

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 6 of 2004

In the matter of
Review of Tariff Order dated 10.03.2004 with regard to load factor and other incentives.

Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member

ORDER

Dated: 9th August, 2004

In their Petition filed on 5th May, 2004, M/s. Balaji Electro Smelters Ltd. (BESL), Yavatmal have sought review of the Commission's tariff Order dated 10th March, 2004 in respect of the Maharashtra State Electricity Board (MSEB) with regard to the provisions for Load Factor Incentive (LFI), with the following prayers:

- "a) To consider to deduct 60 hours from total number of hours in a month, while calculating maximum consumption possible to enable to avail maximum Load Factor Incentives of 15% to consumer.*
- b) To consider squaring up of higher unit if load factor is above 0.5%*
- c) To allow LFI even if any unit exceeds contract demand upto 5% in view of practical difficulties in controlling contract demand.*
- d) To allow LFI to Petitioner for the month of February 2004 MSEB bill.*
- e) To direct Respondent to allow incentive amount during the same month if a consumer pays bill within seven days."*

2. The Petition states that MSEB are giving the benefit of LFI, which was provided in the Order dated 10th March, 2004, as follows:

- i) Deduction of actual planned Load Shedding hours from the total number of hours (No. of days X 24) in a billing month.
- ii) If load factor is above 0.5%, MSEB are squaring up to the lower digit, e.g. if the load factor is 87.60%, it is considered as 87%.
- iii) Further, if MSEB undertakes planned load shedding for 60 hours a month, the load factor will be 91.67% (660 hours / 720 hours) even if a consumer maintains 100% efficiency. Hence, even if 100% efficiency is maintained, no consumer can achieve a load factor of 92.50% to avail of maximum LFI of 15%.

3. The Petition refers to the Load Factor formula in the Order. The Commission notes that the maximum consumption possible (the denominator of the formula) is equal to the Contract Demand X Actual Power Factor X (total hours during the month less planned load shedding hours), and the Order states that interruption/ non-supply to the extent of 60 hours in a month is built into this scheme. In this context, the Petition states that every industry has to resort to shut downs due to repairs, maintenance, etc. as also done by MSEB through load shedding. Therefore, the Commission should consider deducting 60 hours from the total number of hours during a month. For example, if the total number of hours in a month are 720, MSEB should deduct 60 hours (660 hours). In such case, if a consumer maintains 100% efficiency, load factor will be 100% (660 hours / 660 hours). It would then be possible to achieve load factor of 92.50% after repairs and maintenance by any consumer, which would be fair and just.

4. With regard to rounding off, the Petition urges that squaring up should be done to the next higher digit if the load factor is above 0.5%. Thus, if the load factor achieved is 87.60%, it should be squared up to 88%.

5. The Petition states that the Order provides that, if the billing demand exceeds the contract demand, the LFI would not be applicable since, in such circumstances, the MSEB system is subjected to stress and load management will become difficult. However, the Petition points out that MSEB are charging a penalty for exceeding contract demand. There are also practical difficulties in controlling contract demand, viz.

- (a) to achieve higher load factor, a consumer has to run at maximum Contract Demand.
- (b) there are no equipments to precisely control the Contract Demand. There is a variation of upto 5%. For example, if a consumer has contract demand of 3,000 KVA, there is a variation of 2,850 KVA to 3150 KVA for controlling the contract demand.
- (c) C.T. & P.T. ratios, accuracy, cable length and time setting differ as between the consumer and MSEB. There is a variation of Contract Demand upto 3% on this account.

For these reasons, the Petition seeks that LFI be allowed even if the contract demand is exceeded upto 5%. Even though BESL exceeded their contract demand by only 0.1% in respect of the bill for February, 2004, MSEB did not allow LFI for that month. The Petition argues that, since this was prior to the Commission's Order dated 10th March, 2004 in which it was stated that units exceeding contract demand would not be entitled for LFI during the relevant month, and also since BESL have not done so intentionally, MSEB should allow them LFI in respect of the bill for February, 2004.

6. The Petition states that MSEB are allowing load factor, power factor and bulk discount incentives to eligible consumers in the next month, and urged that the incentive amounts should be passed on the same month.

7. In their Reply dated 25th May, 2004, MSEB have submitted that the review Petition is not maintainable in law. BESL are, in fact, seeking modification of the Order dated 10th March, 2004 and the Commission ought, therefore, to reject the Petition on this ground itself. Citing the provisions of the Conduct of Business Regulations, MSEB have submitted that the scope of review is very limited and can be allowed on only the three grounds which have been cited in Regulation 87.

8. MSEB have submitted further that BESL have erred in calculating the maximum possible load factor by deducting planned load shedding hours from the numerator of the Load Factor formula. In fact, MSEB are deducting planned load shedding hours from the denominator as per the

Commission's formula, which is used by MSEB for calculating load factor for all consumers. MSEB contend that it is possible for consumers to achieve a load factor of 93% and avail of LFI to the maximum possible extent.

9. Quoting from para 32.1.3 of the tariff Order, MSEB's Reply states that the calculation of LFI is for every percentage point of increase in load factor, and there is no question of MSEB squaring up the load factor as suggested in the Petition.

10. With regard to the position when Contract Demand is exceeded, MSEB have pointed out that the system is designed to cater to the Contract Demand specified by the consumers themselves, and in its Order the Commission has drawn attention to the problems that arise when it is exceeded. MSEB have further stated that in case BESL are experiencing difficulty in limiting billing demand to the extent of Contract Demand, they can approach MSEB for an increase in the Contract Demand. With a small increase in Contract Demand and no change in billing demand, they will still be eligible for the maximum LFI. Since the Commission's Order does not provide for it, BESL cannot seek allowance of LFI if the billing demand exceeds Contract Demand by upto 5% through a review Petition.

11. With regard to BESL's arguments regarding the instance of February, 2004 predating Commission's Order, MSEB have pointed out that the Order expressly states that it is applicable from 1st December, 2003.

12. With regard to providing the incentives in the same month, MSEB have stated that, in such an event, if the consumer does not pay the bill within the stipulated period, MSEB will have to reverse the amount in the next bill, and so on. This will needlessly increase the complexity of the billing process. Moreover, once the billing has been completed for a month, it is practically not possible for MSEB to provide incentive in that month.

13. In their Rejoinder dated 16th June, 2004, which also seeks to respond to the Commission's letter asking them to clarify how the Petition meets the requirement of review under its Conduct of Business Regulations, BESL have submitted that, since the matter has not been challenged by way of an appeal or Writ Petition by them, BESL have every right to seek review. They have cited the Supreme Court Judgement reported in AIR 2002 (Page 1402) in the case of Kalpataru Agro Forest Enterprises vs. Union of India (no copy was submitted), where it had been held that a decree or order from which no appeal has been filed can be reviewed, and argued that this principle is applicable to the present case. Regulation 87 states that a party may apply for review of an Order arising from the discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the party or could not be produced at the time of decision. BESL have submitted that the "theory" of LFI was introduced for the first time by the Order dated 10th March, 2004. Hence, BESL were not aware of it during part of the relevant period and could not produce any evidence on this point prior to the Order. Regulation 87 also provides for filing of a review Petition for any other sufficient reason, and BESL have argued that such reasons and grounds have been given. BESL's Rejoinder also points out that, even prior to the final Order, and after the operative Order was passed, they had sought clarifications on 20th December, 2003 from the Commission regarding the definition of Contract Demand, LFI and its applicability, etc. Even though there was no provision in the Regulations, the Commission had given the clarification in the detailed Order. That, impliedly, was nothing but a review. Further, under Regulation 24, the Commission has the power to hear affected or interested persons and also to initiate any proceedings suo moto. BESL are an interested and affected party and, therefore, should be given an opportunity to be heard. The Rejoinder also contends that MSEB in their Reply have merely submitted that the review Petition is not maintainable, without giving any grounds.

14. In their Rejoinder, BESL have also sought to rebut with the help of hypothetical figures, MSEB's claim that it is possible for all consumers to achieve a load factor of 93% and avail of LFI to the maximum possible extent, i.e. 15%, through the Commission's formula.

15. With regard to rounding up, BESL have stated that it is the general practice to square up to the next higher digit if a value is above 0.5% , and to the lower digit if it is below 0.5% .

16. With regard to marginal excess of Contract Demand, BESL have stated that the consumer is being heavily penalized and, hence, there should be an allowance upto some percentage when Contract Demand is exceeded due to compelling circumstances. The Rejoinder illustrates BESL's practical difficulties by citing meter readings From February, 2004. It states that increasing the Contract Demand, as suggested by MSEB, is no solution since the consumer would have to increase the demand further once again to achieve a higher load factor. It also points out that there is always a difference in the readings of MSEB's and their own meter which should also be taken into account, the details of which are annexed to the Rejoinder.

17. BESL also reiterate that the provisions of the Order dated 10th March, 2004 cannot be applied retrospectively, and the Rejoinder seeks to rebut MSEB's contention that it would be difficult to pass on the benefit of incentives in the same month.

18. The matter was heard for admission on 3rd August, 2004. Shri G.G. Basantani, Technical Consultant on behalf of BESL, accompanied by Shri K. Sudesh Kumar of BESL, submitted at the outset that even if the Commission found that the Petition did not meet the requirements of review, then clarifications may be given on the Order dated 10th March, 2004 so as to address BESL's concerns. Citing the formula at para 32.1.3 (Part II) of the Order, he submitted that it was not being applied properly by MSEB. According to MSEB, 60 hours of interruptions or non supply was built into the formula. He contended that, if so, then the consumer would not be able to achieve the maximum LFI. Therefore, he contended that there was a lacuna in the formula. If it is in-built, he queried whether MSEB would be deducting the excess over 60 hours. In fact, they are dividing that figure by 720 hours also. Shri Basantani also submitted that the number of hours of any kind of planned load shedding should be deducted.

19. Shri Basantani reiterated that BESL had been deprived of LFI even when they had exceeded Contract Demand by only 0.1%. He pointed out that MSEB and BESL each have a meter at the same premises which, though calibrated, had consistently been giving different readings. In February, 2004, according to the MSEB meter, the Contract Demand was exceeded by 0.1%, but not according to BESL's meter. He also pointed out that there was no Contract Demand restriction on LFI in the Commission's operative Order dated 1st December, 2003. In any case, some tolerance level should be allowed in this regard, also taking into account practical exigencies such as banking of capacitors, etc. BESL have suggested an upward allowance of 5% , but the Commission could fix any other reasonable percentage. As far as BESL's prayer for providing the incentive in the same month, he acknowledged that the Commission has now resolved the matter through its Clarificatory Order dated 13th July, 2004.

20. Ms. Ruby Kerawale, Counsel for MSEB reiterated the contention in their written Reply that the review Petition was not maintainable. As far as any clarification was required, she submitted that MSEB had no difficulty in conceding the prayer regarding rounding off to the next higher digit in case of excess over 0.5%. The Commission drew Counsel's attention to the difference in wording used in respect of power factor incentive and LFI in its Order dated 10th March, 2004. In case of the latter, the incentive is to be given "for every percentage point increase in load factor from 85%". Thus, it is not continuous but step-wise or discrete. Moreover, a formula has been given for load

factor and that will throw up a specific figure. Around 8000 cases might have to be reopened if such rounding off is agreed to, and the Commission queried as to whether MSEB had considered the implications.

21. Shri C.B. Bagal, Chief Engineer, (TRC), MSEB submitted that, as far as the difference in meter readings was concerned, the acceptable range of error of electronic meters is within $\pm 0.5\%$. Shri Basantani intervened to say that the differences between the readings on the two meters are often more than that, and that they had taken up this problem in detail with MSEB at the local level. MSEB had stated that they were looking into it, nothing has been done. He had brought the correspondence with him, and would furnish it to the Commission and to MSEB's representative. The Commission observed that if there is a dispute regarding the accuracy of the respective meters, then BESL should approach the appropriate authority. However, if MSEB also recognizes that there is a problem, then they should take immediate steps to resolve it.

22. Shri Basantani reiterated BESL's contention that the restriction on LFI in case the Contract Demand was exceeded was included for the first time in the Order dated 10th March, 2004 and did not apply in February, 2004. The Commission observed that, while providing LFI in its operative Order of 1st December, 2003, it was never its intention to mandate or to condone a situation where Contract Demand is exceeded.

23. Referring to the limit of 60 hours in the load factor formula, Shri Basantani submitted that the excess number of hours should be deducted from the 720 hours. The Commission observed that, as far as the maximum possible rebate is concerned, the Commission had only stated that the total rebate would be subject to a ceiling of 15%, and not that it would necessarily go upto 15%. Shri Basantani submitted that at least the planned load shedding should be deducted, and that they never informed about such load shedding. Shri Bagal responded that BESL are an important consumer of MSEB in that area, and that MSEB are not resorting to load shedding for them. However, MSEB have to resort to shut down for a few hours of maintenance per month. Shri Basantani submitted that at least those hours should be deducted. The Commission observed that, in such cases, MSEB should inform the consumers and treat it as planned shut down to be considered while giving LFI. Breakdowns, on the other hand, are not to be included and are already considered in the formula.

24. The Commission notes that Regulation 87 of the Conduct of Business Regulations, 2003 which governed review of the Commission's orders at the time the Petition was filed, reads as follows:

"Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from 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 decision/ order was passed by the Commission 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 60 days of the date of decision/ order. to the Commission."

After the filing of the Petition, new Conduct of Business Regulations have been notified on 10th June, 2004. However, Regulation 85 of the new Regulations contains a similar provision. Thus, the maintainability of the Petition has to be tested against these requirements. The scope of review is, accordingly, limited, and substantive modification of an Order outside its scope can only be agitated in appeal and not before the Commission.

25. Keeping in view the Regulations governing review, none of its elements have been cited to justify introducing any allowance for exceeding Contract Demand for availing of LFI since it would constitute a substantive modification in the LFI. No error has been shown, nor is there any difficulty in implementing these provisions. In its Order, the Commission has also brought out the reasons for not allowing any LFI if the Contract Demand is exceeded. As far as the claim that this restriction was not in the operative Order dated 1st December, 2003 and, therefore, did not apply in February, 2004, the Commission notes that the former is in the nature of a summary Order. Further details, modalities, elaborations and considerations required in a speaking Order can necessarily be set out only in the detailed Order, which followed on 10th March, 2004 and is, therefore, applicable from the date when the summary Order took effect unless stated otherwise.

26. With regard to the prayer for squaring up to the next higher digit if the load factor is above 0.5%, para 32.1.3 of Part II of the Order dated 10th March, 2004 states that "consumers having load factor over 75% upto 85% will be entitled to a rebate of 0.75% on the energy charges for every percentage point increase in load factor from 75% to 85%" (emphasis added). Thus, discrete and not continuous intervals are envisaged. In other words, squaring up can only be done to the lower digit unless there is a full percentage point increase. The Order is clear on this matter, and any change in this formulation is outside the scope of clarification, particularly when the only ground cited is "general practice", which is not relevant in view of the clear and precise wording used in the Order.

27. There is nothing in the Order to say that, in the best case, 15% LFI would be given. The Order only states that "the total rebate under this head will be subject to a ceiling of 15% of the energy charged to that consumer". However, considering the submissions at the hearing, the Commission clarifies that events such as stoppage for maintenance have to be treated as planned shut down and be considered as such while computing entitlement for LFI as per the formula.

28. As acknowledged by BESL, in its Clarificatory Order dated 13th July, 2004, the Commission has clarified that credit of the LFI and bulk discount is to be given to eligible consumers for the relevant month in the energy bill pertaining to that month itself. The Clarificatory Order also states that, in case this practice is not being followed, it should be implemented in the case of energy bills for the month of August, 2004 onwards.

The Commission rejects admission of the Petition with the above observations and clarifications.

Sd/-
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Member

Sd/-
(Pranod Deo)
Member

Sd/-
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