

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Email: mercindia@mercindia.com
Website: www.mercindia.com

Case No. 18 of 2003

In the matter of
Determination of Tariff [2003-04 and 2004-05] applicable to various categories
of consumers of M/s Reliance Energy Limited - Review of Clarificatory Order
dated 25.11.2004 regarding billing computation.

Dr. Pramod Deo, Chairman
Shri A. Velayutham, Member

ORDER

Dated: 6th June, 2005

Under their Petition dated 7th January, 2005, Reliance Energy Ltd. (REL) have approached the Commission for a review of its Clarificatory Order dated 25th November, 2004. REL have stated that they were not given a hearing in respect of the complaint made by Shri Nadkarni before passing the Clarificatory Order, as provided for in the Commission's Conduct of Business Regulations. Had REL been heard, they would have explained the correctness of the methodology applied by them for computation of bills covering a part of June, 2004 (earlier tariff) and part of July, 2004 (revised tariff), which was in line with the Commission's directions in the Tariff Order dated 1st July, 2004 that:

"Depending on the billing cycle applicable to different consumer categories, the revised tariff should be made applicable on a pro-rata basis for the consumption starting from 1st July, 2004."

2. In their Petition, REL have submitted that, for any billing cycle which included a part of July, 2004 (when the new tariff took effect), the total consumption for the billing period has to be taken into account. In Shri Nadkarni's case, the billing period was between 5th June to 7th July, 2004, with total consumption of 386 units. Shri Nadkarni was billed (i) for the period in June, 2004 at the old rate and (ii) from 1st July, 2004 to 7th July, 2004 at the new tariff. As per the old tariff, a higher rate was payable if consumption was more than 350 units for a particular billing month, i.e. at a flat rate of 3.38 per unit. Thus, on a pro-rata basis, if the daily consumption exceeded 11.667 units per day (350 units divided by 30 days), the flat rate would be applicable. The monthly consumption of Shri Nadkarni is 386 units for 32 days. REL have stated that his pro-rata daily consumption is 12.0625 units per day. Being higher than 11.667 units, the flat rate of Rs 3.38 per unit would be applicable to consumers such as Shri Nadkarni.

3. In their Petition, REL contend that Shri Nadkarni's argument that it is essential to separate out the consumption pertaining to the period from 1st July, 2004 onwards is contrary to the directive in the Tariff Order that the revised tariff should be made applicable on a pro-rata basis. According to REL, Shri Nadkarni's contention in his letter dated 30th July, 2004 to REL (cited in the Clarificatory Order) that the consumption in part of June and part of July, 2004

should be worked out separately on the basis of average consumption per day during the bill period to arrive at charges separately to total up the bill due, is also incorrect. The billing period is between 5th June and 7th July, 2004. There is no question of consumption during June, 2004 being less than 350 units inasmuch as this slab for billing under the then applicable tariff was admittedly on the basis of monthly billing period. Thus, it would not be correct to take pro-rata consumption for the month of June, 2004 on a "per day" basis for determining the tariff slab. Such a computation would be inconsistent with the Commission's directions. In fact, the billing period and the applicable tariff slab for the pre-revised tariff rate was always on a monthly basis. REL have also referred to the contents of their earlier responses to Shri Nadkarni.

4. On the basis of the above, REL have sought a review of the Clarificatory Order, and asked to be heard in person. With regard to the Commission's direction that any over-recovery made should be refunded by 31st January, 2005 with 12% interest, REL have sought that the Order be stayed pending hearing and final disposal of their Application.

5. Subsequently, REL have also submitted, vide their letter dated 19th January, 2005, that:

"As per the directives of the said Order, REL was to make necessary adjustments in the bills of consumers for refund of over recovery, if any, arising out of the procedure of billing adopted by REL. this was to be done by 31st January, 2005. In view of the Review Petition filed by REL and the Scheduled hearing on 1st February, 2005, no adjustment in the bills of the consumers has so far been made."

The Commission, in its reply dated 20th January, 2005 pointed out that *"since no stay has been granted by the Commission, the Clarificatory Order will, therefore, continue to operate."* Subsequently, REL again, vide their letter dated 23rd January, 2005, approached the Commission reiterating their request, in spite of the clear indication given earlier.

6. At the hearing held on 1st February, 2005, Shri J.J. Bhatt, Counsel for REL submitted that the Commission passed its Tariff Order on 1st July, 2004, in which a departure had been made from the earlier practice by introducing a telescopic tariff, and thereafter issued its Order dated 25th November, 2004 clarifying in this context the method of computation of bills covering the period both before and after the new tariff took effect. Counsel submitted that REL should have been heard before the Clarificatory Order was issued, though it is true that a reply could have been filed to the Commission's prior letters seeking their response. If a hearing had been fixed, REL could have explained their stand. Personal hearing is contemplated in the MERC (Conduct of Business) Regulations, in the absence of which REL's civil rights are affected. Hence the Application for review of the Clarificatory Order.

7. The Commission pointed out that several communications were sent to REL seeking comments on Shri Nadkarni's contentions, without response, and queried as to how long the Commission should have waited for them to avail of the opportunity given before clarifying the matter.

8. Shri Nadkarni queried as to whether it was obligatory to give a personal hearing to REL before passing the Clarificatory Order, particularly in view of the fact that 3 months had been given to them to reply, but they had preferred not to respond at all to the Commission's communications. As a consumer, he himself had also repeatedly followed up with both REL and the Commission with regard to the irrational and arbitrary method of billing by REL for the transition period from the old to the new tariff structure. It is clear from the Clarificatory Order that the Commission had duly referred to all the papers, including REL's responses to him. He

submitted that, as against Rs 470/- that he was overcharged because of the incorrect method of billing computation, he has had to spend more than that in photocopying, writing and commuting, besides spending personal time and energy on this matter, as against the vast resources available to REL to avoid their obligations. He pointed out that the Clarificatory Order essentially only elaborates on the interpretation of the Commission's Order dated 1st July, 2004. He submitted that it should be implemented in true spirit, rather than raise legalities. Shri Nadkarni pointed out that REL could have sought a hearing prior to the Clarificatory Order, but had preferred not to respond at all at that time. Moreover, inspite of the Commission's directions to refund the excess amounts to consumers by 31st January, 2005, REL had not done so.

9. With regard to implementation of the Clarificatory Order, REL Counsel submitted that it had been kept in abeyance considering that a hearing was fixed on 1st February, 2005 (i.e. just a day after the stipulated date for refund), and that REL would refund with interest in case their computation methodology was confirmed to be incorrect upon review. Shri Nadkarni could be paid today itself, subject to the Commission's final decision. Shri Nadkarni queried as to how long a consumer should wait to get justice even in terms of implementation of a dispensation already mandated by the Commission. While flouting the Commission's Orders, REL are talking of denial of natural justice and legalities, but at the same time denying consumers their legitimate dues. It was not a question of refund only to him, but of several crores of rupees due to many such consumers, which REL have wrongfully retained.

10. Referring again to the Commission's direction in its Tariff Order dated 1st July, 2004 that *"Depending on the billing cycle to different consumer categories, the revised tariff should be made applicable on a pro-rata basis for the consumption starting from July, 2004"*, REL Counsel submitted that, had the billing cycle been from 1st June to 30th June, a residential consumer (such as Shri Nadkarni) consuming more than 350 units would have had to pay for all the units at a higher rate as per the earlier tariff structure. Shri Nadkarni's contention that, due to the overlapping of the billing cycle, he should get the benefit of the lower tariff slab for part of June as well as July (post Order) would amount to a double benefit accruing to such consumers. Referring to the Annexure to the Clarificatory Order which uses Shri Nadkarni's own example as illustration, he pointed out that Shri Nadkarni's consumption has been more than 350 units in all months except one (though the Commission notes that by itself the Annexure does not indicate anything about such past consumption pattern). Therefore, while computing the pro-rata consumption pertaining to the period 5th to 30th June, the consumption to be considered has to be taken for the whole month for deciding the applicable slab, or else Shri Nadkarni would get a double benefit.

11. Counsel for REL cited para 7 of the Clarificatory Order to the effect that *"Shri Nadkarni's computation is essentially the correct way of applying the revised tariff from 1st July, 2004 and segregating the two periods... While applying the pre-revised tariff, only the pro-rata consumption for the month of June, 2004 has to be considered to determine which tariff slab will be applicable."* Counsel submitted that the issue is what constitutes 'pro-rata'. He submitted that, ideally, the meter reading for all consumers should have been done on 1st July, 2004, which is not practicable. Therefore, the pro-rata consumption has to be arrived at by segregating the two periods, and then taking the average daily consumption for the billing cycle falling in the month of June and using it to determine the notional monthly consumption for the purpose of arriving at slab applicability for the June part.

12. Shri Nadkarni referred to the leaflet issued by REL after the Tariff Order, which explains that *".... The new tariff is effective from 1st July, 2004. This month's bill includes consumption of both the months of June and July. As per the Order, June consumption is to be charged as per*

the old tariff and July consumption as per the new tariff. For the purpose of calculation, total consumption is divided between June and July based on the number of days in each month.." Shri Nadkarni submitted that, thus, REL themselves have clearly set out the manner of segregating consumption for each month for computation on pro-rata basis, and it is consumption that is to be divided on pro-rata basis and not the bill amount computed on the basis of total consumption. In his case, however, 386 units have been taken as the basis. REL are not following their own guidelines for segregation of consumption.

13. Giving an example of 15 days of June and 15 days of July covered under one month of billing cycle, Shri Subodh Shah of REL submitted that, in such a case, 50% of the consumption recorded during the billing cycle would be considered under the old tariff regime, and the next 50% under the new tariff. Under the old tariff regime, units in excess of 100 units were also subjected to FAC charge. By Shri Nadkarni's calculation, the total payable per unit during June would be lower than the total payable during July (considering each month as having 30 days) when the tariff is lower. Shri Shah submitted that this would be patently absurd.

14. Shri Nadkarni pointed out that the Commission has clearly illustrated in its Annexure the methodology, including the treatment of FAC, which leaves no room for doubt. During the month of July, the FAC has been merged by the Commission into the base tariff and, therefore, raising the matter of FAC recovery is out of place. To a doubt raised by the Commission regarding whether the period dates are inclusive, Shri Pandya of REL explained that the date of meter reading is the last date of the bill period, and the consumption upto 06.00 hours on the day of meter reading is considered to be within the billing period. Therefore, effectively, the consumption on 7th July, 2004 in this case would not be falling into the consumption during the relevant billing cycle. Thus, the total number of days should be considered as 32 rather than 33. In case of Shri Nadkarni's bill, the average consumption is, therefore, 12.063 units. Based on this average consumption, the pro-rata consumption for the month could be arrived at to determine the tariff slab applicable and the charges to be recovered.

15. The Commission queried as to why REL could not have clarified their position when opportunities were given to them before issuing the Clarificatory Order. While apologizing, REL Counsel submitted that he had no answer to this. Shri Nadkarni also pointed out that there had in the past been many instances where, based on 38 days' meter reading, the non-telescopic tariff was applied, resulting in over-recovery. When such cases were raised, there had been no response to his complaint of June 2004 regarding bill for April 2004. REL Counsel submitted that he would take this up with his clients.

16. In his subsequent letter dated 2nd February, 2005 and further communications, Shri Nadkarni has addressed the various contentions made by REL, essentially along the lines urged by him at the hearing. In his submission dated 2nd February, 2005, Dr. Ashok Pendse of Mumbai Grahak Panchayat (authorised consumer representative) has urged that, considering Regulations 85, 95 and 96 of the Conduct of Business Regulations, the Commission is not bound to give a personal hearing in respect of Clarificatory Orders. Written submissions are sufficient. While setting out possible alternative interpretations and consequent computations, Dr. Pendse has essentially argued that, when such is the case, the choice has to favour the interpretation and method in which the balance of convenience is to the consumer's interest considering the thrust of the statute, and Shri Nadkarni and the Commission's view meets this test.

17. At the outset, the Commission must emphasize that it had been clear in its mind about the methodology to be adopted for computation of charges in cases where the energy bills included a part of the period before and after the revision of tariff on 1st July, 2004, while directing that

"depending on the billing cycle applicable to different consumer categories, the revised tariff should be made applicable on a pro-rata basis for the consumption starting from 1st July, 2004." However, it was brought to the Commission's notice by Shri Nadkarni that, in practice, a different methodology was being followed by REL which, as it happens, worked to their advantage. In order to confirm the position, and also to give REL an opportunity to explain their stand, the Commission wrote to REL, firstly on 31st August, 2004. Even though no reply was received by the stipulated date (8th September, 2004), the Commission reminded REL on 21st September and also on 7th October, 2004, again without response, as has been set out in the Clarificatory Order. That being the case, and because a clarification had become necessary since REL seemed to have misinterpreted its directions to its advantage, the Commission issued its Clarificatory Order on 25th November, 2004 to remove any scope for ambiguity and contrary interpretation, along with an Annexure illustrating the correct method of computation. REL were given three opportunities over a period of nearly 3 months to explain their position, but did not avail of them. Moreover, the Commission had before it the stand taken by REL contained in their correspondence with Shri Nadkarni, which has been quoted in the Clarificatory Order. Thus, REL were given a full opportunity to present their views, and could also have asked for a personal hearing at that time but did not do so. Hence, no principle of natural justice can be alleged to have been breached while passing the Clarificatory Order.

18. The computation methodology set out in the Clarificatory Order was intended to make the Commission's Tariff Order direction clear. However, it is necessary to examine and address some of the arguments raised by REL, which ultimately focus on the impact of the methodology clarified by the Commission while proposing an alternative dispensation.

19. One such argument is that, as a result of the Commission's manner of computation, consumers such as Shri Nadkarni would derive a double benefit by avoiding the higher slab and its application to all units in the June period, as well by taking advantage of the telescopic nature of the revised tariff for consumption of less than a week in July while paying for the bill pertaining to the billing period spanning over two calendar months. As far as the latter is concerned, it is not a question of benefit or disadvantage, but the application of a tariff determined after a due process which did away with the earlier non-telescopic tariff slabs. The alleged benefit with regard to consumption in the latter part of June through avoidance of the higher slab rate applicable to all units is also not on firm ground. Firstly, applying the REL methodology would imply that the consumers would have to pay at a higher rate for units that they had not consumed in the calendar month. REL's other supporting argument that Shri Nadkarni's consumption fell in the highest non-telescopic slab in all previous months except one (which, however, does not seem to be the case) and that therefore, REL would be deprived of its due in this case, can equally well be turned on its head in cases in which the consumers' consumption in the months prior to the relevant period had been generally less than 350 units. The Clarificatory Order and, indeed, the Tariff Order itself is applicable in general, and not to a particular case. If REL's line of argument were pursued further, it could be urged that one should look not at the whole monthly consumption, but the average daily consumption in like-to-like periods, and so on. That is why a more general dispensation has been set out in the tariff Order, as further clarified on 25th November, 2004. Thus, the Commission finds no merit in REL's arguments on this count with regard to the methodology clarified in respect of particularly the June consumption in the example used by the Commission.

20. However it is also true that, while considering the bill for the consumption during a billing month, if the portion of energy consumption during the latter part of the billing period under consideration in Shri Nadkarni's example is added (i.e. 6 days of July), all units would have attracted the highest tariff slab, as per the earlier non-telescopic tariff dispensation. Hence, it

would not be appropriate to treat such portion of consumption on par with the earlier consumption which attracts a comparatively lower slab rate during the month of transition as per the Commission's clarification. To be fair to both the Licensee and the consumer, the Commission therefore considers it appropriate to arrive at pro-rata consumption (units arrived at on the basis of average consumption per day) for 26 days of June 2004 since, for the first 4 days of June, the recovery is already worked out and over and the tariff payable accordingly as per the relevant tariff slabs for 314 units (in the present example). As far as the tariff payable for the part of the billing period falling in July 2004 is concerned, in view of the introduction of telescopic tariff, the energy charges for the month should be worked out based on average consumption. This would ensure that charges close to the average billing rate are levied. On arriving at the month's energy charges payable, apportionment for six days of July 1 should be done before levying duties and taxes to determine the final bill for that period.

21. For greater clarity and understanding, the Annexure to this Order sets out the consequent computations, again using Shri Nadkarni's own case as an example, and taking the number of days as 32 (instead of 33 earlier, considering REL's clarification at para 14 above).

22. REL had been directed in the Clarificatory Order dated 25th November, 2004 to refund any over-recovery made to the concerned consumers by adjustment through energy bills or other means by the end of January, 2005, with 12% interest (the lowest rate chargeable for arrears of payment by consumers). In its Review Petition, REL had sought a stay on the operation of the Clarificatory Order pending hearing and final disposal. REL essentially reiterated their prayers under letter dated 19th January, 2005 cited at para 5 above. Under letter dated 20th January, 2005, the Commission made it clear that no stay had been granted. In spite of this and without reference to the Commission's reply, REL reiterated the position under letter dated 23rd January, 2005. At the time of hearing, it was found that REL had admittedly not refunded the amounts of over-recovery. While the approach of the Commission to defaulting stakeholders has never been punitive, such a cavalier attitude cannot be accepted. Nevertheless, the Commission is not inclined to pursue the matter further.

23. Based on the considerations set out at para 20 as illustrated in the computations annexed, any over-recovery refunds on this count should be made by 31st July, 2005 with 12% interest from 1st July, 2004. Any refunds made thereafter should be made along with delayed payment charges as well as interest as applicable to delayed payments by REL's consumers @ 18% (applicable to payments made after 6 months) as per the terms set out for such interest on arrears in REL's approved tariff booklet. In any event, all such refunds should be made by 31st August, 2005, and compliance submitted on affidavit by 10th September, 2005.

The Commission disposes of REL's review Petition accordingly.

Sd/-
(A. Velayutham)
Member

Sd/-

(A.M. Khan)
Secretary, MERC

(Dr

Annexure to Order dated 06.06.05 (Review of Clarificatory Order dated 25.11.2004 in Case No.18 of 2003)

Details of Electricity Consumption (Prorata allocation) for REL Consumer number B46740399				
Source of Information: REL Bill dated 13.07.04				
Bill Period: 05-06-2004 to 07-07-2004		No of Days : 32 days		
Meter Read on : 07-07-2004				
Tariff Category : LF1				
Initial Meter Reading: 18398				
Final Meter Reading : 18784		M.F: 1 Units Consumed : (18784-18398) = 386 Units		
Previous Tariff		Tariff w.e.f 1st July 2004		
Consumptions during a month	Rs/ Unit	Consumptions during a month	Fixed Charge Rs/Conn/month	Rs/ Unit
for the first 100 units consumed per month	1.38	0-100 units	25	1.15
for the next 50 units consumed per month	2.40	101-300 units	40	3.20
for the next 200 units consumed per month	3.10	> 300 units (only balance units)	40	4.40
Where Consumption in a month exceeds 350 units, for all the units	3.38			
FAC charges	Extra			
Meter Rent per Single Phase month	2.00			
Elect Duty @ 12% of Energy plus FAC				
GoM Tax on sale of Electricity	0.15			
Average Consumption per day	12.06			
Consumption/month	361.88 units	Consumption during 6days of July'04	72.38	units
Consumption during 26 days of June'04	313.63 units			
Total units consumption for the billing period = 313.63 + 72.38 units= 386 units.				

Computation for JUNE'04				Computation for JULY'04			
June Consumption	314 units (rounded)			July Consumption (monthly)	362 (12.06 X 30) units		
Total Charges Calculation	Rate / Unit	Units chargeable	Rs	Total Charges Calculation	Rate / Unit	Units chargeable	Rs
Energy Charges	1.38/2.40/3.10	314	766.40	Energy Charges	1.15/3.20/4.40	362	1027.80
Meter Rent			2.00	Fixed Charges	40		40.00
FAC Charges	0.84	214	179.76	FAC Charges	0	362	0
Elect Duty on E+FAC	12%		113.54	Elect Duty on E+FAC	12%		128.14
Tax	0.15	314	47.10	Tax	0.15	362	54.30
Total Charges			1108.80	Total Charges			1250.24
Proportionate Bill for June 26 days			1108.80	Proportionate Bill for July 6 days '=1250.24 X (6/30)			250.05
Total Bil payable during the above billing period covering June and July 2004 will be				Rs.(1108.80+250.05) = 1358.85			

Note: REL bill shows the above amount as Rs 1706.58 /- (Positive difference of Rs 347.73/-