

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 10 of 2007**

**In the matter of  
Application filed by MSEDCL initiating enquiry in respect of revocation /  
suspension of licence of MPECS**

**Shri. V.P. Raja, Chairman  
Shri. S. B. Kulkarni, Member  
Shri. V. L. Sonavane, Member**

**INTERIM ORDER**

**Date: April 01, 2010**

The Maharashtra State Electricity Distribution Company Ltd. (“MSEDCL”) has filed a petition *inter alia* seeking revocation of distribution license of Mula Pravara Electric Co-operative Society Ltd., (MPECS) due to nonpayment of electricity bills by MPECS. MPECS is deemed to be a licensee within the meaning of the first proviso of Section 14 of the Electricity Act, 2003 (“EA 2003”) engaged in the business of supply of electricity in terms of the license granted by the Govt. of Maharashtra in 1970 and renewed by Govt. of Maharashtra Resolution dated May 21, 1999. The main object of MPECS is to purchase electricity from MSEDCL (successor entity to MSEB) and distribute it to consumers in the area of operation of MPECS.

2. Certain facts brought on record by MSEDCL in the present petition significantly concern the financial position of MPECS. It has been submitted by MSEDCL that since October 1977, MPECS defaulted in making payments of the electricity supplied by the erstwhile MSEB. Further, it has been submitted by MSEDCL that there has been arrears amounting to Rs. 951.49 crores in respect of non-payment of electricity dues by MPECS to MSEDCL. It has been submitted that the arrears are increasing by around Rs. 12 crores every month thereby amounting to Rs. 144 crores every year.



3. The Hon'ble Bombay High Court, Nagpur Bench in its order dated April 30, 2003 in Writ Petition No. 3399 of 2000 relating to non-payment of dues to MPECS by various defaulters, as quoted by MSEDCL, observed that MPECS, in spite of accumulating arrears of somewhere around Rs. 5 crores per month, is still allowed to continue and operate. In the same order in para 9, the High Court had directed that MSEB could continue with the supply of electricity to MPECS till June 30, 2003 and if on that date, any arrears are found due for whatever reasons, it would be open for MSEB to disconnect electric supply to MPECS. In view of the above order dated April 30, 2003, the Government of Maharashtra (GoM) requested the Commission to consider the issue of viability of MPECS vis-à-vis continuity of MPECS as a licensee. Vide letter dated June 6, 2003, the GOM requested the Commission under Section 22(2)(p) of the erstwhile Electricity Regulatory Commissions Act, 1998 to examine as to whether and under what conditions MPECS should be allowed to continue its operation, and to make recommendations to GoM in the matter. The Commission had thereafter given its detailed findings and recommendations on the viability of MPECS. In the said advice to GoM, the Commission had stated that the total power purchase overdue of MPECS to MSEB as on March 31, 2003 including arrears was estimated to be around Rs. 381.27 crores. The advice also stated that the GOM, vide Order dated March 26, 2003, have committed around Rs. 116 crores as subsidy to MPECS, payable directly to MSEB in 3 annual installments, leaving arrears of around Rs. 265 crores unsettled.

4. MSEDCL has submitted that it had raised energy bill from the month of October 2006 on MPECS on the basis of the tariff determined by the Commission vide Order dated October 1, 2006 determining the ARR and tariff for wheeling of electricity and retail sale of electricity for MSEDCL. Also, the Commission, vide Order dated February 23, 2007 determined the ARR and Tariff of MPECS. Thereafter, it is submitted that in spite of notice being sent by MSEDCL to MPECS on March 22, 2007 about disconnection of electric supply, MPECS had still failed to pay the arrears of Rs. 951.41 crores.

5. Further, it has been submitted that due to the huge amount of arrears receivable from MPECS, MSEDCL in turn is defaulting in meeting its contractual obligations to diverse parties because amounts are blocked with MPECS.

6. It has been submitted by MSEDCL that, the condition under which the license of MPECS was renewed on May 21, 1999 was that MPECS would regularly pay the erstwhile MSEB the monthly electrical charges and the amount of arrears due to MSEDCL. Also, it stated that MPECS shall immediately pay to MSEDCL 25% of the arrears and shall pay the rest of the arrears in five equal installments per year, which MPECS failed to comply with. It has also been submitted that the renewed license also stipulated that MPECS will have to



execute the contract agreement with MSEDCL for the terms and conditions mentioned therein. But, although MSEDCL time to time requested MPECS to execute the agreement, MPECS avoided entering into such agreement.

7. MPECS in its reply dated 11.08.2007 has submitted that the arrears of Rs. 951.41 crores as stated by MSEDCL is exaggerated as it contains interest and delayed payment charge components. Also, it is submitted that the Commission in the past has recommended that a separate mechanism for treatment of past power purchase dues of MPECS need to be evolved. It has also been submitted that the failure to pay current dues is a result of an uneconomical and unviable bulk supply tariff.

8. MSEDCL in its reply dated 7.1.2008 has stated that the outstanding amount of Rs. 951.49 crores which is due to MSEDCL has now risen to around Rs. 1150 crores. MSEDCL has further stated that the dues of MPECS starting from October 1977 have mounted to the tune of Rs. 1820 crores approx till September 2009 in respect of non-payment of electricity dues.

9. The above as well as various other facts and submissions have been taken on record.

10. During the hearing held on 15-3-2010, Ms. Deepa Chawan, and Shri. Kiran Gandhi, Advocates appeared on behalf of MSEDCL. Shri Sanjay Sen, Advocate appeared on behalf of MPECS along with Shri V.K. Pandit, Managing Director of MPECS. Shri S.R. Nargolkar, Advocate appeared on behalf of the Government of Maharashtra. Counsel of MPECS submitted that a draft Business Plan has been prepared and they will be able to submit the same for consideration of the Commission, within a week's time. Further, it was submitted that MPECS is in touch with the NTPC and Ministry of Power for allocation of power for MPECS from unallocated quota and meetings have also been scheduled. Counsel of MPECS submitted he requires some time to submit documents in this regard. The Counsel of GoM submitted that he has already communicated to the Chief Secretary of Maharashtra, detailing what had transpired in the earlier hearings and requirement of submission of Govt's affidavit in accordance with the Transaction of Business Rules of GoM. However, he has so far not received any instruction from the Government of Maharashtra. During the hearing, the Commission gave the following directions:

- a) Parties to verify and file response on the veracity of the enquiry report submitted by the Commissioner (Cooperation), Government of Maharashtra vide his letter dated 27.10.2002 to the Government Pleader, Nagpur High Court, copies of which were handed over to the parties during the hearing. The parties to also file



their response as to what happened thereafter so far as the GoM and the Hon'ble High Court is concerned;

- b) MSEDCL and the GoM should verify the documents submitted by MPECS, in the Registry of the Commission on 12.03.2010 and file their response / submission;
- c) The Engineers of MSEDCL, as well as the Regulatory Officers / Directors of the Engineering Division of the Commission should verify the various bills submitted by MPECS and compare the Sanctioned Load / Contract Load of the consumers with the amounts showed in the bills and to submit whether there is a correlation between the Sanctioned load and the bill amount;
- d) Secretary, MERC should write a letter to the Secretary, Co-operation asking as to what action has been taken by the Commissioner Corporation and Co-operative department of the Government of Maharashtra with regard to the aforesaid enquiry report submitted by the Commissioner (Cooperation).
- e) The parties to file before the Commission copies of the complete set of the paper books with the entire set of pleadings and orders relating to Writ Petition No. 3399 of 2000 and Writ Petition No. 3403 of 2002 filed before the Hon'ble High Court, Nagpur Bench;
- f) The Government of Maharashtra shall before the next date of hearing, file its reply in the present case as directed in the order dated 8<sup>th</sup> February 2010 and record of proceedings of the hearing held on 2<sup>nd</sup> March 2010.

On a request from the Counsel appearing for MSEDCL regarding the information on payment mechanism followed by MPECS, the Commission directed MPECS to provide all such details and to extend co-operation to MSEDCL's Counsel.

11. MSEDCL vide its letter dated March 29, 2010 to the Commission, has submitted its reply on affidavit in the matter in consonance with the directions given by the Commission on March 15, 2010. By the said reply, MSEDCL has addressed the various information sought by the Commission from MSEDCL. Their averments are as follows:



- a) It is submitted that the enquiry report has been submitted by the Commissioner, Government of Maharashtra under the cover of his letter dated October 27, 2002 pursuant to the directions passed by the Nagpur Bench of the Bombay High Court in Writ Petition No. 3399 of 2000 on September 19, 2002. In this regard, it is submitted that the Report reveals that MPECS is incurring huge losses per year due to the difference in the rate of purchase of and sale of electricity, which is resulting in a precarious financial condition and therefore being liable for mis-utilisation of funds. It is submitted by MSEDCL that the High Court in its Order dated October 31, 2002 observed that MPECS enjoyed political patronage to the extent that the authorities have overlooked and neglected to take any appropriate action w.r.t. MPECS. The High Court had also directed the GoM to take appropriate actions in accordance with law against MPECS.
- b) It is further submitted that the erstwhile MSEB by letter dated October 29, 2002 had offered a package in respect of the arrears, but was of no avail. This fact had been recorded by the High Court in its order dated December 3, 2002 and the High Court clarified that erstwhile MSEB was free to disconnect the power supply if MPECS fails to pay the electricity bills as per the package. In this order, the High Court had noted that MPECS have accumulated huge arrears since the time of grant of license and from time to time, and that the GoM had renewed the license without making any efforts to make up the deficiency. The High Court had even made it clear that if the Cabinet does not take any decision in the matter for clearing the arrears of MPECS within a period of 15 days, it is open to the erstwhile MSEB to disconnect the power supply of MPECS. It is submitted that MPECS and GoM had approached the Supreme Court of India thereafter.
- c) Further, it is submitted that the High Court vide order dated April 30, 2003 had observed that the financial capacity of MPECS is weak and it is not economically viable. The GoM was directed to examine the issue and take some decision or otherwise to revoke the license of MPECS and acquire the society, which can then be handed over to MSEB. Also, the High Court in its order dated April 15, 2004 had directed the GOM to examine and take a decision in the matter on the option suggested by the Commission on or before April 30, 2004.
- d) With reference to the verification of the bills submitted by MPECS and the co-relation with the Sanctioned Load / Contract Demand with the bill amount, MSEDCL has submitted that the sanctioned load of LT consumers is mentioned on the bills



without any supporting documents, for which the correctness cannot be ascertained. Further, the sanctioned load of HT consumers is not mentioned on the bills, which is mandatory. Only the connected load and contract demand are mentioned.

- e) It is submitted that MPECS have been billing at the old rate and not as per the Commission's Tariff Order dated February 23, 2007 in Case No. 51 of 2005, which is presently in force. Also, in some cases, the tariff category applied by MPECS to the consumers is not justifiable such as residential / agricultural tariff is applied to college / education institutions instead of applying the commercial tariff.
- f) MSEDCL has further submitted that they have initiated steps to obtain copies of the pleadings in the Writ Petition No. 3399 of 2000, which they will file on record before the Commission.
- g) MSEDCL has submitted that in response to their email dated March 15, 2010 asking for information from MSEDCL in respect of their billing and other details, MPECS has replied vide their email dated March 22, 2010 which MSEDCL has filed alongwith its reply.

12. During the hearing held on 30.03.2010, Mr. JJ Bhatt, Senior Advocate appearing for the Govt of Maharashtra submitted that he needs some time to make his submissions. Counsel appearing for MSEDCL submitted that a formal appearance in the matter should be made by GoM in accordance with the business rules of the Govt. The Commission asked Counsel for GoM to be sure as to whether he would be representing the Cooperation Dept. or the Energy Dept. The Commission also enquired as to what action has been taken by the Cooperation Dept. on the reports, and as to the details of the proceedings of the Nagpur Bench. Counsel for MPECS submitted that there appears to be separate proceeding by some other party before the Aurangabad Bench. In that proceeding, an order was passed by which this particular report was stayed. He also submitted that GoM was a party, but MPECS was not a party in that proceeding. He submitted that this report should not be made a part of the present proceedings which could continue in any case. He submitted that once he finds out about the said report he would address the issues raised therein.

13. Counsel appearing for MSEDCL submitted that they have written to MPECS regarding the Commission's direction that from April 1, 2010 a viable payment security mechanism should be put in place by MPECS. She submitted that MSEDCL is yet to receive



a response to this from MPECS. She said that MSEDCL's engineers would need to obtain information from the office of MPECS, by making visits whereafter a detailed report could be placed before the Commission. As regards the defaulters of MPECS it was submitted that there are two entities who were the primary defaulters in the year 2002. They continue to be so even today.

14. Counsel appearing for MPECS submitted that they are not in a financial position to put in place a payment security mechanism. About the proposed visit by MSEDCL Officers to the offices of MPECS, it was stated there is no power under law under which MSEDCL Officers can come and visit the offices of MPECS. It was submitted that MPECS will furnish whatever documents MSEDCL requires of them. It was submitted that this investigation has to be done only by the Commission.

15. In view of the above, an enquiry is required to be conducted to ascertain whether MPECS is in default in doing any of the duties and obligations cast on it by or under the Act or the rules and regulations made thereunder and also terms and conditions of its license and also to ascertain whether it is in a position to fully and efficiently discharge the duties and obligations imposed on it by its license on a long term basis. The financial position of MPECS needs to be examined and whether it is able to fully and efficiently discharge the duties and obligations imposed on it by its license. The Commission is of the view that efforts are required to be made to collect and analyze the data, information in respect of the financial and other performance of MPECS. What is required to be found out is as to whether MPECS is financially capable of discharging their liability towards electric bills to be paid to MSEDCL and as to whether they solely depend on the various concessions and subsidies, which according to them is to be offered by the State Government. What is also required to be examined is as to whether it would be in public interest that inspite of the fact that arrears of MPECS is accumulating to somewhere around Rs. 12 crores every month that they should be allowed to operate and continue. While MPECS had admitted that due to their consumer mix, they are unable to recover from their consumers the tariff and consequently there remains an unrecovered revenue gap of approximately Rs. 2/- per unit, MPECS has also submitted that the Tariff Order issued by the Commission in respect of MPECS cannot be implemented by them in its present form. MPECS has further **stated** that its books continue to reveal huge deficits and unpaid dues of MSEDCL. In the notes forming part of accounts for the year ended March 31, 2009, the amount shown under Current Liabilities for 2007-08 is Rs. 13,68,32,01,888.35/- and for 2008-09 is Rs. 16,95,08,74,331.70/-. The later is also reflected in the Balance Sheet as on March 31, 2009. As a consequence of this, what is



required to be enquired into is as to whether the functioning of MPECS is financially viable and as to whether its license is required to be revoked in larger public interest.

16. Whereas, in the circumstances, it has been decided to hold an enquiry under Section 19 of the EA 2003 to look into the affairs of MPECS And whereas Section 97 of the EA 2003 empowers the Commission to delegate to any person the function inter alia of making an enquiry under Section 19 of the EA 2003. And whereas the Commission considers that an Enquiry team should be appointed to look into the truth of imputations of lapses against MPECS. Therefore, in view of the issues as stated above, the same are required to be enquired into and for which the Commission hereby entrusts Administrative Staff College of India (ASCI),Hyderabad with the work of conducting an enquiry into the affairs of MPECS in light of the brief background of the issues and concerns relating to MPECS. The enquiry shall inter alia cover all the points raised in Case No. 10 of 2007 and shall be done to ascertain as to whether MPECS suffers from financial mismanagement and as to whether any tactics are being used to avoid making payments to MSEDCL. ASCI will enquire as to whether MPECS is recovering tariffs as determined by the Commission and as to whether it has taken action under law against defaulters or concessions have been granted to consumers despite the inability to pay the arrears to MSEDCL. ASCI will also enquire as to whether the MPECS has launched any specific schemes to serve its members or office bearers despite its weak financial health. Details of each and every subsidy given by the State Govt. to MPECS shall be examined and its utilization and whether the financial reports of MPECS show the true and correct position in this regard. Instances of financial mismanagement, siphoning of funds, if any, and also irregularities shall be enquired into. ASCI will also enquire whether the electricity purchased by MPECS from MSEDCL on the basis of units are distributed on the same basis to its consumers and as to whether there is any discrepancy on this account which results in any losses that are attributable to MPECS.

17. The enquiry shall be conducted by examining the records of MPECS and also by giving opportunity to the Chairman and Directors of MPECS to submit their say. The enquiry report shall be submitted within 2 months from the date of this order. MPECS is directed to cooperate with ASCI for making the enquiry and to make available all data as required by them.

18. The observations contained in this order are prima facie and shall not affect the merits of the case.



19. In the meanwhile the parties are directed to submit all the documents which they have been asked to submit as recorded in this order. There should not be any further delay. MPECS will file the business plan urgently. The GoM's stand in the matter shall be filed before the next date of hearing. Matter posted for 12th April, 2010.

This order shall be communicated to all the constituents of the enquiry and the concerned officers.

(V. L. Sonavane)  
Member

(S. B. Kulkarni)  
Member

(V. P. Raja)  
Chairman



(K. N. Khawarey)  
Secretary, MERC