

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 139 of 2008

In the matter of
**Petition for refund of excess recovery of Additional Supply Charge by MSEDCL
and violation of direction of the Commission by MSEDCL and for initiation of
proceedings under Section 142 of the Electricity Act 2003.**

**Shri V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S.B. Kulkarni, Member**

Chamber of Marathwada
Industries and Agriculture,
P-2 MIDC Area,
Station Road,
Aurangabad

... Petitioner

Vs.

Maharashtra State Electricity
Distribution Company Ltd.
(MSEDCL)
Prakashgad, 5th floor,
Bandra (East),
Mumbai-700 051

... Respondent

ORDER

Dated: August 17, 2009

Chamber of Marathwada Industries and Agriculture submitted a Petition under affidavit, before the Commission, on 9.02.2009, invoking Section 142 of the Electricity Act 2003 ("EA 2003"), alleging non compliance of directions of the Commission contained in its Orders dated 31.05.2008 and 20.06.2008 (MSEDCL Tariff Orders) by Maharashtra State Electricity Distribution Co. Ltd. ("MSEDCL") with respect to the refund of excess recovery of Additional Supply Charges.



2. The Petitioner prays as follows:

1. *Since neither the Commission nor Hon'ble Appellate Tribunal for Electricity has stayed refund of Additional Supply Charge (ASC), initiate proceedings as per the Section 142 of Electricity Act 2003, for non compliance of directions to refund excess recovery of Additional Supply Charges (ASC);*
2. *To direct MSEDCL to refund the excess amount of Additional Supply Charge (ASC) to the tune of Rs. 653.34 Crores immediately along with the interest @18% per annum from the due date with retrospective effect as per Order of the Hon'ble Commission dated 31st May 2008 and letter Ref. No. MERC/ MON/ IASC/ 453, dated February 21, 2008 addressed by MERC to the Director (Finance), MSEDCL, Mumbai;*
3. *Alternatively, direct MSEDCL to adjust the amount in energy bills and dues of the consumers and treat the amount as advance deposit out of the total refund to be made to the consumers as against the excess recovery of Additional Supply Charges (ASC).*

3. The Petitioner has alleged that MSEDCL has been charging Additional Supply Charges (ASC) to its consumers since October 2006. It states that the Commission has vetted the ASC over the period October 2006 to March 2007 and has directed MSEDCL in the Tariff Order; to refund the excess ASC recovered from the consumers on one to one basis. It alleges that MSEDCL is yet to refund any excess ASC and further states that the excess recovery has occurred due to the fact that MSEDCL has not purchased the quantum of costly power envisaged at the time of the Tariff Order, whereas the ASC has been recovered through the tariff in accordance with the approved ASC matrix.

4. The following points have been made by the Petitioner:

a) The exact additional amount available to MSEDCL for setting off against the base ARR will be known only after MSEDCL undertakes refund on one to one basis, which has to be done for FY 2006-07. Further, while truing up the expenses and revenue for FY 2006-07, the Commission has estimated that the additional amount available to MSEDCL for setting off against the base ARR of FY 2006-07 will be around Rs.427 Crores and hence consider this surplus to compute the revenue gap for FY 2006-07. The same will be adjusted once the actual amounts are known, at the times of the APR for FY 2008-09.

b) For FY 2007-08, MSEDCL estimated the provisional truing up requirement as Rs.403 Crores on the basis of the projected expenses and revenue for the year. The Commission's analysis of the truing up for the FY 2007-08 shows that MSEDCL has a surplus of Rs.756 Crores in FY 2007-08.

c) As in FY 2006-07, MSEDCL has also over recovered ASC to the extent of around Rs.1005 Crores in FY 2007-07, which has to be returned to the consumers on a one to one basis. The Commission has estimated that the additional amount available to



MSEDCL for setting off against the base ARR of FY 2007-08, is around Rs.768 Crores and hence considered this surplus to compute the revenue gap for FY 2007-07. The same will be adjusted once the actual amounts are known, at the time of ARR for FY 2008-09.

d) The ARR for FY 2007-08 and FY 2008-09 includes the expenditure on non costly power purchase as well as costly power purchase and that the Commission has not considered the applicability of the ASC.

5. The Petitioner states that the ASC was introduced in the context of the increasing need to procure additional costly power in order to mitigate load shedding and was equitably allocated to all regions and categories, while the costly power was allocated to certain categories, who were benefiting from reduction in load shedding and the expenditure on the procurement of costly power was recovered through ASC. It further states that the actual procurement of costly power by MSEDCL has been much lower than that estimated by the Commission in the Orders for FY 2006-07 and FY 2007-08, where ASC is recovered from the consumers every month in accordance with the ASC matrix, leading to situation where significant amount of over recovery of ASC is taking place.

6. The Petitioner claims that MSEDCL has till date, not refunded the ASC over recovery for the period of October 2006 to March 2007, and submits that this is confirmed by MSEDCL in its reply to a specific query from the Commission in this regard. The Petitioner further submits that the Commission's letter dated 21st February 2008, addressed to the Director (Finance), MSEDCL in regard to the vetting of Additional Supply Charge (ASC) and Incremental Additional Supply Charge (IASC) for the month of January to April 2007, clearly states as under:

“ Out of total excess recovery of Rs.785.24 Crores, the Commission vide its letter Ref.MERC/MON/IASC/07 dated May 3, 2007 directed MSEDCL to refund the excess recovered amount of Rs.131.9 Crores in the bill of May 2007. MSEDCL is hereby directed to refund the amount of balance excess recovery of ASC/IASC of Rs.653.34 Crores (Rs.78524 Crores – Rs.131.90 Crores) on a one to one basis to the consumers in the bill of March 2008. The refund of excess recovery of ASC and IASC should be made to the consumers on one to one basis after adjusting the base energy charges applicable for the relevant consumer category; else the energy will have been consumed without any charges being levied. The amount retained against base energy charges will be considered as income under non costly power ARR, under the truing up process for the relevant period. The details of the refund shall be submitted to the Commission by the end of the month”

7. The Petitioner also submits that the Order dated 31st March 2008 passed by the Commission in Case No. 72 of 2007 is reasoned and is a speaking order and is passed on the merits of the case and should thus be implemented. The Petitioner relies on Section



142 of the Electricity Act, 2003 to and submit that it is mandatory and obligatory on the part of MSEDCL to comply with the Order passed by the Commission.

8. The Respondent submitted its reply on 31st March 2009, stating that the issue of ASC is highly complex and complicated and that the Commission should be pleased to condone the lapses and omissions; if any, on MSEDCL's part. It requests the Commission to issue necessary directions to ensure one to one refund in accordance with the Order and that it would appreciate Commission's consultation in this regard. It states facts as under:

a) In 2006 the concept of ASC was introduced for the procurement of additional costly power to mitigate load shedding in the State and around 15.05.2007, the Commission issued vetting Order in respect of ASC/ InASC for which the total refund to consumers was calculated as Rs.303.53 Crores for the period of Oct.2006 to Dec. 2006.

b) In January 2007, refund of Rs.226.9 Crores was adjusted but this was not effected on one to one basis.

c) Around 13.11.2007, MSEDCL filed the APR Petition (Case No. 72 of 2007). On 31.05.2008, the Commission passed its operative Order. With a detailed Order that followed on 20.06.2008, the Commission withdrew the ASC concept and considered all the power purchase while computing the ARR and Tariff.

d) MSEDCL filed a Review Petition being Case No. 42 of 2008 against the Order dated 20.06.2008. The Commission allowed the Review Petition and passed an Order dated 10.12.2008, stating that it defers the refund of surplus ASC for the time being as the quantum of ASC is not exactly known. The Order further directed MSEDCL to submit a Petition indicating the category wise refund, total amount required to be refunded and the amount required to the ARR of the subsequent year.

e) MSEDCL submitted the Petition on 23.01.2009, being Case No. 144 of 2008, for consideration of above mentioned issues including refunding of ASC/ IASC on one to one basis. On 14.03.2009, both, the present Petition and MSEDCL's Petition in Case No.144 of 2008; came for consideration by the Commission.

9. MSEDCL thus submits that there is no wilful or deliberate disobedience of the Commission's Orders and that non compliance was due to complexity of ASC/ IASC. There was no specific mechanism for levy of IASC, which led to excess recovery as the rate of externally purchased power was very high, ASC rate was also high. It further submits that its intention was never to retain consumer's money.



10. It states that from May 2007 to February 2008, MSEDCL had regularly computed IASC as refund amount on a bi-monthly basis for the Commission's approval and that the vetting Order for the same is awaited. Since the Commission did the truing up of expenditure and revenue for FY 2007-08, MSEDCL is left with no surplus amount.

11. It further claims that there was double accounting error in calculation of revenue gap, after the Commission removed the concept of ASC/ IASC vide its Order dated 20.06.2008 and that on the Commission directing MSEDCL to file a fresh Petition, MSEDCL has filed the Petition after adjustment of base energy charges.

12. It submits that the refund amount mentioned for the period of FY 2006-07 has already been taken care of and that refund to the extent of one on one basis will be carried out as per the Commission's directives after the approval of the Petition in Case No. 144 of 2008.

13. After hearing the parties, the Commission is of the view that MSEDCL has indicated its willingness to refund the ASC and has filed a Petition in Case No. 144 of 2008 seeking directives from the Commission for the same. Thus, the present application does not attract Section 142 of the Electricity Act, 2003 and the issues regarding refund of ASC and interest on it shall be decided by the Commission in Case No. 144 of 2008.

In view of the above, the present petition stands disposed of.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P.B.Patil)
Secretary, MERC