

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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CASE No. 10 of 2004

**In the matter of Review of Order dated 11.6.2004 regarding determination of ARR and
Tariff of Tata Power Company Ltd.**

Shri P. Subrahmanyam, Chairman

Dr Pramod Deo, Member

Shri A. Velayutham

ORDER

Dated: 17th September, 2004.

After an elaborate public process, the Commission passed its detailed Tariff Order in the matter of Determination of Annual Revenue Requirement and Tariff applicable to consumers of M/s Tata Power Company Ltd. (TPC) for FY 2003-04 and 2004-05 on 11th June, 2004 in Case No. 30 of 2003. Thereafter, under affidavit dated 8th July, 2004, TPC purported to seek certain clarifications on the Order. However, TPC were directed to segregate the issues on which clarifications were sought and those which were sought to be reviewed, and to pursue the latter through a separate Petition if desired, indicating how each issue met the requirements of the MERC (Conduct of Business) Regulations, 2004 governing review. Accordingly, TPC have submitted the present Petition dated 26th July, 2004 seeking review of the Tariff Order dated 11th June, 2004. As directed by the Commission at the hearing held on 23rd August, 2004, TPC also filed a further affidavit dated 27th August, 2004 elaborating on certain issues.

2. At the outset, it would be useful to set out Regulation 85(a), cited in the Review Petition, which reads as follows:

“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 45 days of the date of the direction, decision or order, as the case may be, to the Commission.”

In support of the plea for review, the Petition also cites Regulations 92 and 93 (which refer to the Commission’s inherent powers), 95 and 96 (which deal with the Commission’s general powers to amend or rectify any defect or error in any Order for the purpose of determining the real question or issue arising, and to remove difficulties in giving effect to any provision of the Regulations).



3. The Petition was heard for admission on 23rd August, 2004. At the outset, Shri Janak Dwarkadas, Counsel for TPC, submitted that the Review Petition raised various operational, commercial and financial issues, but that TPC would not be pressing the last issue relating to distribution franchisees. The Commission observed that TPC had already approached the High Court, and should not approach the Commission on matters that are only within the ambit of appeal in the guise of a review. For the substantive matters, which otherwise would not satisfy the requirements under the Regulations governing review, alternative remedies are available. The Commission was open to providing any clarifications that might be required on relevant issues separately. TPC Counsel submitted that, while clarifications had been asked for separately, the present matters were not amenable to mere clarification.

Operational Issues

(1) Shutting down Unit 4

4. The Petition states that the Commission's directives to stop the operations of TPC's Trombay Unit 4, except during outage of Units 5 and 6, saves fuel expenses to a certain extent, and that TPC had already been doing so whenever demand is slack. However, Unit 4 needs to be available for about 150 days during the year, including the time when Reliance Energy Ltd. (REL)'s unit is out, and should generate 500 MUs which cannot be produced by Units 5 and 6 because of demand variations. The Commission had allowed purchase of only 61 MUs based on the monthly energy requirement. However, if the requirement is calculated on hourly MW basis, this purchase quantum is not sufficient if Unit 4 is not available. Therefore, TPC have asked the Commission to reconsider the restriction on generation of Unit 4 to 112 MUs.

5. TPC have further stated that Unit 4 provides generation support to the TPC system during peak hours. In the absence of Unit 4, if the Maharashtra State Electricity Board (MSEB) system collapses during peak hours, the islanding system may not be effective in arresting the collapse of the TPC grid in Mumbai. According to TPC, the Commission's stipulation that only upto 61 MU may be purchased from MSEB, and that TPC should not carry out any load shedding inspite of shutting down of Unit 4 is not practicable since MSEB may not be able to supply during peak hours when they are already carrying out load shedding of about 2000 MW daily throughout the State. In this regard, TPC have referred to a recent communication from MSEB asking them to reduce drawal and bring Unit 4 back online. The Petition further states that the cost of additional generation as a result of TPC's proposal would be only around Rs.10 crores, and the fuel cost would be 0.61% of the total fuel cost. This is insignificant compared to the risk to reliability and stability of the TPC grid and deprivation of MSEB consumers during peak hours.

6. TPC have stated that Unit 4 requires around 48 hours to attain full load, which would be problematic during emergency periods. Moreover, since the energy balance is reworked by the Commission by shutting down Unit 4 and correspondingly increasing allocation of the balance units, an error has occurred in the estimation of power purchase. TPC have cited the provisions regarding error or mistake apparent on the face of the record in Regulation 85(a), and also Regulations 92, 93, 95 and 96 of the Conduct of Business Regulations to support the maintainability of the Petition on this point.

7. At the hearing, TPC Counsel submitted that the matter of shutdown of Unit 4 had not been posed during the tariff determination proceedings, and hence TPC had no opportunity to raise the issue, which they would have done had they known that such a direction was being contemplated. He



pointed out that the additional fuel cost amounts to less than 1%, but left the matter for the Commission to decide.

(2) Merit Order Dispatch

8. Referring to the Merit Order stack considering backing down limits in the Table at page 113 of the Order, the Petition details the implications of the oil support required for Unit 5. Hence, it argues that the additional oil requirement at this level of loading should be permitted for calculation of variable cost. The plea for review is supported citing the provision in Regulation 85(a) regarding the discovery of new and important matter or evidence. At the hearing, Counsel for TPC submitted that, with reference to the Table at page 110 of the Tariff Order, the Commission itself had recognised that Unit 4 cannot be operated below 150 MW due to technical limitations. Similarly, Unit 5, which is the only coal fired Unit, would require oil support if it is operated below 200 MW. That has not been provided for in the Tariff Order, and thus justified review.

(3) Heat Rate

9. With regard to the heat rate of Unit 5, the Petition states that the rate of 2447 Kcal/kWh considered by the Commission for FY 2005 is based on TPC's assumption that minor fuels would be accounted separately, but the Commission had disallowed that expenditure. In these circumstances, the heat rate for fuel cost calculations should be 2469 Kcal/kWh, based on the actuals for FY 2004 accepted by the Commission. At the hearing, TPC Counsel submitted that this correction, being an error apparent on the face of the record, requires to be made.

10. To a query of the Commission regarding the tenability of review of such matters under the Regulations, TPC Counsel submitted that, in a tariff determination process of such scale and complexity, there are bound to be deficiencies and the exercise may be required to be fine-tuned when anomalies are noticed. With regard to the Petition filed by TPC in the High Court, Counsel conceded that appeal lay with the Appellate Tribunal under the Electricity Act (EA), 2003, but it has yet to be constituted. As a result, TPC had to file a Writ in the High Court. However, the issues raised cannot really be dealt with in a Writ Petition, being matters of technical detail. He reiterated that there are errors apparent on the face of record, and some points may have been overlooked.

11. The Commission observed that the issues raised by TPC are substantive in nature, and fundamentally question the very basis of the tariff setting exercise and the determination based on detailed analysis and application of Merit Order principles. It also essentially challenges the considered judgement call of the Commission on various matters on which there might be differing opinions or assessments, and would thus not fall under the ambit of review.

12. As regards TPC's reference to higher purchase from MSEB being required in case of shut down of Unit 4, and its linkage with grid stability under emergency conditions, reiterated by Shri J.D. Kulkarni of TPC at the hearing, the Commission notes that it has not restricted the source of power purchase to only MSEB. In fact, at various places, the Tariff Order clearly states the following:

- *“The Commission directs TPC to enter into an alternative arrangement to purchase power during peak hours so as to ensure that load shedding is not required.”*
- *“The Commission may consider permitting additional cost of purchase of power during peak hours for meeting energy requirement of License Area operations arising of shutdown of Unit 4, through the FAC mechanism, based on evidence submitted by TPC to substantiate its claims.”*



- “It would be economical to buy part of quantity at higher rate rather than operating Unit 4 as a base load Station.”
- “TPC may explore the option of selling electricity generated using Unit 4 to MSEB and other States, in such a manner that there is no additional burden on consumers of the License Area.”

At page 112 of the Tariff Order, the Commission has also noted that:

“the approval of Ministry of Power for installation of a second 500 MW set Unit No. 6 at Trombay Thermal Power Station states that ‘the proposed Unit has been approved in replacement of Units 1 to 4 (3 X 62.5MW + 1 X 150 MW). As soon as the proposed Unit (6th Unit) comes into operation, the existing three units amounting to 187.5 MW capacity would be scrapped without fail. The fourth Unit of 150 MW capacity would be relegated to standby duty and operated to meet peaking requirements only when surplus gas is available for its operation.”

In view of the above, the Commission concludes that the Operational Issues set out in the Petition do not meet the test of the provisions governing review, and some of TPC’s concerns have already been addressed in the Order itself. It may also be mentioned in passing that MSEB’s letter of end June, 2004 regarding drawal from Unit 4 (referred to by TPC at para 5 above) was addressed at a particular time of unusual delay in the onset of the monsoon rains.

Commercial Issues

(1) Demand Charges for 220 kV off-take by REL

13. Citing the Commission’s observation in its Tariff Order that the 220 KV interconnection at Borivli is only for standby supply and not for regular drawal, and that REL should refrain from drawing normal power from this interconnection, TPC’s Petition states that, instead, this interconnection is being regularly used by REL for normal energy drawal, and that they have written to the Commission earlier pointing this out. The demand in June, 2004 was 188 MVA, i.e. 34% of the demand at the 22/33 KV supply point, which amounts to Rs.6.4 crores at the rate of Rs.340 per kVA. The Petition, therefore, seeks that demand charges be fixed for 220 KVA supply to REL in line with the charges for the 22/33 KV supply point, which would be treated and billed separately from the standby charges applicable from 1.6.2004. TPC have cited the clause in Regulation 85, regarding discovery of an important matter or evidence, in support of review.

14. The Commission notes that this issue is contingent upon the disputes between TPC and REL pending before the Commission in Case Nos. 3 and 4 of 2003, which have also been mentioned in the Tariff Order. Accordingly, it would be resolved through the Commission’s forthcoming Orders in those cases, and cannot be decided through review of the Tariff Order at this stage.

(2) Demand Charges for REL

15. The Petition states that, according to Appendix 7 of the Tariff Order, the revenue from demand charges from REL 22/33 KV supply would be Rs. 274.44 crores, computed on the basis of average monthly billing demand of 673 MVA. At pages 85-86 of the Tariff Order, billing demand for FY 2005 has been projected to remain at the FY 2004 level. The average level of FY 2004 has been derived from Annexure 1 of the additional information that had been submitted by TPC vide letter dated 23rd April, 2004. In that submission, the billing demand for November, 2003 was erroneously mentioned as 1807 MVA instead of actual demand of 602.5 MVA. The Petition points out that the



revenue figure for that month was in line with other months. Thus, the annual revenue from demand charges would, in fact, be lower by around Rs. 40 crores. Further, the demand charges computed in the Tariff Order are as per the maximum demand registered at each individual metering points. The Order directs TPC to bill REL on the basis of Coincident Maximum Demand (CMD). TPC contends that the annual reduction in revenue due to demand charges based on CMD would be Rs.20 crores. Therefore, the Petition seeks that the Commission consider the impact of these amounts on the Annual Revenue Requirement. TPC have sought review on the basis of a mistake or error apparent from the face of the record, and also relied on Regulations 92 and 96.

16. The Commission has also considered the further elaboration on this matter by TPC in its affidavit dated 27th August, 2004. It notes that, by its very nature, the exercise of tariff determination for any prospective period involves estimations and projections based on a considered judgement of various factors. There is, therefore, always the possibility of divergence between such estimates and actuals, the net impact of which has to be assessed in the next filing and tariff determination exercise, and considered appropriately at that time through the regulatory dispensation. Thus, it is premature at this stage to mandate any revenue recovery or remedial measures. However, the Commission is in the process of revisiting its Tariff Regulations (with the involvement of TPC, among others), during which it could be examined as to whether and how such matters could be addressed generically.

(3) HT point of supply for residential complexes

17. Stating that TPC had proposed a new category of consumers in their supplementary affidavit dated 23rd April, 2004 (the Commission notes that this was a month after the public hearing), namely a HT point of supply to residential complexes, the Petition states that TPC would like to extend the same tariff to industrial and commercial complexes also. TPC have stated that the Commission has approved the same in the REL and MSEB Tariff Orders. Review of the Tariff Order to introduce this dispensation is sought claiming discovery of a new matter or evidence, or some mistake (or omission) under Regulation 85. Regulations 92, 95 and 96 have also been cited.

18. The Commission notes that TPC are essentially seeking a basic change in the duly determined tariff categorisation and structure, which is clearly outside the scope of review, and have neither shown nor are seriously claiming any mistake as such. TPC would have the opportunity to introduce such proposals when they approach the Commission for tariff revision in future.

(4) Delayed Payment Charges on Tax on Sale of Electricity.

19. Citing the provisions for review under Regulation 85 on account of mistake or error apparent on the face of record, TPC have submitted that the amount of Tax on Sale of Electricity (TOSE) needs to be included in the calculation of Delayed Payment Charges (DPC), since TOSE is payable to the State Government irrespective of the actual recovery made by TPC from their consumers, whereas the Commission has excluded this amount.

20. The Commission notes that, under Section 3 and other provisions of the Maharashtra Tax on Sale of Electricity Act, 1994, the onus of payment of TOSE to the State Govt. is squarely on the concerned licensee, and the period within which such payments are to be made by the licensee have also been prescribed. In case such payment to the Govt. is delayed and DPC is payable by TPC, it cannot be passed on to the consumers. The matter of any delay as between TPC and their consumers is solely inter-se between them, and the Commission's dispensation in this matter (viz., to allow recovery DPC at the rate of 2% on the monthly electricity bills, but excluding statutory levies and



power factor penalty) has been a considered one. TPC's claim amounts to a substantive modification of this dispensation, and is thus outside the scope of review.

(5) Minimum Monthly Bill:

21. The Petition states that, as per the tariff prevailing prior to the Commission's Order, TPC have been preferring minimum monthly bills to Disconnected/Shut down consumers by applying demand charges on 10% of the Sanctioned Maximum Demand (SMD). TPC have sought that the new tariff should also provide for billing on 10% minimum charges for giving concessions to such consumers, and claim that this is an omission justifying review under Regulation 85.

22. The Commission notes that TPC have not cited any grounds to show that this was a mistake rather than its considered decision considering the principle behind such charges. The earlier tariff structure (which, in the case of TPC, had never undergone the Commission's scrutiny earlier) and TPC's own proposals are far from being the only factors guiding tariff determination. The Commission's general thrust with regard to the minimum charges of the type suggested by TPC for disconnected consumers can be seen from the absence of such charges in its Tariff Orders in respect of MSEB and REL.

(6) ToD tariff to TPC for purchase from MSEB.

23. Citing the provisions in Regulation 85 regarding a new and important matter or evidence which has come to light as justifying review, the Petition states that the Commission has specified a ToD tariff with two slots for sale of power from TPC to MSEB, but only a flat rate and not a ToD tariff for MSEB's sales to TPC.

24. The Commission notes that TPC's concern has already been addressed through para. 4 of the Corrigendum dated 11.6.2004 to the operative/summary Order on the TPC tariff dated 1.6. 2004. The Corrigendum provides for an additional charge of 25 paise per kWh for sale to MSEB from 0600 to 2200 hours.

Financial Issues:

(1) Loss on Exchange:

25. Citing a mistake or error apparent from the face of the record as justifying review, TPC have sought that the exchange loss on account of the difference between the opening exchange rate and the actual exchange rate at the time of repayment should be allowed in computing the ARR since it has an impact on cash outflow and profit & loss, and is not merely an accounting adjustment as stated by the Commission. In their supplementary affidavit dated 27th August, 2004, TPC have requested the Commission to note this position and record it as expenditure incurred by them for computing the ARR.

26. The Commission has already referred to differences between estimates and future actuals referred at para. 16 above. However, it has noted TPC's concern. Moreover, this matter may also be examined generically while revisiting the Tariff Regulations.



(2) FAC calculations – removal of cap

27. Referring to the cap of 10% of the variable component of tariff or increase in the Consumer Price Index, whichever is lower, on the total Fuel Adjustment Cost (FAC) charged to consumers in a year, TPC have sought that it be removed, particularly since it is likely that the increase in the price of oil and imported coal will be beyond 10% and not reflected in the Consumer Price Index, and would thus adversely affect TPC's revenue. TPC have also asked that deviation may be allowed while approving the FAC rate when it is not feasible to adhere to merit order despatch for various emergent reasons.

28. The Commission notes that the plea for removal of the cap on FAC charges is in the nature of a substantive modification of a considered decision of the Commission. It may be mentioned that the Commission had placed such a cap in the case of MSEB from as far back as its Order dated 31st July, 2001 in separate proceedings. Beyond the cap, adjustments can be made through future filings for tariff revision, and the matter may also considered while revisiting the Tariff Regulations.

(3) Employee Expenditure for 2004-05.

29. The Petition states that TPC had provided for Rs. 35 crores in their ARR for 2004. Out of this amount, there was a one-time expense (towards settlement of Gratuity) of Rs.14 crores, which was not envisaged to be recurring. However, the balance amount of Rs.21 crores was towards wage settlement, and that is expected to recur in FY 2005 (as given in the Financial Model which had been submitted by TPC) with an escalation over FY 2004 (taken as 10% in the ARR). However, it appears that this might not have been recognized by the Commission. The Petition seeks that TPC be allowed this additional expenditure. Review is being sought arising from a mistake or error apparent on the face of the record.

30. On this point, the Commission draws attention to its observations at para.16 above.

With these findings and observations, the Commission disposes of the present Petition.

Sd/-
(Prمود Deo)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(A.M. Khan)
Secretary, MERC

