

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE Nos. 16 of 2002

**In the matter of
application dated 27th August 2002 filed by Prayas, Pune for Review of Tariff being
charged by M/s Tata Power Company Limited and M/s BSES Limited.**

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

ORDER

Dated: November 01, 2002

M/s Prayas, Pune has submitted, under Section 22(1)(a), (d) and 22(2)(e) of the Electricity Regulatory Commissions (ERC) Act, 1998 and Regulations 24, 72(2) and 84 of the MERC (Conduct of Business) Regulations, 1999, an application dated 27th August 2002, under affidavit for a Review of Tariff being charged by M/s Tata Power Company and M/s BSES Limited. Prayer of the Applicant is as under:

“The MERC should initiate a “Review of Tariff Being Charged by TPC and BSES”, and to this end TPC and BSES should be directed to submit detail statements including Annual Revenue Requirement and Expected Revenue from Charges along with supporting calculations and evidence on affidavit within two months.”

2. The Commission held an admissibility hearing in the matter on 30th October, 2002.
3. During the hearing Shri Dixit of Prayas, submitted that the Commission should initiate a review of the tariff charged by the TPC and the BSES, and the Commission is fully empowered to do so under various provisions of the ERC Act, 1998 and also under Regulation 84 of the MERC (Conduct of Business) Regulations, 1999. He further submitted that as envisaged in the Act, there is a need to review the tariff of TPC and BSES in a transparent manner, as the last tariff

was fixed by Government of Maharashtra (GoM) under the then existing legal framework. Significant increase in average tariff by these utilities since then necessitates suo motu review by the Commission to ensure economy and efficiency. He further requested the Commission to direct these utilities to file Annual Revenue Returns (ARR), Annual Accounts, and Annual expected revenue with supporting calculations.

4. He further mentioned that though the BSES in its reply dated 19th September 2002 had argued that the bulk supply tariff need to be determined first with regard to TPC, and then only the retail tariff of BSES could be determined, yet it was only a matter of procedure. This should not hinder the process of tariff determination or review.

5. With regard to the written submission dated 28th October 2002 filed by the TPC, he submitted that essentially they have raised four issues, and point-wise replies thereof are as under:

(a) Under what capacity Prayas can approach the Commission

He submitted that various provisions of the ERC Act and MERC Regulations quoted in their application have amply demonstrated the Commission's jurisdiction over the Maharashtra State as a whole. Being a resident of the State and also an interested person, Prayas could approach the Commission for a review of the tariff. Secondly, the TPC tariff component of standby charges does affect partly the MSEB tariff and, therefore, Prayas is indirectly affected and not limited by geographical boundary or the consumership of the specific utility. Thirdly, the Commission has recognised Prayas as a consumers' representative under Section 26 of the ERC Act, 1998, which does not specifically limit its participation in regulatory process by region / geographical area / utility. Therefore, Prayas, being an interested party as well as being a NGO recognised under Section 26 of the ERC Act, 1998 has the right to approach the Honourable Commission in the matter.

(b) In view of the MERC Order dated March 27, 2000 in case of MIDC Marol Industrial Association in respect of BSES tariff, the application is not maintainable:

In this Order dated March 27, 2000 the Commission's observation is amply clear, wherein it has stated, "*It has no jurisdiction to entertain the present matter. Section 22(1)(a) read with Section read with Sec. 29 of the ERC Act, 1998, gives sole jurisdiction to the Commission to determine tariffs prospectively and not retrospectively. If, however,*

... the High Court gives a direction to the Commission to examine and report on a tariff hike effective from a date before the coming into existence of the Commission, the Commission would have jurisdiction to hear the matter". In the instant case a review of the tariff prospectively and not retrospectively has been requested and, therefore, this issue has no relevance.

- (c) Review of tariff cannot be sought merely on the basis that the same has not been revised for a certain number of years.

The prayer is only seeking for a review of the tariff, which should be examined in a transparent manner in contest of its revenue requirement and revenue earned through the tariff, including the FCA, which is a part of the tariff. Only then the issue of either increasing or decreasing the tariff could be decided.

He further submitted that even, the BEST Undertaking, another bulk consumer of the TPC, is not aware of the rationale of the FCA portion of tariff levied by the TPC. He invited the Commission's attention to the minutes (page 5) of the first meeting of the State Advisory Committee of the MERC held on 29.1.2001 and quoted the relevant portion wherein the GM, BEST stated that "*they have been unable to know the basis on which the FCA charges are being calculated by the TEC ... but there has not been any communication in this regard from the TEC*"

Shri Dixit made a visual presentation (copy circulated after the hearing) with (i) component of fuel used by TPC over last three years, and (ii) the cost charged by the TPC on this account. He submitted a comparison of MSEB's revenue requirement as approved by the MERC for the year 2001-02 with that of TPC for the year 2000-01 based on the published data and concluded that the Busbar energy cost of TPC is atleast 60% higher than that of the MSEB. Therefore, he submitted that there is a need for the Commission to review the tariff in a transparent manner to fulfill the mandate of the Act with regard to the economy and efficiency.

6. The senior counsel of the BSES submitted that

- (i) As far as the locus standi of the Applicant is concerned, Prayas has the locus standi as an interested public body in the State.

- (ii) With respect to the jurisdiction of the Commission, the BSES fully agrees with the views expressed by the Applicant. He further submitted that the Commission, under the ERC Act, 1998 and its Regulations, is fully empowered and mandated to hear the petition.
- (iii) Regarding taking up simultaneous review of the retail tariff of BSES and bulk tariff of TPC, he submitted that the Honourable Commission, at its sole discretion, could decide the matter on admission.
- (iv) With respect to the reference of the Marol MIDC case, he agreed with the observation made by the Applicant on prospective review.

7. The senior counsel of the TPC submitted that as far as the jurisdiction of the Commission is concerned, there is no doubt that the MERC is the sole authority under the law to determine the tariff. He further submitted that the TPC tariff was determined in 1996 under Schedule VI of the E(S) Act, 1948 and the annual accounts have been regularly submitted and audited by the Government. For the last eight years, they have neither received any complaint from any quarter nor the GoM was represented on this issue by anyone. Therefore, the apprehension expressed by the Applicant about manipulating the FCA charges is misplaced. Shri Gupta of TPC submitted that it was incorrect to compare the energy cost of the MSEB with that of the TPC since there is a restriction on the usage of coal in the Trombay plant. He submitted that the fuel ratio and price projection by Prayas are incorrect and, therefore, reserves his right to submit comments, if any, subsequently.

8. The TPC counsel submitted that considering the timing of application by the BSES and the Prayas, though co-incidental, and the BSES's submission supporting Prayas's application, there is an apprehension of their working in synchronism.

9. The Commission observed that the apprehension lacks any foundation and it is a fact that the TPC never approached the Commission, since its constitution, to get the approval of increase in FCA. The TPC has passed on the increased FCA on many occasions since 1999 without clearly placing the rationale in a transparent manner before the public and its consumers. Therefore, it is in every stakeholder's interest to disclose the rationale of charging the enhanced FCA as the same would improve the credibility of the whole process. This will also put all the doubts raised by consumers at rest once for all.

10. The senior counsel of the TPC mentioned that TPC has no hesitation in submitting all relevant information / data / documents which are audited regularly.

11. Shri Girish Sant of Prayas expressed his strong reservation on TPC counsel's comments indicating hand-in-glove approach and submitted that the TPC should have taken a note that Prayas has approached the Commission, which is the right forum to deal with such matters rather than approaching the public through Press. Therefore, he denied strongly that Prayas and BSES are jointly seeking the review of the TPC tariff and mentioned that the application is for a review of both the TPC and the BSES tariff.

12. In the light of the submissions made by the Applicant and the Respondents, the Commission observes that there are sufficient grounds to review the FCA charge, which is a pass-through component of tariff, in a transparent manner (under Section 37 of the ERC Act, 1998), and which has changed substantially since the Commission came into existence. The Commission is mandated to ensure economy and efficiency under Section 22(2)(e) of the ERC Act, 1998 and to review the tariff under Regulation 84 of the MERC (Conduct of Business) Regulations, 1999. However, during the pendency of Appeals [Appeal No.1 and 2] in Case No. 7 of 2000 before the High Court, total review of tariff for both parties may be kept pending at this stage. Therefore, the Commission directs:

- i) Both the TPC and the BSES are directed to submit their method for charging FCA along with monthly details for review, from August 1999.
- ii) Both the TPC and the BSES should also submit their Annual Returns for the last three financial years (1999-2000 to 2001-2002) duly certified by the Chief Engineer (Electrical), Government of Maharashtra under the Electricity (Supply) Act, 1948.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(Sanjay Kumar)
Secretary, MERC