

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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CASE No. 30 of 2001

In the matter of

Petition filed by M/s. Pudumjee Pulp & Paper Mills Ltd. for review of Tariff Order dated 10.01.2002 and related directions.

Shri P. Subrahmanyam, Chairman

Shri Jayant Deo, Member

Dr Pramod Deo, Member

ORDER

Dated: 22nd July, 2004.

M/s. Pudumjee Pulp & Paper Mills Ltd. ("Pudumjee") have filed a Petition for Review of the Commission's Order dated 28th December, 2001 and 10th January, 2002 in Case No. 1 of 2000 read with Order dated 5th May, 2000 as modified by the Order dated 16th June, 2000 in Case No. 1 of 1999, with the following prayers:

- "(a) The Commission be pleased to review and reconsider the levy of Rs 20/- per KVA of billing demand in addition to the normal demand charges of Rs 325/- applicable to HTP-I consumers situate in BMR and PMR area and the Petitioner in particular and to pass appropriate directions/ clarifications to the Respondents to not charge the same retrospectively or prospectively.*
- (b) The Commission be pleased to review and reconsider the additional charge of Rs 0.25 paise per KWH as a component of Tariff payable by HTP-I consumers as a "reliability charge" with effect from 1st April, 2002.*
- (c) That pending the disposal of this Petition, the Respondents be directed not to give effect to the orders being the subject matter of this Petition under consideration of the Commission."*

2. The Commission had passed a detailed Order determining the Maharashtra State Electricity Board (MSEB)'s tariff in Case No. 1 of 2001 on 10th January, 2002, which was preceded by the issue of the operative part of the Order on 28th December, 2001. The Petition states that, under these Orders, MSEB could charge Rs 20/- per KVA of billing demand in addition to the normal demand charges of Rs 325/- applicable to HTP-I consumers in the Mumbai and Pune Metropolitan Regions, and fixed an additional charge of Rs 0.25 per kWH as a component of tariff payable by HTP-I consumers as a "Reliability Charge" from 1st April, 2002. The Petition contends that these Orders were passed without taking into consideration material facts and documents available with MSEB and/or Govt. of Maharashtra, and overlooking the legal provisions.

3. According to Pudumjee, they manufacture special papers on a large scale, requiring huge investments in continuous running equipment and machinery for quality production with uninterrupted power supply. Pudumjee are a HT consumer of MSEB paying around Rs 85 lakhs per month towards electricity charges. In pursuance of GoM's 1993 Industrial Policy encouraging captive power generation, Pudumjee were granted consent by MSEB under letter dated 22nd September, 1998 for installing a 6.4 MW Captive Power Plant (CPP) to run parallel with the grid at 22 KV, under Section 44 of the Electricity (Supply) Act, 1948 with certain terms and conditions. The CPP was commissioned and synchronized with the grid in December, 1998.

4. The Petition states that, under letter dated 16th June, 2001, MSEB asked Pudumjee to pay around Rs 60.52 lakhs against a supplementary bill issued for alleged short billing of the contract demand from December 1998 to May 2001. It was stated by MSEB that Pudumjee had been billed at Rs 180/- and Rs 300/- per kVA respectively instead of Rs 200/- and Rs 320/- per kVA.

5. According to the Petition, from subsequent correspondence it transpired that this additional demand was made by MSEB on the basis of the Commission's Orders fixing Rs 20/- as additional demand charge from consumers having a CPP synchronized with the grid, which was over and above the base tariff charge of Rs 300/- per kVA. Pudumjee paid Rs 25 lakhs under protest pending clarifications/ reconsideration. They also learnt from the correspondence that, by its Order dated 16th June, 2000, the Commission allowed MSEB to charge Rs 20/- as additional demand charge, and the supplementary bill was raised with retrospective effect from December 1998 onwards on that basis.

6. The Petition cites points (7) and (12) of Part 1 of the Commission's first tariff Order dated 5th May, 2000 in Case No. 1 of 1999, referring to rationalization of tariff categories and the introduction of TOD tariff for HT industrial consumers. It further states that the summary of the HT tariff in that Order for the year 2000-01 relating to HTP-I (Industrial BMR-PMR) provides for a demand charge of Rs 300/- per kVA and for no other payment. The Order does not mention payment of an additional amount of Rs 20/- as an additional demand charge, nor is it contained in MSEB's tariff proposal leading to the Order. In this context, the Petitioner quotes para 48.1 of the Order, which refers to the HT tariff being higher than the average cost of HT supply and requiring to be reduced. The Petition further quotes from para 45.1.1.1 of the Order which refers to progressive rationalization of the tariff as a part of the major tariff principles in the context of high industrial tariffs compared to the cost of supply. The Order dated 5th May, 2000 also comments at length on the quality of power supply by MSEB. With regard to CPPs, the Order states that MSEB should not follow an obstructionist policy.

7. The Petition refers to a further Order dated 16th June, 2000 under which additions/ clarifications were issued with respect to the tariff Order dated 5th May, 2000. In particular, the Commission has stated as follows:

"The Commission expects that the Maharashtra State Electricity Board will adhere to the Schedule of installing TOD meters given in the earlier order. In the meantime, the base tariff should be applied as prescribed by the Commission in its Tariff Order dated 5.5.2000 until such time TOD meter is installed.

The Commission clarifies that the high tension consumers who have installed captive generation plants and wherever these plants are synchronized with the Board system will be billed demand charges at the rate of Rs 320/kvs/month for HTP-I and HTP-II categories. However, this matter will be taken up for further consideration at the time of taking up issues relating to Section 22(1) of the ERC Act, 1998."

8. In this context, the Petition reiterates that the original tariff Order dated 5th May, 2000 did not provide for payment of any amount over and above the base tariff of Rs 300/- per kVA/ month by way of additional demand charge by HTP-I consumers, nor had it been proposed by MSEB. Even the Order dated 16th June, 2000 left the issue open for further consideration and there was no final Order in this regard. Further, no public notices were issued for consideration of the issues related to Section 22(1) of the Electricity Regulatory Commissions (ERC) Act, 1998 as mentioned in the Order dated 16th June, 2000.

9. Referring to the operative part of the 2nd tariff Order dated 28th December, 2001, the Petition cites the Commission's decision to penalize MSEB for disregarding earlier directives, and requiring that the amount should be deposited in a special account together with the Reliability Charge. The Commission also introduced the concept of Reliability Charge as follows:

"In response to the oft-repeated demand for supply of reliable, uninterrupted power to MSEB workers, similar to the situation prevailing in Greater Mumbai in the license areas of the TPC, BEST and the BSES, the Commission has initiated the process of levying a 'Reliability Charge' to begin with, on HTP-I and HTP-II consumers who have been provided with ToD meters with urban agglomerations in the State, on consumers receiving power supply through Express Feeders and also those within MIDC areas. The scheme will be operational with effect from 1st April 2002. The MSEB should submit to the Commission details of consumers belonging to the above categories, to whom the MSEB can supply uninterrupted power based on the additional power available without in any way changing the load-shedding programme for other classes of consumers. The MSEB will impose an additional charge of 25 paise per kWh to these consumers and ensure that they get uninterrupted power supply. In any billing cycle, if there is any interruption in power supply from the MSEB system to these consumers, this Reliability Charge shall not be levied."

The detailed tariff Order passed thereafter on 10th January, 2002 elaborates, inter alia, on TOD and the reliability charge.

10. The Petition also cites the Commission's observation regarding the CPP Policy, where it had stated that its silence on this policy should not be taken as approval for the same. The Commission had further observed that:

"The Commission has also specified the demand charges applicable for HT consumer having captive generation facilities synchronized with the grid. The demand charges have been fixed such that these consumers will pay an additional Rs. 20 per KVA of billing demand, in line with the existing practice. This is a provisional decision, and is subject to change after the Commission's decision with regard to the 'Captive Power Policy' in the State and the GoM's approval for the same."

In the Order, the base tariff for HTP-I consumers has been fixed at Rs 325/- from 1st January, 2002 and it has also provided that:

"HT Industrial consumers having captive generation facilities synchronized with the grid, will pay additional demand charges of Rs. 20 per kVA per month."

The Petition contends that, significantly, the revenue charge and projections do not take into account the additional demand charge being claimed over and above Rs 325/- per KVA.

11. The Petition draws attention to the parameters to be followed for determination of tariff under Section 29(2) of the ERC Act. Section 30 requires the Commission to record the reasons for deviation or departure from these guiding factors, and contends that Section 59 of the Electricity (Supply) Act also has to be considered while determining the tariff.

12. In the above background, the Petition states that the base tariff was fixed at Rs 320/- per KVA/ month under Order dated 5th May, 2000 and thereafter at Rs. 325/- per KVA/ month for HTP-I consumers under Order dated 10th January, 2002. This base tariff forms part of the revenue and projections of MSEB. However, the amount of Rs. 20 Per KVA / month added to this base tariff does not form part of the revenue estimates/ receipts in this Order. Moreover, the guiding factors for tariff determination under the ERC Act read with the provisions of the Electricity (Supply) Act do not empower the Commission to allow non-tariff payments to be levied by way of additional charges.

13. The Petition argues that the Commission has no authority or jurisdiction to take such decisions or to keep them subject to change or to fix any charges on ad-hoc basis as has been done by the Orders dated 16th June, 2000 and 28th December, 2001 forming the basis of the Order dated 10th January, 2002.

14. According to the Petition, the direction of payment of additional charges of Rs 20/- per KVA/ month of demand charges is contrary to the requirement to reflect the cost of supply of electricity. The tabular statement at page 168 of the Order dated 10th January, 2002 provides that the average cost of supply per unit for HTP-I is Rs 3.15 per unit and the average realisation per unit is Rs 4.33 (revised to Rs 4.20). The additional charge of Rs 20/- per KVA is not reflected in the tabular statement and is an additional cost, though the average cost of supply is only Rs 3.15 per unit. The additional cost to Pudumjee as a result amounts to Rs 1.7 lakhs per month on an average.

15. The Petition argues that additional conditions cannot be imposed by the Commission on parties who had set up CPPs with large investment on the basis of Govt. of Maharashtra's policies which did not provide for conditions or additional costs. Pudumjee had also incurred capital costs for express and additional feeder lines for continuous uninterrupted supply long back, inspite of which MSEB have failed to provide uninterrupted power. Having incurred such costs, Pudumjee cannot now be required to incur an additional cost as "reliability charge" which would entail a recurring cost of around Rs 4.16 lakhs per month. The breach of obligation by MSEB to supply reliable and uninterrupted power cannot result in consumers being penalized and a reliability charge being imposed on them and is contrary to the parameters laid down under the ERC Act. In fact, in terms of these parameters, the Commission ought to levy a unreliability charge on MSEB for not discharging their duties.

16. Hearing for admission of the Petition was fixed on various dates, and were initially adjourned at the request of MSEB. Thereafter, the Commission decided to postpone the hearing taking into consideration the fact that MSEB had filed an appeal in the meanwhile against its Order dated 10th January, 2002 in the High Court, and the concerned parties were informed accordingly under Notice dated 4th April, 2002. Subsequently, Pudumjee again approached the Commission for a hearing. Under Notice dated 1st January, 2004 fixing the date of hearing, the Commission mentioned that the Order in the appeal filed by MSEB in the High Court is yet to be pronounced, though the hearing was closed in September, 2003.

17. At the admissibility hearing held on 12th January, 2004, Shri Gautham Patel, Counsel for Pudumjee, submitted that he was concerned here only with the additional demand charges of Rs 20 per KVA for CPPs which are synchronized and in parallel with the grid, and referred to the specifics set out in the Petition. He further submitted that Pudumjee had suggested some solutions as set out in

the accompanying correspondence. He submitted that this surcharge of Rs. 20 cannot be justified from any perspective. The CPP, being synchronised and in parallel with the MSEB grid, is essentially reducing the burden on MSEB to a substantial extent. He submitted that, if Pudumjee did not have a CPP or if they had a CPP not synchronised with the grid, then this levy of Rs. 20 would not be attracted. Thus, Pudumjee are being asked to pay more for actually using less and enabling MSEB to supply power elsewhere, and that Pudumjee had incurred capital expenditure of Rs 17 crore on their CPP. He submitted that there is nothing on record justifying why this charge is necessary.

18. To the Commission's observation regarding the fixed cost involved, Counsel for Pudumjee submitted that, as far as the fixed cost is concerned, Pudumjee have paid 100% upfront. The Commission observed that what Pudumjee have paid for is only the connection and not for the generating capacity. Capacity costs charged to most HT holders are below the actual cost incurred. A part of the capacity cost is recovered through variable charges. The Commission further observed that the charges levied on standby are Rs. 600 per KVA whereas Pudumjee are being charged only Rs. 350/- per KVA per month. The Commission has provided in its tariff Order an incentive based on load factor for higher utilization of capacity. Therefore, it is very logical to have negative discount where the load factor is very low. Because Pudumjee have their own CPP, the demand on the MSEB system and, therefore, the load factor is sub-optimal. For this reason, MSEB could have charged Pudumjee something more, not necessarily Rs. 20 per KVA. This is the rationale, and the Commission had agreed to it.

19. Counsel for Pudumjee responded that the review Petition has been filed to assess whether that charge is necessary. He would deal with it when he receives MSEB's detailed reply, because there is an offsetting pattern depending on what the usage of electricity is as drawn from MSEB and as generated locally. Figures would be given once MSEB give their response.

20. To a query from the Commission regarding whether Pudumjee's case in the High Court had any different points, Counsel submitted that the Writ Petition was filed because they segregated it into two periods – one was the period prior to the tariff Order of the Commission, and the other for the period after the tariff Order. For the subsequent period, Pudumjee has come to the Commission, and for the prior period they went to the High Court. The High Court case was more or less on the same basis except that there was no challenge to the tariff Order in the High Court, and Pudumjee was late in filing. He further submitted that this was one of the main reasons why the High Court did not entertain Pudumjee.

21. The Commission observed that the modalities of the levy of Rs.20 per kVA referred to had now been changed in the latest tariff Order dated 1st December 2003. Counsel for Pudumjee referred in this connection to Paragraph 50 of the Order dated 1st December 2003, mentioned by the Commission in its hearing notice dated 1st January 2004, and quoted as under:

“The additional standby charges of Rs.20 per kVA per month will be applicable to HT industrial consumers with captive generating units synchronized with the MSEB grid, only on the extent of standby demands, and not on the entire contract demand as prevalent currently.”

Counsel for Pudumjee further quoted Paragraph 4:

“HT industrial consumers having captive generation facilities synchronized with the grid will pay additional demand charges of Rs.20 per kVA per month only for the standby contract demand component.”

22. Counsel for Pudumjee further submitted that, as a matter of fact and record, MSEB have never billed them Rs.20 on the contract demand but on the billing demand. In Pudumjee's case, the billing demand is substantially less than the contract demand, and has been so for the last one and a half years. He further submitted that he is unable to obtain a precise definition of standby demand at present, subject to what MSEB might say in their reply or which might later be clarified. He submitted that the concept of standby demand appears to have come in for the first time in the process.

23. The Commission queried as to whether only a clarification on this would satisfy Pudumjee. Counsel for Pudumjee illustrated with figures the scope for differing interpretations. The Commission observed that the Rs 20/- charge is only applicable on the capacity of the CPP. Counsel submitted that he did not think that his problem was resolved, but that he would have to take instructions. Pudumjee's contract demand had been reduced, but they are utilizing much less than that. Even on this clarification, they are paying for the entire amount. The additional charge of Rs 20 on that is more than offset by the amount Pudumjee are paying because of the extent of their contract demand compared to actual usage. Counsel for Pudumjee submitted that the substance of his argument is that one has to look at the quantum of supply and the quantum of utilisation. The Commission observed that this has nothing to do with the quantum of utilisation because Pudumjee have a CPP capacity of 6.4 MW and MSEB will have to meet Pudumjee's requirements whenever the need arises, for which MSEB have made some investment which has to be charged. Capacity has been created, whether it is utilised or not, and capital cost has been incurred.

24. The Commission also pointed out that Pudumjee cannot come with a review Petition on the merits and substance of the relevant Order. It queried Counsel as to which of the parameters for review under Regulation 87(1) of the Conduct of Business Regulations, 1999 was being invoked and satisfied by the Petition. Counsel for Pudumjee responded that there appears to have been an error apparent on the face of the record because no justification was given by MSEB when they applied for the surcharge of Rs.20 per kVA. The Order passed by the Commission also does not contain a justification. In the alternative, there is "sufficient reason" for a review of the charge of Rs.20 per kVA.

25. The Commission observed that Pudumjee could have come for the public hearings before the impugned Orders were passed. Counsel responded that the issue of Rs 20 per KVA never came up for public hearing, that notice was not given, and that is what is pleaded in the Review Petition, but there is no reply from MSEB. The Commission observed that Counsel was perhaps referring to the May, 2000 Order whereas the review is sought of the January 2001 Order. In those proceedings, MSEB had sought this charge.

26. Counsel for Pudumjee referred to Paragraph 6.4 of their review Petition and submitted that it deals with the May, 2000 Order. At that time, as pointed out in Paragraph 6.5, there was no proposal for this charge, nor any Order. The Commission observed that it is not concerned with the May, 2000 Order here, but with the January 2001 Order which has been challenged.

27. Counsel for Pudumjee then referred to Paragraph 7.3 at Page 9 of their review Petition and quoted as under:

"The Petitioners are not aware of and on enquiries have been informed that no Public notices were issued for the consideration of the issue related to Section 22(1) of the ERC Act, 1998 as mentioned in the Order dated 16th June, 2000."

Counsel for Pudumjee further referred to Paragraph 7.4 of their review Petition and quoted as under:

“It appears that further Orders have been passed on 28th December, 2001 as also on 10th January, 2002 with regard to the proposal of the Respondents seeking a Tariff revision on 15th March, 2001 with effect from 1st April, 2001. The said proposal of the Respondents was again revised by the respondents by their letter dated 31st August, 2001.”

Counsel for Pudumjee also referred to Paragraph 7.5 of their review Petition citing the Order dated 28th December 2001 and quoted as under:

“HT Industrial Consumers having captive generation facilities synchronized with the grid, will pay additional demand charges of Rs.20 per kVA per month”

The Commission pointed out that, prior to May 2000, MSEB were charging Rs 20. Neither did MSEB say anything nor did the Commission withdraw it. Counsel submitted that the charge was mentioned in the 28.12.2001 Order, as stated at para 7.5 of the Petition. It is at this point that Pudumjee had said that justification was necessary.

28. Counsel for Pudumjee submitted that the latest tariff Order 1st December, 2003 speaks of standby demand charges, which is now clarified. It is still a substantial burden. It may have been reduced, but it is not withdrawn. The Commission observed that the Orders were the outcome of a public process. Counsel further submitted that it is possible that there has been some mistake in the passing of the December, 2001 Order because MSEB's revenue projections did not account for this Rs.20 per kVA additional burden, and that was sufficient reason for the Commission to re-examine this issue.

29. The Commission observed that now Counsel has been made aware of the position, namely, that MSEB's cost is Rs 600. The law requires movement towards the cost of supply. The Commission is going step by step, and that is why it was increased from Rs 160 to Rs 300 in the year 2000. It was further increased in 2001. In case it is only a matter of formal clarification, that could be given. Counsel for Pudumjee then referred to the chart on Page 5.26 of MSEB's tariff revision proposal for 2003-2004 and submitted that the average cost of supply has already been reckoned in the base billing. Thus, the additional charge of Rs.20 per KVA is already accounted for, and is an excess if it is charged separately. He submitted that, on computation, the average cost of supply per unit is Rs. 3.26 which Pudumjee are already paying, and Rs 20 is over and above that. The Commission observed that Pudumjee may be paying more than Rs. 3.26 per unit because of cross subsidy. Counsel submitted that, in that case, justification should have been given for the additional charge. In this context, the Commission observed that Pudumjee could file an Affidavit stating what would be the cost of their making their own standby arrangement, presuming that no standby was available from MSEB.

30. Ms. Deepa Chawan, Counsel for MSEB submitted that, in the context of Pudumjee's High Court case, Pudumjee are bifurcating the matter of Rs 20 per KVA into two periods, i.e. pre-and post the Commission's tariff Order of 5th May, 2000. She pointed out that, in fact the additional charge of Rs. 20 per KVA was being charged from the earlier tariff revision of 1st September, 1998 prior to the constitution of the Commission, and this aspect was brought before the High Court also. Therefore, it was not for the first time that the levy was made in 2000. This levy continued to be a part of the tariff proposals and the tariff sanctioned by the State Government even prior to the constitution of the Commission. She further submitted that, by an application dated 23rd May 2000, MSEB intimated the Commission that the Order did not impute to this levy, and should be formulated. MSEB had merely been continuing with it. The Commission said that they could charge it, and the matter would be

considered in its entirety during the next exercise, and that is what the Commission did after hearings on several occasions including the last Order dated 1.12.2003. She observed that Counsel for Pudumjee wanted MSEB to reply to the grounds raised in the Review Petition and also whether the Commission can reserve its right to hear a matter under Section 22(1)(c) of the Electricity Regulatory Commissions Act 1998. She submitted that the matter of whether this falls within the ambit of the Regulations for review also had to be considered.

31. Counsel for MSEB submitted that the High Court, while dismissing Pudumjee's Petition, had referred to why the levy is being charged. It is not merely for utilisation, but a fixed cost that MSEB incur for maintenance and capital cost. She stated that she would circulate MSEB's reply pertaining to the Writ Petition and the Orders with MSEB's affidavit for a clear picture. Counsel for Pudumjee submitted that, after examining MSEB's reply, he would file a rejoinder.

32. Counsel for MSEB sought guidance from the Commission as to whether MSEB should wait for the High Court Order in MSEB's appeal since it is yet to be pronounced, or file a reply, since it was on that account that the present case had been kept in abeyance. However, that appeal concerned several other matters. The Commission clarified that, in this particular case, since the Commission had passed another Order in January 2002 dealing with the levy of Rs.20 per kVA, it had thought that it would hear Pudumjee briefly, and Pudumjee may consider withdrawing the Petition in view of the deliberations. Counsel for Pudumjee submitted that they were uncertain about the concept of standby demand charges and, since the concept of standby demand charges had been clarified by the 1st December 2003 Order, he would take instructions and file an affidavit before the Commission after examining the financial impact.

33. The Commission notes, however, that no such affidavit was filed. Under letter dated 23rd April, 2004, Pudumjee were reminded of the statement in this regard made by their Counsel during the hearing. In their response on behalf of Pudumjee, M/s. Federal & Rashmikant submitted that the clarifications given by the Commission at the hearing held on 12th January, 2004, viz. that the additional demand charges of Rs 20/- per KVA are only applicable on the capacity of the CPP, does not resolve the issue insofar as Pudumjee are concerned. The affidavit proposed to be filed on behalf of Pudumjee is in the process of finalization. However, they have still not received a copy of the affidavit in reply of MSEB, in which MSEB would presumably deal with the issues at hand. Thus, a composite affidavit would be filed before the Commission including, inter alia, by way of rejoinder to MSEB's reply after it is received. M/s. Federal & Rashmikant submitted that the High Court would be on vacation from 7th May to 6th June, 2004, and that they would revert to the Commission shortly after its reopening.

34. Even thereafter, no affidavit has been filed by or on behalf of Pudumjee to date. The Commission notes that the Petition is at the stage of deciding admission, although the Commission had also sought to clarify to the Petitioner certain substantive matters at the time of the admissibility hearing. Regulation 87(1) of the Commission's Conduct of Business Regulations, 1999 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."

(These Regulations, which were framed under the ERC Act which has now been repealed, have been replaced by fresh Regulations notified on 10th June, 2004 under the Electricity Act, 2003. However, Regulation 85 of the new Conduct of Business Regulations contains similar provisions governing review). Thus, at the present admission stage, Pudumjee are required to satisfy the Commission that the Petition meets the requirements governing review of its Orders rather than being more appropriately a matter of appeal to be agitated elsewhere as per law. Nevertheless, at the hearing on 12th January, 2004, the Commission also sought to discuss and clarify some of the substantive matters raised by Pudumjee, as will be seen from the foregoing paragraphs. The Commission also notes that, during the hearing, the matter of additional charge of Rs 20/- per KVA was agitated rather than the Commission's directions with regard to 'reliability charge', which is yet to be levied in practice. Apart from its observations during the hearing, therefore, the Commission will deal with the matter of admission rather than the substantive issues in the light of the provisions of the Regulations.

35. The Commission notes that both the issues of which review is sought, viz. withdrawal of the additional charge of Rs 20/- per KVA and the reliability charge, are substantive elements of the impugned tariff and related Orders, and have been further amplified in the Commission's latest tariff Order. These Orders have been passed after following due process and consideration, and public hearings where required. Keeping in view the deliberations at the hearing held on 12th January, 2004 and the observations made, the Commission finds that the present Petition does not meet the test of the provisions in the Regulations governing review, either in terms of any prima facie error apparent on the face of record or any other mistake, or new facts, or any other sufficient reason. Under the Regulations, the ambit of review is circumscribed, and the Commission cannot entertain what is essentially an appeal against its Orders in the guise of such review. That would amount to ascribing to itself the powers of the competent appellate authority under the law. Moreover, the Commission has waited for considerable time for a further filing by Pudumjee, which has not been forthcoming upto now.

36. In view of the foregoing, the Commission declines to admit the Petition. However, Pudumjee are at liberty to reapply with further grounds for admission in terms of the Regulations governing review in case they are able to do so subsequently, keeping in view the position set out at paras 31 and 32 above.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

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