

**Before the
MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION**

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Case No. 61 of 2009

**In the matter of
Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition
for recovery of additional capacity charges of Ratnagiri Gas and Power Pvt. Ltd.**

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

ORDER

Dated: December 03, 2009

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition under affidavit before the Commission on September 30, 2009, seeking recovery of additional capacity charges payable to M/s Ratnagiri Gas and Power Pvt. Ltd. (RGPPL).

2. The main prayers in the Petition filed by MSEDCL are as follows:
- a. *“The Hon’ble Commission may be pleased to invoke powers conferred under Section 62 (4) of the Electricity Act, 2003 read with Regulation 11 of the MERC (Terms & Conditions of Tariff) Regulations, 2005 and may further be pleased to permit the Applicant to recover liability arising out of the claim of RGPPL as per Appellate Tribunal’s Order dated 25th August 2009, annexed as Exhibit B to this Petition;*
 - b. *The Hon’ble Commission may for the purpose consider to permit the Applicant to levy & recover an additional charge, over & above the prevailing tariff, till such time the Hon’ble Commission determines the Aggregate Revenue Requirement of the year 2010-11 and tariff to be charged to the consumers for the year FY 2010-11;*



- c. *Pending final disposal of this Petition, the Hon'ble Commission may immediately pass an interim order permitting the Applicant to levy & recover an appropriate additional charge from all the consumers (except BPL Domestic & Agricultural) over & above the prevailing tariff with effect from the billing month of September 2009;*
- d. *The Hon'ble Commission may be pleased to consider the Petition for a favourable dispensation;*
- e. *The Hon'ble Commission may also be pleased to condone errors/omission, if any, and may please give an opportunity to rectify the same & to file additional data, information or to amend/alter/modify the Petition as may be necessary.*

3. MSEDCL submitted that the Commission issued its Order dated August 17, 2009 in Case No. 116 of 2008 on the Annual Performance Review (APR) for FY 2008-09 and determined the tariff for FY 2009-10, which MSEDCL was in the process of implementing.

4. MSEDCL submitted that the Commission, in its above-said APR Order in Case No. 116 of 2008, has approved a power purchase quantum of 7500 MU from RGPPL for FY 2009-10 at an average rate of Rs. 3.624/kWh (i.e., Rs. 2718 Crore for 7500 MU) inclusive of capacity charge of Rs. 849 Crore. MSEDCL submitted that the Commission has considered the capacity charge based on fixed charge as approved by the Central Electricity Regulatory Commission (CERC) for FY 2008-09 with an escalation of 5%.

5. MSEDCL submitted that the Government of India (GoI) has constituted an Empowered Group of Ministers of Government of India (EGOM) to study the various issues related to RGPPL. The said EGOM had several meetings to resolve the vexed issue of revival of RGPPL in a viable manner, which is also critical for substantially meeting the power supply needs of the State of Maharashtra. MSEDCL submitted that after extensive discussions amongst various stakeholders, the EGOM/Secretary (Power), GoI in February/March 2009 finalised the framework for ensuring long-term viability of RGPPL, and subsequently, approval of Rs. 2.65/kWh as capacity charge was conveyed by Government of Maharashtra (GoM) to MSEDCL, subject to the approval of CERC.



6. RGPPL filed a Petition before CERC (numbered as Petition No. 96 of 2007) for approval of the capacity charge and energy charge. CERC disposed of the Petition vide its Order dated June 4, 2009 and approved the fixed charge for FY 2007-08 and FY 2008-09. MSEDCL submitted that the said CERC Order in Petition No. 96 of 2007 was applicable, when the Commission's Order in Case No. 116 of 2008 was issued.

7. MSEDCL submitted that RGPPL, being aggrieved by the said CERC Order dated June 4, 2009, approached the Appellate Tribunal for Electricity (ATE) and filed an Appeal (numbered as Appeal No. 130 of 2009), along with the Interlocutory Application No. 243 of 2009.

8. MSEDCL added that the ATE disposed of the said Interlocutory Application by its Order dated August 25, 2009, thereby inter-alia permitting RGPPL to provisionally and on adhoc basis bill and recover from MSEDCL capacity charge at the rate of Rs. 2.24/kWh with effect from April 1, 2009.

9. MSEDCL submitted that RGPPL, relying on the said ATE Order dated August 25, 2009, has raised a supplementary invoice for capacity charges for the period from April 1, 2009 to August 31, 2009, amounting to Rs. 341.29 Crore.

10. MSEDCL further submitted that considering the impact of the said ATE Order dated August 25, 2009, MSEDCL has estimated that the payment of capacity charge at the rate of Rs. 2.24/kWh would result into additional payment of Rs. 80 Crore per month to RGPPL, from September 2009 onwards.

11. MSEDCL submitted that in its APR Petition in Case No. 116 of 2008, MSEDCL had submitted that financial restructuring of RGPPL is likely to result in a tariff higher than the tariff considered in the APR Petition, and had also requested the Commission's approval for any such additional cost, which might arise out of the financial restructuring exercise as and when it is finalised.

12. MSEDCL submitted that the Commission's APR Order in Case No. 116 of 2008 does not enable MSEDCL to generate the requisite resources necessary to discharge the liability on account of the said ATE Order and discharging the payment liability of Rs. 341.29 Crore in one stroke and further payment of around Rs. 80 Crore per month is very difficult and the same would adversely affect the cash flow of MSEDCL. MSEDCL submitted that it needs an immediate compensation for the same.



13. MSEDCL submitted that RGPPL has communicated that MSEDCL should pay the dues immediately as RGPPL has to meet its debt service obligations. RGPPL has added that in case of inability to service the debt, it would be difficult for RGPPL to arrange funding for restoration of unavailable machines as well as funding for working capital for maintaining its current operations.

14. MSEDCL requested the Commission to allow MSEDCL to recover such amount from its consumers by way of levy of a separate charge.

15. MSEDCL submitted that since the above liability has not been considered in the APR Order in Case No. 116 of 2008, the same may be considered as an extraordinary situation and the Commission may consider the present Petition in exercise of powers conferred under Section 62 (4) of the Electricity Act, 2003 (EA 2003) read with Regulation 11 of the MERC (Terms & Conditions of Tariff) Regulations, 2005.

16. The Commission, vide its notice dated October 1, 2009, scheduled the hearing in the matter on October 8, 2009, and directed MSEDCL to serve a copy of its Petition to the four Consumer Representatives authorised on a standing basis under Section 94 of the EA 2003.

17. During the hearing, Shri. Shantanu Dixit, representing Prayas Energy Group, one of the authorised Consumer Representatives, submitted that the ATE has scheduled the final hearing in the matter in October 20, 2009 and suggested that the Commission should wait for the final outcome of the said hearing before disposing off the current Petition filed by MSEDCL.

18. Shri. Shantanu Dixit further submitted that MSEDCL is still in the process of implementing the revised tariff approved by the Commission in the APR Order in Case No. 116 of 2008 and suggested that the Government of Maharashtra (GoM) should be made a party to the present Petition.

19. Shri. Shantanu Dixit further requested the Commission to hold a public hearing in the matter considering the significant impact of Rs. 341.29 Crore for the period from April 2009 to August 2009 and Rs. 80 Crore from September 2009 onwards.

20. Subsequently, based on the analysis of the Petition, the Commission vide its letter October 22, 2009 directed MSEDCL to submit certain additional information, which was submitted by MSEDCL vide its letter dated November 4, 2009 along with a copy of the Power Purchase Agreement (PPA) signed with RGPPL on April 10,



2007 and subsequently signed Supplementary Agreements (No. 1, 2, 3 and 4) on July 18, 2007, July 18, 2007, May 21, 2009 and September 2009, respectively.

21. MSEDCL reproduced the relevant para of the signed PPA, which stipulates payment of capacity charge @ Rs. 1.016/kWh as under:

“Accordingly, for present fiscal year (2007-08), MSEDCL would pay capacity charge of 101.6 paise per kWh including the interest on working capital. Based on above capacity charges of 101.6 paise per kWh, the total annual capacity charges work out to Rs. 1530.83 Crs. per annum. Full capacity charges shall be payable at 80% of 2150 MW (i.e., 1720 MW) declared capacity on annualized basis and for declared capacity lower than this shall be recovered on pre rate basis after CoD of Block(s)/Station. MSEDCL shall pay capacity charges in proportion to the allocation of power from RGPPL.”

22. MSEDCL submitted the detailed computations for determination of the capacity charge @Rs. 1.016/kWh, as under:

a. O&M expenses	-	Rs. 0.314/kWh
b. Depreciation	-	Rs. 0.200/kWh
c. Interest Charges	-	Rs. 0.298/kWh
d. Return on Equity	-	Rs. 0.129/kWh
e. Interest on Working Capital	-	Rs. 0.075/kWh
f. Total	-	Rs. 1.016/kWh

23. MSEDCL submitted the detailed computation for considering the impact of Rs. 341.29 Crore for the period from April 1, 2009 to August 31, 2009 and Rs. 80 Crore per month for the period from September 2009 and onwards, as under:

Sr.No.	Month	Unit Billed	Capacity Charges	
			Rate (Rs/kwh)	Amount (Rs.)
1	Apr-09	333812351	1.224	408586318
2	May-09	509896708	1.224	624113571
3	Jun-09	632610159	1.224	774314835
4	Jul-09	655582521	1.224	802433006
5	Aug-09	657472703	1.224	804746588
6	TOTAL	2789374442		3414194318

24. MSEDCL further submitted that RGPPL is currently generating around 920 MW of power per day, i.e., 650 MU per month and accordingly, the additional burden on account of increase in capacity charge works out to Rs. 80 Crore per month (650 MU @ difference of Rs. 2.24/kWh and Rs. 1.016/kWh, i.e., Rs. 1.224/kWh).



25. Having heard MSEDCL and other stakeholders, and after considering the material placed on record, the Commission is of the view as under:

26. Section 62 (4) of the Electricity Act, 2003, reads as under:

“No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.”

27. Regulation 11 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, reads as under:

“11.1 No tariff or part of any tariff may be ordinarily amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as specified in Regulation 82.

11.2 The Commission, may, after satisfying itself for reasons to be recorded in writing, allow for the revision of tariff...”

28. Considering the fact that the present Petition has been filed as a consequence of the decision of the ATE and given the fact that the ATE decision dated August 25, 2009 issued in Interlocutory Application No. 243 of 2009 has a significant impact on the procurer, viz., MSEDCL, the Commission has admitted MSEDCL’s Petition in this regard.

29. The ATE, in its Order dated August 25, 2009, has ruled as under:

“The relevant prayer for the interim order which has been made by the learned counsel for the Appellant is given in paragraph 7 of the affidavit filed on 21.08.2009 which is reproduced below:

“7. In the facts and circumstances mentioned herein above the Appellant respectfully submits that pending the decision in the above appeal the Appellant may be allowed to provisionally and on an adhoc basis bill and recover from the second respondent tariff of Rupees 2.24 per Kwh and further be allowed to treat the amount of Rs. 420 crores as regulatory asset, subject to all appropriate adjustments to be undertaken in the tariff for the period up to 31st March, 2009 and also in the tariff which may be finally determined for the period 1st April 2009 onwards”



...

Accordingly, the same is ordered. As requested by the learned counsel for the Central Commission, it is made clear that this interim arrangement through this interim Order is subject to the outcome of this Appeal pending before this Tribunal.”

30. As regards the contention that the Commission should await the final decision of the ATE on the Appeal filed by RGPPL, it should be noted that the ATE Order dated August 25, 2009 in Interlocutory Application No. 243 of 2009 has already allowed RGPPL to bill MSEDCL at the rate of Rs. 2.24/kWh, pending the final dispensation in the matter. Hence, awaiting ATE's final Order would amount to non-implementation of its interim Order. Hence, the Commission has allowed MSEDCL to recover the impact of the ATE Order through this Order.

31. As regards the contention that the Government of Maharashtra (GoM) should be made a party to the present Petition, the Commission is of the view that GoM has nothing to do in this matter as it is a tariff issue and the Agreement is between RGPPL and MSEDCL.

32. As regards the contention that the Commission should hold a Public Hearing in the matter considering that this impacts the tariff of the consumers, the Commission is of the view that although this is a tariff matter, a Public Hearing is not required to be held, as the recovery of increase in power purchase cost on account of the Order of the ATE is in the nature of a Statutory due/payment and there is no discretion available. Further, in the above-referred Tariff Order, the Commission had considered the cost of power purchase from RGPPL in accordance with the then effective CERC Order on RGPPL tariffs, and which has subsequently been challenged by RGPPL before the ATE, and the ATE has given an Interim Relief to RGPPL.

33. As regards the payment of capacity charges on per unit basis, MSEDCL confirmed that RGPPL bills the capacity charges on per unit basis. The Commission also observes that the relevant para in the PPA specifically mentions payment of capacity charge on per unit basis only for FY 2007-08. Further, CERC has determined the Annual Fixed Charge (AFC) for RGPPL vide its Order dated June 4, 2009 in Petition No. 96 of 2007 and also directed RGPPL to adjust the provisional billing of tariff in accordance with the approval of CERC. Moreover, the CERC Tariff Regulations do not specify recovery of AFC on per unit basis, and the AFC has to be levied in terms of Rs. Crore per month. Hence, MSEDCL is directed to take up this matter with RGPPL and the relevant authorities, to ensure that all payments for the



purchase of power are made in accordance with the PPAs approved by the appropriate authority, wherever applicable.

34. As regards the approved fixed charge for purchase from RGPPL for FY 2009-10, the Commission, in its APR Order in Case No. 116 of 2008, stipulated as under:

“...For projecting the energy availability from RGPPL, the Commission has considered the energy availability of 7500 MU for FY 2009-10 as projected by MSEDCL. For projecting the power purchase cost from RGPPL, the Commission has considered the variable charge of Rs 2.43/kWh considering the actual purchase rate for FY 2008-09 and an escalation of 3% and capacity charge of Rs 849 Crore based on the fixed cost approved by CERC for FY 2008-09 with an escalation of 5%. Accordingly, the Commission has considered the expense on purchase of 7500 MU from RGPPL at Rs 2718 Crore for FY 2009-10.”

However, it is clarified that in the above-referred extract of APR Order, the capacity charge of Rs. 894 Crore has been inadvertently mentioned as Rs. 849 Crore, though for all subsequent computations and determination of ARR for MSEDCL for FY 2009-10, the amount of Rs. 894 crore has been considered.

Accordingly, the Commission clarifies that the approved fixed charge for purchase from RGPPL for FY 2009-10 should be read as under:

Particulars	Capacity Charge	Purchase Quantum	Energy Charge	Energy Charge	Total
	Rs. Crore	MU	Rs./kWh	Rs. Crore	Rs. Crore
	1	2	3	4=(2x3)/10	5=1+4
RGPPL	894.10	7500.00	2.43	1823.85	2717.95

A. Impact of the ATE Order on the Power Purchase Cost for FY 2009-10

35. As regards MSEDCL’s request to approve the impact of Rs. 341.29 Crore for the period from April to August 2009 in accordance with the ATE Order dated August 25, 2009, the Commission has approved the recovery of the impact by way of Additional Charge to be levied to consumers. However, the Commission observes that MSEDCL has considered the difference between interim tariff approved by the ATE in its Order dated August 25, 2009 and the rate as billed by MSEDCL (i.e., Rs. 1.016/kWh) for the said period.



36. As discussed above, the Commission has already approved the fixed charges of Rs. 894 Crore for FY 2009-10, which has been considered while approving the Aggregate Revenue Requirement and tariff for FY 2009-10. Hence, for computing the impact of the said ATE Order dated August 25, 2009, the difference between the fixed charges approved by the Commission in the APR Order and the fixed charges now permitted for recovery by the ATE needs to be considered, rather than the difference vis-a-vis the actual payments made by MSEDCL.

37. Moreover, the Commission has already approved 7500 MU for power purchase quantum for purchase from RGPPL in FY 2009-10, hence, the impact of the ATE Order dated August 25, 2009 has been computed based on the approved power quantum. Further, the Commission also obtained the details of amount payable for the period from April 1, 2009 to September 30, 2009 and has accordingly considered the same while working out the impact. The Commission's working in this regard is shown in the Table below:

Sl. No.	Particulars	Unit	Amount
1	Capacity Charge Approved in Case No. 116 of 2008	Rs. Crore	894.10
2	Approved power purchase quantum in Case No. 116 of 2008	MU	7500.00
3	Capacity Charge Payable @ Rs. 2.24/kWh (2=2x2.24/10)	Rs. Crore	1680.00
4	Difference to be allowed (4=3-1)	Rs. Crore	785.90

38. As observed from the above Table, the impact of the ATE Order dated August 25, 2009 in Interlocutory Application No. 243 of 2009 for FY 2009-10 works out to Rs. 785.90 Crore, as against the impact of Rs. 901.29 Crore estimated by MSEDCL for FY 2009-10 (i.e., Rs. 341.29 Crore for the period from April to August 2009 and Rs. 80 Crore per month for the period from September 2009 onwards).

39. For recovery of the above-computed impact of Rs. 785.90 Crore, the Commission has computed the Additional Charge payable by consumers in the remaining four months of FY 2009-10 as detailed below, such that MSEDCL recovers the additional amount of Rs. 785.90 Crore over the period from December 2009 to March 2010. The Commission has considered the monthly sales in proportion to the monthly power purchase as approved in the APR Order in Case No. 116 of 2008. The summary of the sales considered for working out the Additional Charge is shown in the Table below:

Particulars	Unit	April	May	June	July	August	September	October	November	December	January	February	March	Total
Power Purchase	MU	6354	6326	8160	6306	6442	7927	6536	6519	8356	6696	6533	8488	84641
Sales	MU	4707	4686	6044	4671	4772	5872	4841	4829	6190	4960	4839	6287	62696



40. The summary of the approved Additional Charge is shown in the Table below:

Particulars	Unit	Amount
Difference to be allowed for FY 2009-10	Rs. Crore	785.90
Sales for December 2009 to March 2010	MU	22276
Additional Charge	Rs./kWh	0.3528

Thus, the Commission permits MSEDCL to recover the impact of the ATE Order dated August 25, 2009 in Interlocutory Application No. 243 of 2009 by way of Additional Charge to the extent of Rs. 785.90 Crore for FY 2009-10 in the remaining months of the year, i.e., December 2009 to March 2010 @ 35.28 paise/kWh to be billed to consumers of MSEDCL.

B. Impact of the ATE's final Judgment in Appeal No. 130 of 2009

41. As regards any under/over recovery in the cost of power purchase from RGPPL on account of ATE's final Judgment to be issued in the Appeal No. 130 of 2009, the Commission directs MSEDCL to inform the Commission regarding the impact of the same, within two weeks of issue of the ATE Order, as and when it is issued.

With this Order, the Commission disposes of MSEDCL's Petition in Case No. 61 of 2009.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC