

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 63 of 2009

In the matter of
Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition
seeking review of Commission's Order dated August 17,
2009 in Case No. 116 of 2008

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

ORDER

7th January, 2010

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Review Petition on September 23, 2009 seeking review of the Commission's Order dated August 17, 2009 in Case No. 116 of 2008 in respect of Truing up for FY 2007-08, Annual Performance Review for FY 2008-09 and determination of Aggregate Revenue Requirement (ARR) and Tariff for FY 2009-10, under Regulation 95 of the Maharashtra Electricity Regulatory Commission (MERC) (Conduct of Business) Regulations, 2004.

2. Under the said Petition, MSEDCL prayed as under:
- a. *"The Hon'ble Commission may be pleased to admit the Review Petition;*
 - b. *The Hon'ble Commission may permit review of the Order dated 17th August 2009 passed by the Hon'ble Commission in Case No. 116 of 2008;*
 - c. *Accordingly the Hon'ble Commission may be further pleased to re-determine the tariffs to be levied / applied for sale of electricity to different categories of the consumers during the year FY 2009 – 10;*

- d. *Since the Hon'ble Commission has passed the said Order dated 17th August 2009 after due public hearing process, the Hon'ble Commission may permit review of the said Order without any further public hearing;*
- e. *The Hon'ble Commission may please condone any inadvertent omissions / errors / short comings in the present Review Petition and may further permit the Review Petitioner to add / modify / change / amend / alter the present Review Petition and to make further submissions as may be required during the proceedings;*
- 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 Review Petition."*

3. MSEDCL submitted that it had carried out detailed analysis of the Commission's APR Order dated August 17, 2009 in Case No. 116 of 2008, and contended that there were some conceptual errors in the said APR Order, as summarised below:

1. Consideration of Surplus on account of Provisional True-up for FY 2008-09

4. MSEDCL submitted that the Commission, in its APR Order, approved the Aggregate Revenue Requirement (ARR) of Rs. 23,111 Crore for FY 2008-09 as against Rs. 24,875 Crore estimated by MSEDCL. MSEDCL added that the Commission computed the provisional Revenue Gap for FY 2008-09 at Rs. 981 Crore, in its APR Order. Further, while estimating the revenue gap for FY 2008-09, the Commission considered Rs. 214 Crore as surplus from the truing up of FY 2006-07. MSEDCL contended that the Commission might have considered the said surplus of Rs. 214 Crore based on the Commission's Order dated June 20, 2008 in Case No. 72 of 2007, and has not considered its own Order dated December 10, 2008 in Case No. 42 of 2008, wherein the Commission clarified that it had apparently done a double accounting of the revenue on account of Additional Supply Charge (ASC) for FY 2006-07, which resulted in MSEDCL's revenue requirement for FY 2008-09 being under-stated by Rs. 427 Crore.

5. MSEDCL requested the Commission to rely upon its Order in Case No. 42 of 2008, and review its Order in Case 116 of 2008 in this context.

2. Distribution Loss Achievement and sharing of efficiency gains thereof

6. MSEDCL submitted that in accordance with the provisions of the Maharashtra Electricity Regulatory Commission (MERC) (Terms and Conditions of Tariff) Regulations, 2005, MSEDCL was entitled to retain one-third of the amount of efficiency gains, with another one-third being passed on to the special reserves.

7. MSEDCL contended that the Commission, in its APR Order, principally approved the same, and computed the efficiency gains in this regard as Rs. 528.50 Crore, by considering the additional sales that have become possible due to lower distribution loss, at the actual average billing rate. MSEDCL added that the Commission, in its APR Order, stipulated that one-third of the total efficiency (i.e., Rs. 176.20 Crore) should be used for the purpose of refund of Regulatory Liability Charge (RLC), instead of parking the above said one-third amount into the special reserve.

8. MSEDCL submitted that Regulation 19 of the MERC Tariff Regulations stipulates as under:

“19: Mechanism for Sharing of gains/losses on account of controllable factor:

..... “19.1 The approved aggregate gain to the Generating Company or Licensee on account of controllable factors shall be dealt with in the following manner:

(a) One-third of the amount of such gain shall be passed on as a rebate in tariffs over such period as may be specified in the Order of the Commission under Regulation 17.10;

(b) In case of a Licensee, one-third of the amount of such gain shall be retained in a special reserve for the purpose of absorbing the impact of any future losses on account of controllable factors under clause (b) of Regulation 19.2;and

(c) The balance amount of gain may be utilized at the discretion of the Generating Company or Licensee.

...”

9. MSEDCL stated that the directive of the Commission in its APR Order to utilize one-third of the total efficiency gain (i.e., Rs. 176.20 Crore) for the purpose of refund of Regulatory Liability Charge (RLC), was not in accordance with Regulation 19 of the MERC Tariff Regulations and prima-facie amounted to either violation or amendment of the said provisions. MSEDCL further submitted that the RLC could neither be treated as a ‘loss’ nor as ‘future loss’ on account of controllable factors.

10. MSEDCL submitted that though the Commission was competent to alter / amend / modify any of the Regulations framed by the Commission in exercise of powers vested in it under the EA 2003, MSEDCL was of the view that for such purpose, the Commission needs to initiate different proceedings with an opportunity being given to all stakeholders.

3. Distribution Loss for FY 2009-10

11. MSEDCL submitted that the Commission, in its Order dated August 17, 2009 in Case No. 116 of 2008, determined the tariff to be charged in FY 2009-10, by considering a 4% reduction in the Distribution Losses in FY 2009-10. MSEDCL stated that it had requested the Commission in its APR Petition, as well as subsequent submissions during the proceedings on several occasions, to not consider the reduction in Distribution Loss during FY 2009-10 at 4%, as the same was not realistic or achievable. MSEDCL further stated that in its Supplementary Submission to its main APR Petition for FY 2008-09 and Tariff Petition for FY 2009-10, MSEDCL had stated that the exercise of ARR determination by considering a 4% reduction in Distribution Loss would be academic in nature.

12. MSEDCL quoted paragraphs from the National Electricity Policy and Tariff Policy to strengthen its contention that reduction in Distribution Losses by 4% for FY 2009-10 was not realistic or achievable. MSEDCL further quoted the ATE Judgment in Appeal 90 of 2007, relevant directives in Tariff Order for FY 2008-09 issued by Bihar Electricity Regulatory Commission, Tariff Order for FY 2008-09 issued by Kerala State Electricity Regulatory Commission and recommendations of the Abraham Committee Report, to further strengthen its contention. MSEDCL requested the Commission to review the above-said APR Order in this regard.

4. Excess revenue considered on account of sales to Bhiwandi Franchisee

13. MSEDCL submitted that in its APR Petition in Case No. 116 of 2008, MSEDCL had submitted category-wise sales projections for FY 2009-10, which were inclusive of the sales of 2315 MU to Bhiwandi Franchisee. MSEDCL submitted that it has segregated the revenue on account of sales to Bhiwandi Franchisee from the revenue on account of sales to other consumer categories. MSEDCL added that while estimating revenue from sale of power to Bhiwandi Franchisee, it has considered Bulk Supply Tariff (BST), in accordance with the Agreement signed with Bhiwandi Franchisee. MSEDCL further submitted that as a part of reply to data gaps raised by the Commission in Case No. 116 of 2008, MSEDCL had submitted the actual

category-wise sales in Bhiwandi Franchisee area for FY 2007-08 and FY 2008-09, including projections for FY 2009-10.

14. MSEDCL contended that the Commission, while estimating the revenue for FY 2009-10 in the APR Order, has not considered the revenue from sale of power to Bhiwandi Franchisee at the BST of Rs. 2.13 /kWh, but has instead considered the revenue from sale of power (including Bhiwandi Franchisee) as per the approved tariff, for the category-wise estimated sales for FY 2009-10, including sales within Bhiwandi Franchisee.

15. MSEDCL contended that the revenue computed by the Commission in its APR Order for FY 2009-10 has resulted in estimation of excess revenue of Rs. 878 Crore. MSEDCL stated that the energy sales for FY 2009-10, after segregating the category-wise sales approved by the Commission and category-wise sales excluding sales to Bhiwandi Franchisee is as shown in the Table below:

CATEGORY	Approved Sale	Approved Sale without Bhiwandi sales	Approved Tariff	Revenue approved in APR Order	Revenue without Bhiwandi sales	Difference
	MU	MU	Paise/unit	Rs. Crore	Rs. Crore	Rs. Crore
LT Residential	4911	4806	235	1154	1129	-25
LT Commercial (above 200 units)	1404	1334	590	828	787	-41
LT V-0-20 KW (Powerloom)	3194	1798	350	1118	629	-489
LT Industries (above 20 kW)	2635	2455	475	1252	1166	-86
HT -Water works (on Express Feeders)	982	684	350	344	239	-104
HT-I Continuous (on Express Feeders)	14086	13822	505	7113	6980	-133
Total				11809	10931	-878

16. MSEDCL submitted that the estimated revenue that would be generated from sale of 2315 MU to Bhiwandi Franchisee at BST of Rs. 2.13/kWh would be Rs. 493 Crore. MSEDCL added that the net excess revenue estimated by the Commission for FY 2009-10 in its APR Order, after considering revenue from sale of Power to Bhiwandi Franchisee (at BST) would be Rs. 385 Crore (i.e., Rs. 878 Crore – Rs. 493 Crore), which is due to MSEDCL, and needs to be given under the review process.

5. Truing-up of Power Purchase cost for FY 2007-08 and FY 2008-09

17. MSEDCL contended that the Commission, in its APR Order in Case No. 116 of 2008, considered Power Purchase Cost of Rs. 15,518 Crore as against actual (audited) Power Purchase Cost of Rs. 15,537 Crore for FY 2007-08. MSEDCL added that the Commission considered actual Power Purchase expenses for FY 2007-08, except the power purchase cost on account of purchase from the Ratnagiri Gas and Power Private Limited (RGPPL). MSEDCL submitted that the Commission approved the Annual Fixed Charges (AFC) payable to RGPPL by MSEDCL on pro-rata basis considering the actual availability vis-à-vis target availability approved by Central Electricity Regulatory Commission (CERC) for FY 2007-08, in accordance with CERC's Order dated April 16, 2009. MSEDCL added that the Commission, in the APR Order, considered only 95% capacity allocation of RGPPL towards MSEDCL and accordingly reduced Rs. 19 Crore from the AFC payable by MSEDCL to RGPPL for FY 2007-08, as shown in the Table below:

Sl.	Particulars	Unit	FY 2007-08
1	AFC Approved by CERC	Rs. Crore	412.00
2	Actual Availability	%	70.20%
3	Normative Availability Approved by CERC	%	80.00%
4	AFC Allowed to be recovered	Rs. Crore	361.53
5	MSEDCL Claim in APR Petition (Capacity Charge)	Rs. Crore	363.00
6	Capacity Allocation	%	95.00%
7	AFC considered as per CERC Order	Rs. Crore	343.45

18. MSEDCL contended that it had availed 100% capacity allocation of RGPPL for FY 2007-08, and RGPPL has not supplied power to any other State during the said year.

19. MSEDCL further submitted that while carrying out the provisional truing up of power purchase cost for FY 2008-09, the Commission reduced AFC of RGPPL for FY 2008-09 on pro-rata basis, on similar lines as considered for FY 2007-08. MSEDCL added that the Commission considered only 95% of capacity allocation of RGPPL for MSEDCL and accordingly reduced AFC by Rs. 89 Crore (i.e., Rs. 435.77 Crore – Rs. 346.43 Crore) for FY 2008-09 as shown in the Table below:

Sl.	Particulars	Unit	FY 2008-09
1	AFC Approved by CERC	Rs. Crore	851.52
2	Actual Availability	%	34.26%
3	Normative Availability Approved by CERC	%	80.00%
4	AFC Allowed to be recovered	Rs. Crore	364.66
5	MSEDCL Claim in APR Petition (Capacity Charge)	Rs. Crore	453.61
6	Actual Capacity Charge Paid during FY 2008-09	Rs. Crore	435.77
7	Capacity Allocation	%	95.00%
8	AFC considered as per CERC Order	Rs. Crore	346.43

20. MSEDCL contended that it availed 100% capacity allocation of RGPPL for FY 2008-09 and RGPPL has not supplied power to any other State during the said year.

21. MSEDCL further contended that the Commission, in its APR Order in Case No. 116 of 2008, while provisionally approving power purchase cost for FY 2008-09, has not considered power purchase expense of Rs. 13.70 Crore on account of purchase from India Energy Exchange (IEX). MSEDCL requested the Commission to review the power purchase expenses allowed in the APR Order, on account of the above reasons.

6. Grant from Government of Maharashtra

22. MSEDCL submitted that the Commission in its Order in Case No. 116 of 2008, had reduced the approved ARR for FY 2008-09 by Rs. 200 Crore and approved ARR for FY 2009-10 by Rs. 400 Crore based upon Government of Maharashtra Resolution (GR) dated May 29, 2009, wherein the Government of Maharashtra (GoM) approved a financial assistance of Rs. 600 Crore to MSEDCL towards power purchase.

23. MSEDCL contended that GoM had not released any financial assistance in pursuance of the said GR, as on date of filing the present Review Petition. MSEDCL further contended that the Commission's approach to adjust the grant receivable from GoM towards the ARR may not be correct as far as the accounting procedure is considered and may put MSEDCL under financial constraints.

24. MSEDCL proposed that the Commission may consider any receipts of grant from GoM, while approving final truing-up of FY 2008–09 and provisional truing up of FY 2009–10. MSEDCL further stressed that non-receipt of grant of Rs. 600 Crore from GoM needs to be considered as discovery of new and important matter or evidence and therefore this alone may be considered as a sufficient ground/reason for review of the Commission’s APR Order.

7. Power Purchase from Maharashtra State Power Generation Company Limited

25. MSEDCL submitted that the Commission, in its APR Order dated August 17, 2009 in Case No. 115 of 2008, in the matter of Tariff determination for Maharashtra State Power Generation Company Ltd. (MSPGCL) for FY 2009-10 stipulated the net generation from MSPGCL for FY 2009–10 at 50,050 MU. MSEDCL added that the Commission in its above said Order stipulated that it has not considered the expected generation from Parli Expansion Unit-6 (250 MW) and Paras Expansion Unit–3 (250 MW) as those shall be separately approved while disposing off the respective Petitions filed by MSPGCL in that regard.

26. MSEDCL submitted that the Commission in its APR Order for MSEDCL in Case No. 116 of 2008, stipulated the net power purchase quantum from MSPGCL at 49,092.70 MU for FY 2009-10. MSEDCL further submitted that the Commission in its above said Order also stipulated that pending final disposal of the Petition filed by MSPGCL for determination of tariff of the recently commissioned generation stations namely Parli Unit No. 6 and Paras Unit No. 3 of MSPGCL, out of the net approved generation of 49,092.70 MU, the power available from the recently commissioned stations was considered at 3,188.64 MU for FY 2009-10.

27. MSEDCL contended that from the APR Order of MSEDCL, the average power purchase cost payable by MSEDCL to MSPGCL for FY 2009-10 works out to Rs. 2.05/kWh, which is different from the average cost of power generation computed by the Commission in the APR Order of MSPGCL (Case No. 115 of 2008) at Rs.1.96/kWh for FY 2009-10, as shown in the Table below:

Particulars	Commission Approved	Energy charges	Total Energy charges	Fixed Charges	Total Cost	Avg cost of PP
	MU	Rs/kWh	Rs. Crore	Rs. Crore	Rs. Crore	Rs./kWh
As per Commission's Order on MSPGCL (Case No. 115 of 2008)						
A. Thermal Generation						
Bhusawal	3004.24	2.28	684.97	135.75		
Chandrapur	15119.62	1.23	1859.71	603.93		
Nasik	5612.01	2.4	1346.88	255.19		
Koradi	6574.06	1.51	992.68	281.14		
Paras	348.05	1.86	64.74	13.54		
Parli	4272.78	2.13	910.10	115.07		
Uran	5745.2	1.22	700.91	211.33		
Khaperkheda	5439.54	1.75	951.92	371.36		
Total	46115.5		7511.92	1987.31		
B. Hydel Plants	3934			304.61		
Net Total (A + B)	50049.5		7511.92	2291.92	9803.84	1.96
As per Commission's Order on MSEDCL (Case No. 116 of 2008)						
Thermal plants	41670	(Based on past 3 year performance)				
Hydel	3934					
Ghatghar	300					
New Projects (Parli & Paras)	3188					
Total	49092				10080.86	2.05

28. MSEDCL contended that the Commission's decision of considering generation from the recently commissioned Parli Unit No. 6 and Paras Unit No. 3 of MSPGCL in the APR Order of MSEDCL in Case No. 116 of 2008 deviates from its APR Order of MSPGCL in Case No. 115 of 2008, where the Commission excluded the generation from the recently commissioned stations, while stipulating net generation of MSPGCL for FY 2009-10. MSEDCL, further contended that as a consequence of the Commission's decision to consider 3188.64 MU from Parli Unit No. 6 and Paras Unit No. 3 of MSPGCL in its APR Order in Case No. 116 of 2008, the Commission concluded that MSEDCL would not be required to purchase bi-lateral (Trader) power during FY 2009-10 and has, therefore, not included the cost of such bi-lateral power purchase while determining the ARR for FY 2009 -10.

8. Deduction of Interest Paid to Wind Developers

29. MSEDCL submitted that the Commission, in its APR Order in Case No. 116 of 2008, disallowed expenditure of Rs. 12.92 Crore incurred by it towards payment of penal interest to Wind Developers due to delay in payment by MSEDCL on invoices raised by the Wind Developers. MSEDCL further submitted that the Commission, in

its APR Order, also admitted that the issue of payment of invoices raised by the Wind Developers was legally agitated by MSEDCL before the Commission and Honourable Appellate Tribunal, which caused delay in release of payment to Wind Developers thus, resulting in payment of interest.

30. MSEDCL contended that it has every right to legally contest any issue where it has reason to believe that MSEDCL has good chances of success. MSEDCL further submitted that if it would have had immediately released the payment to Wind Developers against the invoices received and then contested the issue, it would have been very difficult for MSEDCL to recover such payment at later stage, in case required to do so. MSEDCL further reasoned that in case it would have made the payment, then in such circumstances the loss would have been more, and would have unnecessarily burdened the consumers or alternatively, there would have been a possibility that the Commission would have disallowed such expenditure.

31. MSEDCL submitted that the decision of the Commission to disallow the expenditure of Rs. 12.92 Crore amounted to infringement of the fundamental right of MSEDCL to legally agitate an issue on principles or considering financial implications. MSEDCL contended that the said decision of the Commission could be construed as blanket permission by the Commission to settle any claim received from any person without ascertaining the admissibility of such claim from a legal point of view. MSEDCL further alleged that the Commission's APR Order virtually directed that any dispute raised by any entity shall be accepted as fait accompli by MSEDCL, which inter-alia also means that MSEDCL was being prohibited from protecting its rights.

32. MSEDCL further added that the Electricity Act 2003 also permits legal recourse to MSEDCL, and further, the MERC Tariff Regulations mandate pass through of all legitimate expenses.

33. The Commission, vide its Notice dated October 14, 2009, communicated the date for the hearing as November 9, 2009 in the matter of MSEDCL's Review Petition in the presence of authorized Consumer Representatives.

34. During the hearing, MSEDCL made a Presentation on all the issues raised in the Review Petition. MSEDCL submitted that the Review Petition was admissible under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, since no Appeal has been preferred against the Tariff Order, and the issues raised in the Review

Petition could be admitted under the grounds of 'error apparent on the face of the record' and 'for any other sufficient reasons'. MSEDCL reiterated the submissions made in its written Petitions during its presentation.

35. Dr. Ashok Pendse, representing Thane Belapur Industries Association (TBIA), one of the authorised Consumer Representatives, submitted that penal interest paid to Wind Developers should not be allowed to be recovered through the ARR and tariff, and that generally, any penal interest on statutory dues is not allowed as an expense for all Companies. Ms. Ashwini Chitnis, representing Prayas, one of the authorised Consumer Representatives, submitted that the distribution loss trajectory had been considered by the Commission in accordance with the MYT Order, and hence, there was no ground for review. As regards revenue from Bhiwandi Franchisee area, Prayas submitted that the impact on account of considering revenue from sale to individual consumers, vis-a-vis the Franchisee Agreement, which provides for levy of Bulk Supply Tariff, needs to be assessed on the basis of independently audited sales and revenue data. As regards the impact on account of capacity charges payable to RGPPL, Prayas submitted that the matter was sub-judice before the Appellate Tribunal for Electricity (ATE) and Prayas had impleaded itself as an Intervener in the matter. Hence, Prayas suggested that any impact on this account may be passed through to the consumers only after the final decision of the ATE in this regard.

36. Subsequently, Prayas submitted its comments/suggestions on the Review Petition vide its letter dated November 11, 2009, as summarized below:

- a. MSEDCL's contention regarding consideration of surplus of Rs. 214 Crore while estimating revenue gap for FY 2008-09, was inappropriate as the Commission in its APR Order in Case No. 116 of 2008 had clearly elaborated the reasons for considering surplus of Rs. 214 Crore after truing-up of FY 2006-07.
- b. MSEDCL's contention that the Commission's directive of apportioning Rs. 176 Crore of efficiency gain toward refund of RLC, was against the provisions of the MERC Tariff Regulations is incorrect.. Prayas submitted that the objective of the special reserve is to avoid tariff shock. Further, RLC refund is closely linked to loss reduction and the original Order specifying RLC had stated that RLC would be refunded through efficiency gains should be seen from that context. Moreover, MSEDCL's share of the efficiency gains has not been reduced; hence, there is no merit in MSEDCL's contentions in this regard.

- c. Regarding the contention of MSEDCL to reduce the distribution loss trajectory, Prayas submitted that the loss trajectory was one of the performance parameters set under the present Multi-Year Tariff (MYT) regime at the beginning of the Control Period itself, and is not an outcome of the present APR Order. Moreover, the opening loss levels have already been restated in accordance with the provisions of the Tariff Policy, at the beginning of the Control Period. If the loss trajectory is revised or restated during the Control Period, then the purpose of specifying performance norms for the Control Period would be defeated. Prayas further submitted that 60% of MSEDCL's circles had distribution losses higher than 22% and there are still a few circles with loss levels as high as 50% to 60%. Hence, MSEDCL's contention that it was not possible to reduce losses further was not acceptable.
- d. Prayas submitted that MSEDCL's contention regarding consideration of excess revenue on account of sale to Bhiwandi Franchisee was correct, since as per the Distribution Franchisee Agreement (DFA) signed by MSEDCL with the Franchisee, MSEDCL will sell power to the Franchisee at a fixed Input Rate (which is the outcome of the bidding procedure), indexed to tariff indexation ratio; however, certain issues need to be addressed:
- i. Though the Input Rate for bulk supply to Bhiwandi Franchisee area was discovered through a competitive bidding process, however, the process did not have any regulatory oversight, and it needs to be considered whether the Commission is bound to accept such Input Rates discovered through the bidding process. Hence, the validity of the Input Rate has to be ascertained and cannot be accepted as per MSEDCL's claim.
 - ii. Bulk Supply rate is linked to tariff indexation ratio, which in turn is a ratio of Average Billing Rate (ABR) of the year under consideration to ABR of FY 2005-06. As per the DFA, both annual ABR and base ABR need to be audited by an independent auditor. However, till May 2009, none of these audits had been completed by MSEDCL. Hence, it cannot be ascertained whether MSEDCL is getting the due revenue as per the provisions of the DFA.
 - iii. 50% of sales in Bhiwandi circle are to power looms, which receives subsidy from the State Government. Hence, quantum of subsidy has significant impact on MSEDCL's revenue as well as the ABR. The DFA for Bhiwandi also mandates quarterly audit of subsidy. Though

- the Bhiwandi Franchisee model has been operational from January 2007, till date, no audits of subsidy have been done.
- iv. The Operation and Maintenance (O&M) cost of Bhiwandi area needs to be deducted from the total O&M cost approved under ARR of MSEDCL, as the approved O&M costs have been determined based on past trends and the past trend pertains to the period when the Franchisee was not formed.
 - v. Prayas requested the Commission to direct MEDCL to submit a separate Petition for establishing prudence for the bulk supply rates for supply to Franchisee based on audit reports, as stated earlier.
 - vi. The issue needs to be addressed with utmost caution, considering the implications if the Franchisee model is replicated in many areas, since any impact of such Franchisee arrangements will have to be borne by the other consumers of MSEDCL.
- e. As regards the contention of truing up of power purchase cost for FY 2007-08 and FY 2008-09, Prayas submitted that if MSEDCL has utilized 100% of the power generated by RGPPL, then the same needs to be considered and 100% of the capacity charge payable to RGPPL needs to be allowed, however, in respect of variable charge reconciliation, the Commission in its APR Order had directed MSEDCL to submit details on adjustment of variable cost for RGPPL. Prayas submitted that the issue of capacity allocation and subsequent true-up may be combined with adjustment of variable charge, since it will not be a significant amount.
 - f. As regards the quantum of fixed charges to be paid to RGPPL, Prayas submitted that the CERC Order on the basis of which, the Commission had calculated the fixed costs, had been challenged before the ATE by RGPPL and MSEDCL on the same issues. MSEDCL has also filed a separate Petition for recovery of additional capacity charge to RGPPL (Case No. 61 of 2009). Prayas requested the Commission to club this issue along with MSEDCL's Petition in Case No. 61 of 2009, as the outcome of Case No. 61 of 2009 would also have impact on the Annual Fixed Charges (AFC) payable to RGPPL.
 - g. As regards MSEDCL's contention that grant from GoM should not be considered, as the grant has not been actually paid by GoM, Prayas submitted that GoM declared the grant in the backdrop of elections at that time in order to ease the tariff burden on consumers and hence, the Commission has appropriately considered the same while computing the revenue requirement.

Prayas submitted that issue pertaining to non-payment of committed grant should be raised by MSEDCL before the GoM.

- h. Prayas submitted that MSEDCL's contention regarding discrepancy in the Commission's APR Orders for MSPGCL and MSEDCL on the quantum of power, was incorrect, as the Commission in its APR Order on MSEDCL had stated that net energy estimation for Parli Unit No.6 and Paras Unit No.3 was on normative basis, while the Commission has not considered the same in its APR Order for MSPGCL, as MSPGCL is expected to file a separate Petition in that matter. Also, the Commission has to make an estimate of all available power.

37. MSEDCL has not submitted any replies to the comments/suggestions raised by Prayas vide letter dated November 11, 2009.

38. Having heard the Parties and after considering the materials placed on record, the Commission rules as under:

39. The admissibility of the Review Petition has to be seen with reference to Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 ("CBR"), which stipulates as under:

"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."

40. Further, as established by several Judgments of the Honourable Supreme Court, the review jurisdiction is limited, and for review to be granted under the grounds of 'error apparent on the face of the record', the error has to be apparent and capable of being established without having to go into detailed analysis and computations. The Commission now discusses each of the issues raised by MSEDCL in its Review Petition, to assess whether review is merited on any of the issues.

1. Consideration of Surplus on account of Provisional True-up for FY 2008-09

41. MSEDCL has contended that the Commission has erred in considering the surplus of Rs. 214 crore based on truing up for FY 2006-07, while undertaking the provisional truing up for FY 2008-09, in view of the Commission's Order in Case 42 of 2008, wherein the Commission had allowed MSEDCL's Review Petition on account of double-accounting error, and allowed MSEDCL to recover an additional amount of Rs. 427 crore.

42. The Commission has studied MSEDCL's submissions in this regard. In MSEDCL's APR Order in Case No. 116 of 2008, the Commission has very clearly stated the reasons for considering the surplus of Rs. 214 crore, under the provisional truing up for FY 2008-09, and has also clearly mentioned that this dispensation has been arrived at after considering the Commission's Order in Case No. 42 of 2008, as reproduced below:

“The Aggregate Revenue Requirement for FY 2008-09 is significantly lower than that projected by MSEDCL, primarily due to the following reasons:

- ...
- *The revenue surplus considered by the Commission after final truing up for FY 2001-02 (Rs. 469 crore) and FY 2006-07 (Rs. 214 crore) has not been considered by MSEDCL while computing the revenue requirement, though the same had been considered by the Commission while determining the tariffs for FY 2008-09. This issue was raised by consumers and Consumer Representatives during the public process, and MSEDCL has given contradictory submissions in this regard...As regards the surplus of Rs. 214 crore considered by the Commission for FY 2006-07, MSEDCL submitted a Review Petition, numbered as Case No. 42 of 2008, wherein MSEDCL submitted that the Commission's approach had resulted in double-counting of the ASC revenue and hence, MSEDCL was entitled to additional revenue of Rs. 427 crore in FY 2008-09, and only then, would the computation of surplus of Rs. 214 crore be appropriate. **The Commission accepted MSEDCL's submission in this regard, and allowed MSEDCL to recover additional revenue of Rs. 427 crore in FY 2008-09. Hence, non-consideration of surplus of Rs. 214 crore of FY 2006-07 while undertaking provisional truing up for FY 2008-09, would tantamount to double-counting in favour of MSEDCL. Hence, the Commission has considered this surplus amount of Rs. 214 crore to reduce the ARR of FY 2008-09 correspondingly. Hence, this does not affect MSEDCL.**” (emphasis added)*

43. The above extract of the APR Order clearly gives the Commission's reasoning, as also MSEDCL's acceptance of the rationale that the surplus of Rs. 214 crore would be realised only if the additional revenue of Rs. 427 crore is allowed to be recovered by MSEDCL. Having been allowed by the Commission to recover the additional amount of Rs. 427 crore, there is no error on the face of the record in the provisional truing up for FY 2008-09. Hence, no review of the APR Order is warranted on this account as there is no ground made out for grant of review under Regulation 85 of the CBR.

2. Distribution Loss Achievement and sharing of efficiency gains thereof

44. MSEDCL has contended that the Commission's approach of considering one-third of the efficiency gain due to reduction of distribution losses in FY 2007-08, for refunding part of the Regulatory Liability Charges (RLC), was not in accordance with Regulation 19 of the MERC Tariff Regulations and prima-facie amounted to either violation or amendment of the said provisions, and hence, the APR Order needs to be reviewed in this regard.

45. In MSEDCL's APR Order in Case No. 116 of 2008, the Commission has very clearly stated the reasons for considering one-third of the above-referred efficiency gain to refund part of the RLC, as reproduced below:

“3.18 Sharing of Efficiency Gains and Losses for FY 2007-08 due to Controllable Factors

...

Thus, an amount of Rs. 352.3 crore (176.17 x 2) has to be added to the revenue requirement of FY 2007-08 after final truing up, under this head. As mentioned in the Table above, rather than parking 1/3rd of the efficiency gains in the special reserve in the last year of the first Control Period, the amount of Rs. 176.2 crore has been used to fund additional refund of RLC. The Commission is of the view that it is more appropriate to use these funds to refund the RLC, since the original Order of the Commission had envisaged that the funds for RLC refund would come from accelerated reduction in distribution losses. Moreover, this amount is not available to MSEDCL for normal use, since the same would have had to be passed on a special reserve. All these reserves are to be eventually used to reduce the burden on the consumers. This move will also ensure refund of RLC in an accelerated manner. At the same time, MSEDCL's 1/3rd share of the efficiency

gain has been allowed to be retained by MSEDCL, since the Commission is of the view that MSEDCL needs to be adequately incentivised to reduce the distribution losses further.”

46. Having given the aforesaid reasoning consciously, the Commission is not inclined to accept that there is an error in it. MSEDCL has also not been put to a loss in this regard, since the special reserve does not form part of its resources, and is in any case, intended to reduce the burden on the consumers in the future. If according to the Petitioner the reasoning itself is wrong, then the matter would require a fresh decision by an appellate authority. A review cannot be an appeal in disguise.

3. Distribution Loss for FY 2009-10

47. MSEDCL has contended that the Commission should not have considered a 4% distribution loss trajectory for determining the ARR for FY 2009-10, in its APR Order in Case No. 116 of 2008, in view of MSEDCL’s contentions in this regard.

48. In MSEDCL’s APR Order in Case No. 116 of 2008, the Commission has very clearly stated the reasons for considering a 4% distribution loss trajectory in FY 2009-10, as reproduced below:

“4.1.1 Distribution Loss

The actual level of distribution loss achieved by MSEDCL in FY 2006-07 was 30.2%, which becomes the opening level for the MYT Control Period from FY 2007-08 to FY 2009-10. The Commission directed MSEDCL to reduce the distribution losses by 4% during each year of the Control Period, through a combination of reduction of both commercial and technical losses. Thus, considering a loss reduction of 4% each in FY 2008-09 and FY 2009-10 as stipulated in the MYT Order, the distribution loss level to be considered for FY 2008-09 and FY 2009-10 works out to 22.2% and 18.2%, respectively.

In its APR Petition, MSEDCL considered a loss reduction of 4% for estimating the Energy Balance for FY 2008-09. However, for FY 2009-10, MSEDCL submitted that it has considered a realistic loss reduction target of 1%, thus considering a distribution loss level of 21.2% for estimating the Energy Balance for FY 2009-10.

...

In the Supplementary Submission, MSEDCL submitted the revised Energy Balance for FY 2009-10, by considering the distribution loss reduction trajectory during FY 2009-10 as 4%. However, MSEDCL submitted that

“...the above scenario is exclusively indicative and academic in nature as MSEDCL considers that distribution loss reduction of more than 1% from current level is not a realistic task. The MSEDCL prays to the Hon’ble Commission that 4% loss reduction in distribution loss is an academic exercise, which is not based on realistic assumption. Hence, MSEDCL prays before Hon’ble Commission that target of distribution loss reduction for the FY 2009-10 shall be considered as 1%, which will be realistic and achievable.”

...

It should be noted that the distribution loss trajectory specified by the Commission for MSEDCL vide its MYT Order dated May 18, 2007 issued by the Commission in Case No. 65 of 2006 has neither been challenged nor set aside by any higher Court, and is hence, still applicable and valid. Moreover, MSEDCL’s overall loss levels in FY 2007-08 was significantly lower than the normative level of 26.2%, and MSEDCL has earned incentive to the extent of around Rs. 350 crore on this account, as elaborated in Section 3 of the Order. In FY 2008-09 also, the provisional numbers as submitted by MSEDCL indicate that the distribution loss level is 21.98%, which is better than the normative level of 22.2% specified in the MYT Order. Though the distribution loss level estimated by the Commission works out to be slightly higher at 22.48% based on the provisional data, it is only 0.28% higher than the normative level of 22.2% specified in the MYT Order. **Hence, there appears to be no reason to doubt that MSEDCL can achieve the distribution loss reduction trajectory of 4% in FY 2009-10.** Further, though MSEDCL is reporting overall distribution losses of 21.98% in FY 2008-09, based on data submitted by MSEDCL, it is apparent that there are still several Circles, where the distribution loss levels are quite high, as summarised in the Table below:

Table: Circle-wise Distribution Losses in FY 2008-09

Sl.	Distribution Losses	Number of Circles	Percentage of Circles
1	> 40%	2	5%
2	> 35%	6	15%
3	> 30%	11	28%
4	> 25%	17	43%

As seen from the above summary, there are 17 Circles out of the total 40 Circles, i.e., 43% of the Circles, where the distribution losses are higher than 25%. Similarly, 11 out of the 40 Circles (28%) have distribution losses are higher than 30%, and so on. There are around 140 Divisions in MSEDCL licence area, and each of these Circles consists of 3 to 4 Divisions. Hence, there will be even more number of Divisions, where the distribution losses are higher than 25% to 30%, which only proves that there is still ample scope for reduction of distribution losses by MSEDCL.

*It should also be noted that most of the DISCOMs in the States of Gujarat and Andhra Pradesh, which are States comparable to Maharashtra, had distribution losses ranging from 15% to 18% in FY 2008-09, which are expected to reduce to 13% to 15% in FY 2009-10. **Considering the capital expenditure planned by MSEDCL and the cost-benefit analysis indicated by MSEDCL while seeking in-principle approval of the capital expenditure schemes, the Commission is of the view that it should be possible for MSEDCL to reduce the distribution losses to 18.2% in FY 2009-10.***

The Commission has hence, considered the distribution loss levels of 18.2% to assess the energy requirement for FY 2009-10.”(emphasis added)

49. The loss reduction target is a reasoned decision of the Commission as above. No error has been found to be apparent on the face of the record. Simply because the Petitioner is of the opinion that it is difficult for it to achieve the loss reduction target specified by the Commission or that it feels that the 4% distribution loss trajectory is academic in nature does not mean that there is an error in the order or that there are sufficient reasons to review the said 4% distribution loss trajectory.

4. Excess revenue considered on account of sales to Bhiwandi Franchisee

50. MSEDCL has contended that the Commission, while estimating the revenue for FY 2009-10 in the APR Order, has not considered the revenue from sale of power to Bhiwandi Franchisee at the BST of Rs. 2.13 /kWh, but has instead considered the revenue from sale of power (including Bhiwandi Franchisee) as per the approved tariff, for the category-wise estimated sales for FY 2009-10, including sales within Bhiwandi Franchisee, resulting in a shortfall of Rs. 385 Crore, which needs to be given under the review process.

51. The Commission has studied MSEDCL's contentions in this regard. At the outset, it is admitted that the approach adopted in the APR Order to estimate revenue from sale of electricity in Bhiwandi Franchisee area, is incorrect, since MSEDCL bills the Franchisee at the Bulk Supply rate and does not bill the individual consumers within the Franchisee area at the tariffs approved by the Commission. The error has occurred on account of the data submitted by MSEDCL in reply to the Commission's queries in this regard. While MSEDCL had separately submitted the category-wise sales within the Bhiwandi Franchisee area, while replying to the query regarding actual sales in FY 2008-09, MSEDCL did not show sales to the Franchisee area separately, and the category-wise sales indicated in this reply included the sales within the Franchisee area. As a result, since the sales for FY 2009-10 were projected by using FY 2008-09 sales as the base, the Franchisee area sales were not considered separately, leading to the revenue being estimated on the entire sales. Notwithstanding the above reasons, since MSEDCL does not earn revenue from actual category-wise sales in the Franchisee area, the revenue should have been computed by considering the Input Rate quoted by the Franchisee after indexing the same with the Indexation Ratio. While doing so, certain important issues have to be addressed, as discussed below:

- a. The Indexation Ratio depends on the ABR in the current year and the ABR in the base year, i.e., 2005-06
- b. As per the Distribution Franchisee Agreement (DFA), the ABR and other relevant data has to be audited by an independent agency, however, till date, no such audit has been undertaken for Bhiwandi Franchisee area till date
- c. The actual Indexation Ratio for FY 2009-10 will be known only after completion of the year, and after audit of the relevant billing data
- d. No independent subsidy audit has been done for Bhiwandi Franchisee area till date.
- e. In the absence of audited data as provided for in the DFA, which is one of the essential components of the Franchisee Agreement, it is difficult to assess the veracity of the ABR and the indexed Input Rate, to assess the revenue that MSEDCL can realise from the Franchisee area.
- f. The impact of Rs. 385 crore, on base revenue of Rs. 878 crore, appears to be very high, and can be granted only if the same is verified by an independent audit. The independent audit is essential, since, any under-recovery from the Franchisee area has a direct impact on the other consumers of MSEDCL, who have to pay a correspondingly higher amount to meet the ARR of MSEDCL. It is in MSEDCL's own interest to ensure that all the bills raised on the Franchisee are based on an independent audit of the numbers, as clearly

provided in the DFA, to safeguard the interest of MSEDCL and its consumers, and to ensure that the billing is done in a fair and transparent manner.

- g. Hence, MSEDCL is directed to immediately initiate an independent audit of the sales, revenue, ABR, and subsidy claimable, claimed and received from GoM for the period starting from January 2007 onwards till date. Pending the audit review, to partly mitigate MSEDCL's difficulties, an adhoc amount of Rs. 200 crore would be considered at the time of truing up for FY 2009-10. However, if the Audit is completed before the submission of the APR Petition or before March 1, 2010, and submitted to the Commission, the actual amount would be considered and allowed.**

52. The other issues raised by Prayas in this regard do not come within the purview of the present Review Petition, and have hence, not been addressed.

5. Truing-up of Power Purchase cost for FY 2007-08 and FY 2008-09

53. MSEDCL has contended that the Commission has allowed only 95% of the capacity charges payable to RGPPL for FY 2007-08 and FY 2008-09, even though MSEDCL has utilised 100% of RGPPL's capacity, and RGPPL has accordingly billed MSEDCL for the same.

54. In this context, it should be noted that nowhere in its Petition, has MSEDCL specifically mentioned that it has availed 100% power from RGPPL for the said years. The Commission has specified a detailed Format, i.e., F 2, which also contains the details regarding the installed capacity (MW), and Utility's share in % and in MW. While approving the cost for power purchase from RGPPL, the Commission relied on the information provided by MSEDCL in Format F2 submitted along with the Petition, which stipulates as under:

Form 2: Power Purchase for the period from Apr 2007-Mar08

Source of Power (Station wise)	Installed Capacity	Utility share %	Utility share (MW)
RGPPL	2150	95%	2043

Form 2: Power Purchase for the period from Apr 2008- Mar 09

Source of Power (Station wise)	Installed Capacity	Utility share %	Utility share (MW)
RGPPL	2150	95%	2043

55. Therefore, as may be observed from the above Tables, in its Petition, MSEDCL has also submitted that its share of RGPPL capacity is 95% during FY 2007-08 and FY 2008-09, which has been relied upon by the Commission while approving the power purchase expenses from RGPPL for the said years.

56. Further, although MSEDCL was directed in the APR Order to follow-up with RGPPL for required adjustments in the variable cost for FY 2007-08 and FY 2008-09, and submit the details of the adjustment amount within three months of the date of the APR Order in Case No. 116 of 2008, the same are still awaited.

57. Accordingly, the Commission shall consider any impact on account of expenses for power purchase from RGPPL for FY 2007-08 and FY 2008-09, and MSEDCL should include the impact in its APR Petition for FY 2009-10. MSEDCL should also submit the following:

- a. Submit the documents indicating that the entire capacity has been allocated to MSEDCL for the said years;
- b. Since the Power Purchase Agreement executed between RGPPL and MSEDCL provides for capacity allocation of 95%, with Government of India required to notify the allocation of remaining 5% capacity, MSEDCL should explain clearly whether Government of India has allocated the same during the said years and provide the documents for the same;
- c. Submit the certificate from the appropriate Authority/Load Despatch Centre confirming that the entire capacity was scheduled to MSEDCL for the said years;
- d. Submit the contractual agreement, which specifies that in case the entire capacity of RGPPL is scheduled to MSEDCL for the said years, it has to pay 100% of the capacity charges to RGPPL, even though 100% of the capacity may not be allocated to MSEDCL.

6. Grant from Government of Maharashtra

58. MSEDCL has contended that the Commission's approach to adjust the grant receivable from GoM towards the ARR, to the extent of Rs. 200 crore for FY 2008-09 and Rs. 400 crore for FY 2009-10, may not be correct as far as the accounting procedure is considered and may put MSEDCL under financial stress, since the GoM had not released any financial assistance in pursuance of the GR, as on date of filing the present Review Petition.

59. In this context, the Commission has clearly enunciated the reasons and basis for considering the grant receivable from GoM towards costly power purchase, in MSEDCL's APR Order, as reproduced below:

“The Aggregate Revenue Requirement for FY 2008-09 is significantly lower than that projected by MSEDCL, primarily due to the following reasons:

- ...
- *Further, the Government of Maharashtra has issued a Government Resolution (GR) ref: 2008/Sankirna – 2008/Pra.Kra. 211/Urja-3 dated May 29, 2009, wherein GoM has agreed to provide an amount of Rs. 200 crore for power purchase of upto 400 MW per month for the period from March 2009 to May 2009. Accordingly, the Commission has considered Rs. 200 crore towards power purchase expenses for March 2009, which has been shown separately in the ARR. Hence, this does not affect MSEDCL...”*

“The Aggregate Revenue Requirement for FY 2009-10 is significantly lower than that projected by MSEDCL, primarily due to the following reasons:

- ...
- *In the context of the Government of Maharashtra Resolution (GR) ref: 2008/Sankirna – 2008/Pra.Kra. 211/Urja-3 dated May 29, 2009, wherein GoM has agreed to provide an amount of Rs. 200 crore for power purchase of upto 400 MW per month for the period from March 2009 to May 2009, the Commission has considered Rs. 400 crore towards power purchase expenses for the months of April and May 2009, which has been shown separately in the ARR. Hence, this does not affect MSEDCL...”*

60. For the review jurisdiction to be invoked, the error has to be apparent on the face of the record. In this case, the Commission has arrived at a reasoned ruling in this regard and has given full justification for considering the GoM grant towards reduction in the ARR for FY 2008-09 and FY 2009-10. Moreover, MSEDCL's contention that the GoM grant has not been received till date, and hence, the same should not be considered by the Commission, has no merit, since the entire tariff determination process is done by accounting for expenses and revenue on accrual basis, and cash receipts are not considered. MSEDCL should pursue the matter with the GoM, so that the desired objective of the GoM to protect the consumers from the increase in tariff on this account is achieved. Hence, no review is admissible in this regard.

7. Power Purchase from Maharashtra State Power Generation Company Limited

61. MSEDCL has contended that the Commission has adopted an inconsistent approach while determining the quantum of generation and generation tariff for MSPGCL's stations in MSPGCL's APR Order, vis-a-vis the quantum and rate of power purchase by MSEDCL from MSPGCL as considered in MSEDCL's APR Order, and hence, MSEDCL's APR Order needs to be reviewed in this regard.

62. As regards the power purchase from MSPGCL for FY 2009-10, the Commission in MSEDCL's APR Order in Case No. 116 of 2008 has stipulated as under:

“The Commission has analysed the actual generation from existing thermal generating stations of MSPGCL for the last three years. The summary of the net generation for the period from FY 2005-06 to FY 2007-08 is shown in the Table below:

Table: Summary of Approved Net Generation in MYT Order and Actual Generation during last three years (MU)

Station	Net Generation			Average of 3 years actual generation	Net Generation approved for FY 2009-10 for MSPGCL
	FY 2005-06	FY 2006-07	FY 2007-08		
Khaperkheda	5157.74	5989.50	5734.04	5627.09	5439.54
Paras	433.63	381.53	305.28	373.48	348.05
Bhusawal	3067.11	2884.90	2861.93	2937.98	3004.24
Nasik	5231.54	5935.78	5722.58	5629.97	5612.01
Parli	4687.02	4142.21	3847.41	4225.55	4272.78
Koradi	5837.11	6122.62	5705.47	5888.40	6574.06
Chandrapur	12897.74	12094.11	14688.58	13226.81	15119.62
Uran	3691.54	3941.86	3648.92	3760.78	5745.20
Total	41003.44	41492.52	42514.21	41670.06	46115.50

As observed from the above Table, the actual generation in the previous years has been much lower than the generation at target PLF approved by the Commission. Accordingly, the Commission has estimated the power purchase quantum from MSPGCL based on the average generation over the last three years. It is clarified that though the Commission, while estimating the power

purchase quantum for MSEDCL has considered MSPGCL's net generation based on average of three years actual generation, it does not imply that the Commission has reduced the target Availability/PLF for MSPGCL Generating stations. The target Availability/PLF for FY 2009-10 for MSPGCL thermal generating stations for recovery of full fixed charges shall be as approved by the Commission in its Order dated August 18, in Case No. 115 of 2008 on MSPGCL's APR Petition for FY 2008-09.

...

As regards the purchase from the recently commissioned Parli Unit No. 6 and Paras Unit No. 3, the Commission has considered the normative Plant Load Factor of 80% and normative auxiliary consumption for estimating the net energy for FY 2009-10. For estimating the power purchase cost from these Units, the Commission has considered the provisional fixed and energy charges as approved by the Commission. The Commission further clarifies that any change in the fixed cost on account of the final tariff approved for these Units for which MSPGCL has filed Petitions in separate cases, would be considered for truing up during the APR process for third year of the first Control Period i.e., FY 2009-10.

The summary of approved power purchase from MSPGCL for FY 2009-10 is given in the Table below:

Table: Summary of Approved Power Purchase from MSPGCL for FY 2009-10

S.No	Stations	Quantum (MU)	Fixed Charges (Rs Crore)	Energy Charges (Rs Crore)	Total Cost (Rs Crore)
1	Existing Thermal Stations	41,670.06	2,056.08	6,957.19	9,013.26
2	New Paras -I and New Parli I Expn. Projects	3,188.64	291.07	438.43	729.50
3	Existing Hydel Stations including rebate	3,934.00		278.10	278.10
4	Ghatghar	300.00		60.00	60.00
5	New Paras Unit No. 4 and New Parli Unit No. 7. Projects expected to be commissioned in FY 2009-10	-	-	-	-
	Total	49,092.70	2,347.13	7,733.72	10,080.86

(emphasis added)

63. As may be observed from the above extract of the APR Order in Case No. 116 of 2008, the Commission has clearly specified that while projecting the energy to be purchased from MSPGCL's recently commissioned Units, i.e., (Parli Unit No. 6 and Paras Unit No. 3), the Commission has considered the normative PLF and normative auxiliary consumption. Since, the Petitions filed by MSPGCL for approving the tariff for Parli Unit No. 6 and Paras Unit No. 3 were under consideration by the Commission in separate matters, the Commission has estimated the net energy availability from these Units considering the normative performance parameters. It should also be noted that MSEDCL, in its Petition in Case No. 116 of 2008 has also projected power purchase from these Units for FY 2009-10 as shown in the following Table, though in the present Review Petition, MSEDCL has claimed that on account of the decision of the Commission to consider the purchase of power from these Units, power purchase from traders/bi-lateral sources has not been considered.

Particulars	Quantum (MU)												
	April-09	May-09	June-09	July-09	Aug-09	Sept-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Total
Paras Extension	69.97	69.97	69.97	69.97	69.97	69.97	69.97	69.97	69.97	69.97	69.97	69.97	839.68
New Parli	118.87	118.87	118.87	118.87	118.87	118.87	118.87	118.87	118.87	118.87	118.87	118.87	1426.43

64. Moreover, MSEDCL is also actually availing power from these recently commissioned Units in FY 2009-10. Based on the details submitted along with the Fuel Adjustment Cost (FAC) submissions for the period from April to September 2009, the summary of the power purchase quantum from Paras Unit No. 3 and Parli Unit No. 6 is summarised as under:

Stations	April-09	May-09	June-09	July-09	August-09	September-09
Paras Unit No.3	116.175	137.884	110.526	97.396	107.662	115.090
Parli Unit No.6	141.015	125.536	-	-	115.957	121.593

65. Therefore, MSEDCL's contention that the consideration of generation from the recently commissioned Parli Unit No. 6 and Paras Unit No. 3 of MSPGCL in MSEDCL's APR Order in Case No. 116 of 2008 is a deviation from its own decision to exclude the generation from these stations while estimating the net generation of MSPGCL in MSPGCL's APR Order dated August 17, 2009 in Case No. 115 of 2008, does not have any merit, as the Commission has clearly enunciated the philosophy of computing the energy availability from these stations (i.e., based on the normative parameters) in MSEDCL's APR Order in Case No. 116 of 2008. Further, the Commission has subsequently issued the Orders for tariff determination of Parli Unit

No. 6 (numbered as Case No. 26 of 2008) and Paras Unit No. 3 (numbered as Case No. 95 of 2008), wherein the Commission has approved the net energy availability for FY 2009-10 on normative parameters, which is equal to the net energy considered from these Units in Case No. 116 of 2008.

66. As regards the provisional power purchase cost for FY 2008-09, the Commission in its APR Order in Case No. 116 of 2008 has stipulated as under:

“The summary of the power purchase quantum and expense as petitioned by MSEDCL and as considered by the Commission after provisional truing up for FY 2008-09 is shown in the Table below:

Table: Summary of Power Purchase for FY 2008-09

Station	Petition		Approved after Provisional Truing up	
	Quantum	Total Cost	Quantum	Total Cost
	MU	Rs crore	MU	Rs crore
MAHAGENCO	46667	9047	46257	8983
...
NTPC	18169	3949	18263	4270
...
NPCIL	2671	581	2672	564
SSP	574	123	585	126
PENCH	66	14	56	12
U.I. CHARGES	703	236	778	193
DODSON I	35	8	31	7
DODSON II	55	16	51	15
RGPPL	5174	1363	5073	1546
TRADING Company	2277	1920	1136	833
POWERGRID	0	362	0	341
SLDC	0	12	0	0
Reactive Energy Ch	0	-3	0	0
WRPC	0	0	0	-2
BANKING	-111	3	-111	4
IBSM	-283	-303	-173	-188
TOTAL PP	75996	17328	74636	16718
Non Conv. Energy	2994	1080	2678	956
CPP	210	81	253	101
Sub-Total	3204	1160	2931	1057
Total	79200	18488	77567	17774

67. However, it is clarified that in the above-referred extract (i.e., Table) of the APR Order, the power purchase expense of Rs. 13.68 Crore has been inadvertently not shown, though for computations and determination of power purchase expenses for FY 2008-09, the amount of Rs. 13.68 Crore has been considered (as can be observed from

the difference of Rs. 13.68 Crore between the total power purchase expenses (i.e., Rs. 17774 Crore) shown in the above Table and summation of individual values for all the sources of power purchase shown in the above Table).

68. Accordingly, it is clarified that the cost of power purchase from IEX has already been considered and hence, the same does not affect MSEDCL. The approved power purchase expenses for FY 2008-09 should be read as under:

“The summary of the power purchase quantum and expense as petitioned by MSEDCL and as considered by the Commission after provisional truing up for FY 2008-09 is shown in the Table below:

Table: Summary of Power Purchase for FY 2008-09

Station	Petition		Approved after Provisional Truing up	
	Quantum	Total Cost	Quantum	Total Cost
	MU	Rs crore	MU	Rs crore
MAHAGENCO	46667	9047	46257	8983
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...
NPCIL	2671	581	2672	564
SSP	574	123	585	126
PENCH	66	14	56	12
U.I. CHARGES	703	236	778	193
DODSON I	35	8	31	7
DODSON II	55	16	51	15
RGPPL	5174	1363	5073	1546
TRADING Company	2277	1920	1136	833
MSEDCL Power Purchase through IEX			20	14
POWERGRID	0	362	0	341
SLDC	0	12	0	0
Reactive Energy Ch	0	-3	0	0
WRPC	0	0	0	-2
BANKING	-111	3	-111	4
IBSM	-283	-303	-173	-188
TOTAL PP	75996	17328	74636	16718
Non Conv. Energy	2994	1080	2678	956
CPP	210	81	253	101
Sub-Total	3204	1160	2931	1057
Total	79200	18488	77567	17774

69. Hence, there is no case for review in this regard.

8. Deduction of Interest Paid to Wind Developers

70. MSEDCL has contended that the Commission's approach of disallowing the expenditure of Rs. 12.92 Crore incurred by MSEDCL towards payment of penal interest to Wind Developers due to delay in payment by MSEDCL on invoices raised by the Wind Developers, amounted to infringement of the fundamental right of MSEDCL to legally agitate an issue on principles or considering financial implications, since the delay in payment was on account of the fact that MSEDCL was exploring all the possible legal recourses available to it. MSEDCL further contended that the Commission's decision in this regard could be construed as a blanket permission by the Commission to settle any claim received from any person without ascertaining the admissibility of such claim from a legal point of view

71. In this regard, the Commission has given its detailed reasoning in MSEDCL's APR Order, while disallowing the payment of penal interest, as reproduced below:

“The expense of Rs 12.92 Crore claimed by MSEDCL is actually payment of penal interest to Wind Developers, due to delay in payment of invoices raised by the Wind Developers. The Commission is aware that MSEDCL has legally agitated this matter before the Commission and the Appellate Tribunal for Electricity (ATE), and has paid the penal interest only after its Petitions/Appeals in this regard have been dismissed. Had MSEDCL paid the invoices on time, there would have been no incidence of penal interest. The Commission is of the view that it would be unfair to the consumers if the penal interest, which has been incurred on account of MSEDCL's failure to pay the invoices in time, is allowed to be recovered from the consumers. Therefore, the Commission has disallowed Rs 12.92 Crore pertaining to the payment made to Wind Developers...”

72. The Commission is of the view that the above decision of the Commission does not have any error on the face of the record or require to be reviewed for sufficient reasons. MSEDCL's argument that its duty is to protect the interest of its consumers, and hence, it is filing legal cases to avoid interest payment when MSEDCL is contractually liable to pay the interest, wears thin. Since due to its action in prolonging the matter, the consumers would end up paying a very high cost, which was avoidable.

With this Order, the Commission disposes of MSEDCL's Petition in Case No. 63 of 2009.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V .P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC