FAC) during FY 2011-12 increased considerably, due to circumstances beyond BEST's control. The energy purchase rate of Rs.3.01 per unit as approved by the Commission for FY 2010-11 (Case No. 95 of 2009) has increased to Rs.4.09 per unit in FY 2011-12. Thus, monthly FAC itself per unit has risen to Rs.1.08 whereas FAC cap is 51.77 paise for BEST and therefore huge amount remains unrecovered.
- e) BEST is realizing revenue of Rs.5.61 per unit (position as on August 2011) against approved Rs. 5.76 per unit as Average Cost of Supply in MERC Tariff Order for FY 2010-11. This 15 paise per unit of reduced revenue from sale and unrecovered FAC of 50 paise per unit due to steep increase in Power Purchase Cost resulted in gap of 65 paise per unit as accumulating on daily basis.
- f) BEST submitted that, the Commission while issuing the Tariff Order for FY 2009-10 had made certain erroneous calculations in respect of efficiency gains, payment to TPC-G, additional recovery due to truing up for FY 2007-08 etc. resulting reduction of Rs. 20 Crore in Annual Revenue Recovery which Commission had kindly agreed to consider in their rejoinder to BEST's Appeal filed before Hon'ble Appellate Tribunal for Electricity in Appeal No. 8 of 2011.
- g) Due to above mentioned factors in (d), (e) & (f), revenue generated by BEST in FY 2011-12 would be considerably reduced and there is also increase in working capital cost as result of unrecovered amount. Therefore most urgent and imperative grant as interim rise of Tariff by 15% is required for BEST.

4. Subsequent to the filing of the Petition, the Commission vide Notice dated October 31, 2011, scheduled the hearing in the matter on November 08, 2011 at 12.30 hours in the presence of Authorized Consumer Representatives under Section 94(3) of the Electricity Act, 2003 (hereinafter referred to as EA 2003).

5. Accordingly, a hearing was held on November 8, 2011. Shri. O.P. Gupta, General Manager and Shri. K.N. Rajgopal, C.E appeared on behalf of BEST. Shri. Gupta made a presentation on the issues raised in the Petition.

6. Having heard the matter, the Commission is of the view as under;

(a) As regards the prayer made in the Petition seeking exemption under the first proviso to Regulation 4.1 MERC (Multi Year Tariff) Regulations, 2011, the Commission is of the view that the MERC (Multi Year Tariff) Regulations, 2011 were to take effect from April 1, 2011. Certain provisions are extracted as under:

“1.3 (a) These Regulations shall be applicable for determination of tariff in all cases covered under these Regulations from April 1, 2011 and onwards up to FY 2015-16 [i.e., till March 31, 2016].

(b) These Regulations shall be applicable to all existing and future Generating Companies, Transmission Licensees and Distribution Licensees and their successors, if any.

1.4 These Regulations shall come into force from April 1, 2011.”

However, BEST could not file the Business Plan. Therefore, BEST filed the Petition on March 24, 2011 (Case No. 43 of 2011) seeking exemption from the determination of tariff under the MERC (MYT) Regulations, 2011 for a minimum period of one year so as to enable BEST to prepare and submit the Business Plan, get it approved and submit specific MYT Tariff Petition based on approved Business Plan.

The Commission vide Order dated May 5, 2011 (Case No. 43 of 2011) allowed BEST an extension by four months for submission of Business Plan and MYT Petition as per MERC (Multi Year Tariff) Regulations, 2011. The relevant extract is reproduced as under;

“ Hence, the Commission by this specific order and for removing the difficulty allows BEST an extension by 4 months, of date of submission of the Business Plan and MYT Petition, i.e., BEST shall have to submit the Business Plan and MYT Petition as per the MERC (MYT) Regulations, 2011 on or before August

31, 2011. If BEST fails to submit the Business Plan and MYT Petition by the said date, BEST shall be liable for consequences in accordance with law.”

BEST submitted Business Plan for second control period FY 2011-12 to FY 2015-16 on August 25, 2011. Subsequent to the filing, the process of approval of Business Plan is in progress. BEST is yet to submit its revised Petition for approval of Business Plan under MERC (Multi Year Tariff) Regulations, 2011. The Commission’s Order on BEST’s Petition for approval of Business Plan is likely to be issued only by the end of FY 2011-12. BEST can file MYT Tariff Petition only after approval of Business Plan. Hence, there is no other choice but to enable the Petitioner to file its Annual Revenue Requirement and determination of Tariff for FY 2011-12 under MERC (Terms & Conditions of Tariff) Regulations, 2005

The Commission has amended the MYT Regulations 2011 viz., MERC (Multi Year Tariff) (First Amendment) Regulations, 2011, on October 21, 2011, to enable the continuance of ARR and Tariff filings under the "MERC (Terms and Conditions of Tariff) Regulations, 2005" for the period of exemption under the second proviso to Regulation 4.1 of MERC (MYT) Regulations, 2011.

The Commission is empowered under the first proviso to Regulation 4.1 of the MYT Regulations, 2011 to exempt the determination of tariff of a Generating Company or Transmission Licensee or Distribution Licensee or category of Transmission Licensee or Distribution Licensee under the Multi-Year Tariff framework. The proviso to Regulation 4.1 provides as follows:-

“4 Multi-Year Tariff Framework

4.1 The Commission shall determine the tariff for matters covered under clauses (i), (ii), (iii), (iv) and (v) of Regulation 3.1 above under a Multi-Year Tariff framework with effect from April 1, 2011:

Provided that the Commission may, either on suo-motu basis or upon application made to it by the applicant, exempt the determination of tariff of a Generating Company or Transmission Licensee or Distribution Licensee or category of Transmission Licensee or Distribution Licensee under the Multi-Year Tariff framework for such period as may be contained in the Order granting such an exemption.”

In light of the above, the Commission is of the view that, it has become necessary to invoke the first proviso to Regulation 4.1 of MERC (Multi Year Tariff) Regulations, 2011 in order to exempt determination of tariff of BEST under Multi Year Tariff framework till March 31, 2012 (i.e. for a period of 1 year). Accordingly, the Commission directs BEST to file its Petition for Annual Revenue Requirement and determination of Tariff for FY 2011-12 on or before November 30, 2011 under the Second proviso of Regulation 4.1 of MERC (Multi Year Tariff) Regulations, 2011. Moreover, the Commission directs BEST to ensure that data to be filed in ARR Petition for FY 2011-12 should be identical with the BEST's Revised Business Plan. Further, the Commission has already directed BEST separately to submit the ARR Petition for FY 2011-12, vide its letter dated November 8, 2011. BEST needs to comply with these directives.

(b) The Prayer has been made regarding the interim relief by increasing the existing tariff by 15% to enable BEST to recover unrecoverable Power Purchase Cost and difference in approval per unit recovery cost.

The Commission is of the view that the Power Purchase Cost is passed through and variation in Power Purchase Cost on account of change in fuel cost can be recovered through FAC mechanism under Regulation 82.1 of MERC (Terms & Conditions of Tariff) Regulations, 2005. The relevant extract of Regulation 82.1 of MERC (Terms & Conditions of Tariff) Regulations, 2005 is reproduced as below:

“ 82.1 With effect from the first day of September, 2005, the Distribution licensee shall pass on adjustments, due to charges in the cost of power generation and power procured due to changes in fuel cost, through the Fuel Adjustment Cost (FAC) formula as specified below.”

The FAC mechanism allows BEST to recover its increase in Power Purchase Cost. The Commission has put cap on FAC as 51.77 paise per unit in case of BEST. The excess cost may be recovered by BEST under the Regulation 82.6 of MERC (Terms & Conditions of Tariff) Regulations, 2005. The relevant extract of regulations is as below:

“82.6 The monthly FAC charge shall not exceed 10% of the variable component of tariff, or such other ceiling as may be stipulated by the Commission from time to time:

Provided that any excess in the FAC charge over the above ceiling shall be carried forward by the Distribution Licensee and shall be recovered over such future period as may be directed by the Commission ”

Regarding the difference in per unit recovery cost as mentioned by BEST in its Petition, the Commission is of the view that the difference in per unit recovery cost is adjusted in the Annual Performance Review under Regulation 17.3 of MERC (Terms & Conditions of Tariff) Regulations, 2005. The relevant extract is as below:

“The scope of the annual performance review shall be a comparison of the performance of the Generating Company or Licensee with the approved forecast of aggregate revenue requirement and expected revenue from tariff and charges and shall comprise of the following:

- (a) A comparison of the audited performance of the applicant for the previous financial year with the approved forecast for such previous financial year; and*
- (b) A comparison of the audited performance of the applicant for the first half of the current financial year with the approved forecast for the current financial year ”*

7. In light of the above, the Commission is of the view that no tariff hike can be allowed at this stage as interim relief *dehors* compliance with the procedure under Section 64 of EA 2003. The Commission has already directed BEST to submit its Petition for Annual Revenue Requirement and determination of Tariff for FY 2011-12 where BEST can propose the tariff accordingly.

With the above ruling and directions, the Petition filed by BEST in Case No. 150 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman