

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal Nos.197 of 2011 & 119 of 2012**

**Dated 3rd May, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**Appeal No. 197 of 2011 & IA no. 302 of 2011**

**&**

**Appeal No. 119 of 2012 & IA no. 228 of 2012**

**In the matter of:**

Vidarbha Industries Association,  
1<sup>st</sup> Floor, Udyog Bhawan,  
Civil Lines, Nagpur-440 001  
Maharashtra,  
Through Secretary

...Appellant

Versus

1. Maharashtra State Electricity Distribution  
Company Limited,  
Prakashgad, Bandra (East), Mumbai-51.
2. Maharashtra Electricity Regulatory Commission,  
World Trade Centre No. 1,  
13<sup>th</sup> Floor, Cuffe Parade,  
Mumbai-400 005
3. The Secretary,  
Ministry of Power,  
Mantralaya, Mumbai-400 032,  
State of Maharashtra

...Respondent(s)

Counsel for Appellant : Mr. G. Umapathy  
Ms. R. Mekhala

Counsel for the Respondents : Mr. Atul Nanda, Sr. Adv.  
Mr. Akhil Sibal,  
Mr. Abhishek Mitra,  
Ms. Puja Priyadarshini,  
Ms. Manmeet Kaur  
Mr. Samir Malik for R-1  
Mr. Buddy A. Ranganadhan  
Ms. Richa Bhardwaja for R-2

**JUDGMENT**

**RAKESH NATH, TECHNICAL MEMBER**

Appeal nos. 197 of 2011 and 119 of 2012 have been filed by Vidarbha Industries Association against the orders dated 30.10.2011 and 30.12.2011 respectively passed by the Maharashtra Electricity Regulatory Commission (“State Commission”) regarding Retail Supply Tariff for Maharashtra State Electricity Distribution Company Ltd.

2. The Appellant is an Association of Industries in Vidarbha region of the State of Maharashtra. Maharashtra State Electricity Distribution Co. Ltd., the Respondent no.1 is the distribution Licensee. The State Commission is the Respondent no.2.

3. The brief facts are as under:-
  - 3.1 The Distribution Licensee (R-1) filed a petition on 12.07.2011 before the State Commission for final true up of the accounts for the FY 2009-10, provisional true up for the FY 2010-11 and Annual Performance Review for the FY 2010-11. The Distribution Licensee prayed for an interim order pending final disposal in the matter in order to financially sustain its activities by way of imposition of additional charges with immediate effect.
  - 3.2 The Distribution Licensee filed a miscellaneous application for interim relief being MA no. 4 of 2011 which was rejected by the State Commission on the ground that unless the application seeking interim relief is published under Section 64 of the

Electricity Act, no such interim relief could be considered.

3.3 Pursuant to the public notice issued by the State Commission in main petition, the Appellant filed a detailed objection submitting that the additional costs should not be allowed in view of the mismanagement by the 1<sup>st</sup> Respondent and the tariff should be decided only after giving consideration to all the objections raised by the Appellant.

3.4 However, the State Commission by an interim order dated 30.10.2011 in the main petition granted an interim relief of Rs.3265 crores as against Rs.4742 crores sought by the Respondent no.1 to be recovered through tariff from 01.11.2011 in a period of 12 months resulting in

impact of 41 paise per unit in the tariff. As against this order dated 30.10.2011 the Appellant Association filed the Appeal no. 197 of 2011.

3.5 During the pendency of this Appeal, the State Commission on 30.12.2011 passed the final order reiterating the order granting part relief dated 30.10.2011 and also approving an additional amount of Rs.405 crores in addition to Rs.3265 crores granted in the interim order. The final order, however, did not impose any additional increase in the tariff. As against this final order dated 30.12.2011, the Appellant has filed Appeal no. 119 of 2012.

4. The Appellant has raised the following issues.
  - i) The State Commission has no power under the Section 94(2) of the Electricity Act, 2003

to pass an interim order which would have an effect on the tariff. The petition being not a tariff revision petition and only truing up of the accounts, the amount has to be allowed and recovered through the tariff only through a tariff exercise and not by interim order or by grant of part relief. The Commission has no power to grant interim relief which has the effect of revising the tariff without following due process of law.

- ii) There has to be stability in tariff. Section 62(4) of the Electricity Act, 2003 expressly mandates that no tariff or part of any tariff may ordinarily be amended, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. Thus, by revising the tariff on

true up of accounts for previous years, the State Commission has violated Section 62(4) of the Act.

- iii) The tariff increase approved by the State Commission defeated the very purpose of a multi-year tariff framework.
- iv) The State Commission failed to consider the submissions of the Appellant with regard to power purchase expenses and also failed to issue proper direction to take up adequate steps to reduce power purchase expenses.
- v) The Respondent no.1 has failed to collect the arrears from various consumers including the State Government departments and such collection inefficiency is being passed on to the consumers.

- vi) The State Commission has failed to consider the objections raised by the Appellant and has not given any specific finding and merely recorded the objections.
5. Ld. Counsel for the State Commission has made the following submissions:
- i) The Commission is fully empowered under Section 94(2) of the Electricity Act, 2003 to pass interim orders in matters coming before it. The Distribution Licensee in the petition for true up and APR had specifically prayed for interim relief.
  - ii) The said petition *inter alia*, containing the prayer for interim orders was published in accordance with the procedure contemplated under Section 64 of the Electricity Act and



after hearing all the parties and considering the objections and suggestions raised by the objectors, the interim order dated 31.10.2011 was passed.

- iii) The interim order revising the tariff was as a result of excruciating circumstances resulting in increase in power purchase cost and shortage of working capital affecting the operations of the Distribution Licensee.
- iv) The interim orders were passed in the prayers made in the main petition in case no. 100 of 2011 for interim orders which was subjected to public notice and hearing and not application for interim relief in MA no. 4 of 2011 in which no public notice was given.
- v) The State Commission has considered certain major costs components such as power

purchase cost, income tax, revenue difference, deviation in capital expenses, arrears, etc., none of which have been challenged or even questioned by the Appellant in the present Appeal.

- vi) The objections raised by the Appellant regarding true up have been considered in the final order. However, the objections regarding tariff design, etc., are to be considered only in the tariff order and not in the true up order.
- vii) Even in Appeal no. 119 of 2012, the Appellant has not challenged or even questioned any of the items of costs and revenue which have been true up in the impugned order.

6. The learned counsel for the Respondent no.1 has also made elaborate submissions supporting the impugned orders of the State Commission.
  
7. We have heard the Learned Counsel for the Appellant, the State Commission and the Respondent no.1. Keeping in view the contentions of the parties, the following questions would arise for our consideration:
  - i) Has the State Commission erred in issuing interim order allowing additional charges to be recovered from the consumers through tariff in the true up petition filed by the Distribution Licensee?
  
  - ii) Whether the tariff can be increased by the State Commission in the true up order in

violation of Section 62(4) of the Electricity Act?

- iii) Whether the State Commission was justified in allowing the additional expenses and increasing tariff of consumers?
8. The first two issues are inter-related and therefore, are being dealt with together.
- 8.1 According to the Appellant the State Commission has no power under Section 94(2) of the Electricity Act, 2003 to pass an interim order which would have in effect, increase in the tariff. The State Commission having rejected the interim application filed by the Distribution Licensee could not have passed the interim order.

8.2 According to the learned counsel for the State Commission, the State Commission is fully empowered under Section 94(2) of the 2003 Act to pass interim orders in matters coming before it. The Distribution Licensees had specifically prayed for interim reliefs in view of its poor financial condition. The said petition *inter alia*, containing the prayer for interim orders was published in accordance with the procedure contemplated in Section 64 of the Act and after hearing all concerned parties and considering the objections and suggestions from the stakeholders, the State Commission passed the interim order dated 31.10.2011. In passing the interim order, the State Commission has considered the excruciating circumstances mentioned in the petition no. 100 of 2011.

8.3 Let us first examine the sequence of events in passing the impugned orders.

- i) On 4.3.2011, the State Commission notified Multi Year Tariff Regulations to be introduced for the control period commencing from FY 2011-12.
- ii) On 22.2.2011 the Distribution Licensee filed a petition *inter alia*, seeking deferment of the MYT Regulations.
- iii) On 12.7.2011 the Distribution Licensee filed a petition for final true up for FY 2009-10; provisional true up for FY 2010-11 and Annual Performance Review for FY 2010-11 in petition no. 100 of 2011.
- iv) Between 1.8.2011 and 17.8.2011, Technical Validation Sessions were held and certain

data gaps were filled up by the Distribution Licensee.

- v) On 23.8.2011, the State Commission passed an order deferring the applicability of MYT Regulations for the Distribution Licensee (R-1).
- vi) On 5.9.2011, the Distribution Licensee filed a Miscellaneous Application being MA no. 4 in case no. 100 of 2011 seeking certain interim reliefs.
- vii) On 10.9.2011, a public notice was issued under Section 64 of the Electricity Act, 2003 in case no. 100 of 2011 which *inter alia*, contained the prayers for interim reliefs.
- viii) The State Commission held a hearing on 28.9.2011 in MA no. 4 of 2011 and orally opined that unless MA no. 4 of 2011 seeking

interim financial reliefs was published u/s 64, no such interim reliefs could be considered.

- ix) The Distribution Licensee sought review of proceedings held on 28.9.2011 in MA no. 4 of 2011 in Review Petition no. 143 of 2011.
- x) The State Commission held public hearings in case no. 100 of 2011 which had *inter alia*, contained prayers for interim orders.
- xi) The State Commission passed the impugned order dated 31.10.2011 which has been challenged in Appeal no. 197 of 2011.
- xii) Thereafter, the State Commission passed order dated 30.12.2011 disposing of the petition no. 100 of 2011 which has been challenged in Appeal no. 119 of 2012.



8.4 In the interim order dated 31.10.2011, the State Commission has rejected the Review Petition no. 143 of 2011 in MA no. 4 of 2011, considered the prayer for interim relief as contained in the main petition (case no. 100/2011) and considered various elements of cost and in view of urgency of the matter granted interim relief.

8.5 Let us examine Section 94 of the Electricity Act, 2003.

***“94. Powers of Appropriate Commission.—***

*(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) discovery and production of any document or other material object producible as evidence;*

*(c) receiving evidence on affidavits;*

*(d) requisitioning of any public record;*

*(e) issuing commission for the examination of witnesses;*

*(f) reviewing its decisions, directions and orders;*

*(g) any other matter which may be prescribed.*

*(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.*

*(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it”.*

8.6 Section 94(2) gives powers to the State Commission to pass interim orders in the proceedings before it as it may consider appropriate.

8.7 Let us now examine the prayer in case no. 100 of 2011. The relevant portion is as under:

*“1. To invoke the powers conferred to it under Section 94 of the Electricity Act 2003, to be read with Regulation 4, 99, 100 and 101 of MERC (Multi Year Tariff) Regulations, 2011 and to admit the petition seeking Final True up of FY 2009-10, Provisional True Up for FY 2010-11 and Annual Performance Review of FY 2010-11.*

*2. Pending final dispensation in the matter, to pass an interim order without any delay permitting MSEDCL to recover the deviation in power purchase expenses for FY 2010-11 and assist MSEDCL to financially sustain its*

*activities by way of imposition of an additional charge with immediate effect (Interim Order).*

*3. Pending final dispensation in the matter, to pass an interim order without any delay permitting MSEDCL to recover the deviation in revenue estimation for FY 2010-11 and assist MSEDCL to financially sustain its activities by way of imposition of an additional charge with immediate effect (Interim Order).*

*4. To allow MSEDCL to recover the other factors of Revenue such as Load Factor incentives, Power Factor incentive / Penalty, Contract Demand Penalty and any other incentive/penalty provided to the consumers on a monthly basis in line with the FAC principle as the same is an uncontrollable cost.*

8.8 Thus, in the petition the Distribution Licensee had prayed for interim order without any delay to recover the deviation in power purchase expenses

and deviation in revenue estimation for FY 2010-11.

8.9 The excruciating circumstances given in the Petition by the Distribution Licensee seeking increase in tariff were:

- a) **Unforeseen circumstances on account of water shortage in Chandrapur Thermal Power Station:** In the FY 2010-11 the water level fell below the critical level due to low rainfall. The District Collector issues a directive on 31.3.2010 rescuing the total water available in Erai Dam which supplies water to Chandrapur Thermal Power Station for drinking water only and no water to be utilized for power generation. This resulted in reduction in generation

at Chandrapur by 1700 MW during the period April to June 2010 when the power requirement in the State was high. It was indicated that the total energy availability from Chandrapur Thermal Power Station would be reduced by 8251 Million Units compared to what approved in the last tariff order dated 12.9.2010. Therefore, the Distribution Licensee had to purchase power from other sources at higher prices to avoid load shedding resulting in sharp increase in power purchase expenses.

- b) **Working Capital Requirements:** The Distribution Licensee was borrowing short term fund and using overdraft facility to purchase additional power.

The total sanctioned loan amounts have been fully utilized and the Banks and Financial Institutions were reluctant to sanction additional limit which is affecting the day to day operation of the Distribution Licensee and procurement of additional power.

- c) **Delay in Regulatory Process:** The applicability of MYT Regulations dated 4.2.2011 had been deferred. The Distribution Licensee had also challenged the Regulations before the High Court which is pending. Thus, crucial time was lost.

8.10 Thus, the Distribution Licensee gave pressing reasons for grant of interim relief for sustainance of its operations.

8.11 In the meantime the Distribution Licensee filed a Miscellaneous Application – MA no. 4 of 2011 on 5.9.2011 seeking interim relief to recover deficit of Rs. 4847 crores out of projected revenue gap of Rs. 5155 crores. The State Commission by order dated 28.9.2011 rightly refused to pass interim financial relief without publishing the application and seeking objections and suggestions from the public according to Section 64 of the Act.

8.12 The State Commission after the public hearing and considering the objections and suggestions of the stakeholders in the main petition which also contained a prayer for interim relief passed the impugned interim order dated 31.10.2011 after giving full justification.



8.13 The reasons given by the State Commission to pass an interim order dated 31.10.2011 are as under:

*“37. The Commission had determined tariff of MSEDCL consumers in its last tariff Order dated September 12, 2010 and subsequent Review Order dated December 2, 2011. Subsequent to that the Commission has not received any further Petition for tariff determination.*

*38. However, MSEDCL has now submitted that there is an emergency situation that needs to be addressed even before determination of tariff. Therefore, it is necessary to examine whether the situation warrants such attention of the Commission. From the submissions of MSEDCL, the Commission observed that mainly three factors have been highlighted by MSEDCL for its purported financial difficulty. It has pointed out that it had to bear much higher power purchase cost mainly due to failure of MSPGCL*

*to deliver the required energy from its Chandrapur power station and also due to late applicability of the tariff order for FY 2010-11. Consequently, MSEDCL submitted, it had to resort to short-term borrowings and overdraft from its bank accounts.*

*39. On the other hand, it is a known fact that debt-ridden power distribution companies have started defaulting on payments for merchant power, triggering supply cuts that could sink many parts of the country into darkness. In 2001-02 the Central Government had bailed out sinking State Electricity Boards with the package after they defaulted on payments to Central Utilities. With such huge dues mounting, power suppliers and traders quite possibly may snap supplies to Discoms. Hence, there is an urgent need for improving financial conditions of Discoms inter alia by pricing electricity at an appropriate level. This is an alarming situation with fresh bank loans drying up. It is publicly known that Discoms*

*are reeling under unmanageable debts. In fact, defaulting Discoms will not even possibly get more loans from Government owned banks and financial institutions. Normally, power deficient Discoms can buy from power exchanges, but coal shortage has pushed up prices in October 2011. Moreover, cash payment is required to buy power through this route. Hence, there is no point in dragging one's feet in this matter or else Discom would be caught in a bind. On the other hand, overdrawals from the National Grid are deterred with unscheduled interchange charges. As a result, it is quite possible that there may not be any way out for the Discoms but to resort to heavy load shedding. In the case of Maharashtra, though there is no default by Discom on power purchase from the free market. In the above backdrop, the Commission is inclined to believe that MSEDCL is facing crucial shortage of working capital for running its day to day business. MSEDCL submitted that it enjoys A+ credit*

*rating while borrowing money from the banks. If it is faced with a perpetual financial crisis, it may default on repayments and consequently face a downgrade in credit rating leading to increased cost of borrowing.*

*40. In the present circumstances, the tariff determined under the Order dated September 12, 2010 (along with Review Order dated December 2, 2011) continues to operate till the time new tariffs are determined based on the True Up for FY 2009-10, True Up for FY 2010-11, Annual Performance Review for FY 2010-11 and submission of petition for ARR and Tariff for FY 2011-12.*

*41. However, the situations explained by MSEDCL are clearly not ordinary within the meaning of sub-section (4) of section 62 of the EA 2003. Hence, the tariff determined under the order dated September 12, 2010 could be amended in extraordinary circumstances. The Commission will take some more time in disposing of Case No. 100 of 2011. This may lead to further financial difficulties of*

*MSEDCL. It may not also be in the interest of consumers of MSEDCL to let MSEDCL wait for financial relief on account of truing up of the expenses till the time the entire Case No. 100 of 2011 is disposed of. Hence, the Commission is considering granting a part of the prayers in Case No. 100 of 2011 only after satisfying itself that there is a genuine need for addressing the problem. Also, not considering the case might lead to other undesired consequences, namely, (i) failure of MSEDCL to properly serve the electricity consumers in a huge state like Maharashtra, (ii) increased burden on the consumers later by way of avoidable interest expenses”.*

8.14 The main reasons given by the State Commission for providing interim relief to the Distribution Licensee are:

- a) In view of mounting dues the power suppliers may stop supplies to the Distribution Licensees. Hence, there is urgent need to

improve financial conditions of the Distribution Licensees.

- b) The Distribution Licensee is facing crucial shortage of working capital for running day to day business. If it is faced with perpetual financial crisis, it may default on repayments and consequently face a downgrade in credit rating leading to increased cost of borrowing.
- c) The situation is clearly not ordinary. Hence, the tariff determined under order dated 12.9.2010 could be amended.
- d) The State Commission will take some more time in disposing of case no. 100 of 2011, which may lead to further financial difficulties and may lead to other undesirable consequences viz., failure of the Distribution Licensee to properly serve the consumers and

increased burden of the consumers later by way of avoidable interest expenses.

8.15 The State Commission after considering the submissions of the Distribution Licensee and the objections and suggestions received during the public hearing allowed passing additional expenses of Rs. 3265 crores as interim relief through tariff as against the claim of Rs. 4742 crores by the Distribution Licensee. The State Commission allowed recovery of this amount by additional tariff of 41 paise/kWh from consumers.

8.16 We find that the State Commission has exercised its powers under Section 97 of the Electricity Act, 2003 to pass interim relief after considering the urgency of situation and after satisfying itself about the quantum of interim relief that too after

hearing all concerned. Therefore, we do not find any infirmity in the order dated 31.10.2011.

8.17 The learned counsel for the Appellant has argued that the State Commission could not have allowed increase in tariff in true up proceedings as it would be violation of Section 62(4) of the Act.

8.18 Let us examine Section 62(4) of the Electricity Act, 2003.

*“62(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified”.*

Thus, the tariff would not be ordinarily be amended more than once in any financial year



except in respect of changes expressly permitted in terms of the specified fuel surcharge formula.

8.19 Section 61(d) of the Electricity Act, 2003 provides that the State Commission has to safeguard the consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner. The State Commission has also to ensure that the Distribution Licensee is able to sustain its operations and maintain power supply to its consumer and all uncontrollable expenses of the Licensees are recovered through tariff as early as possible to avoid any cash flow crisis. In this case in view of extraordinary circumstances which in the opinion of the State Commission could affect power procurement by the Distribution Licensee to meet the demand of the consumers, increase in retail supply tariff to enhance the

revenues of the Distribution Licensee became inevitable.

8.20 The State Commission after examining all the submissions in case no. 100 of 2011 passed the final order dated 30.12.2011. In this order, the State Commission has found that the consolidated revenue gap for FY 2009-10 and 2010-11 is Rs. 3670 crores as against Rs. 3265 crores recognized in the interim order dated 31.10.2011. However, the State Commission has not allowed any further tariff increase leaving the balance revenue gap of Rs. 405 crores to be recovered through subsequent tariff order.

8.21 The Appellant has argued that the tariff has been increased frequently in the past. The State

Commission has submitted the data regarding revisions affected in tariff during 2010-11 and 2011-12 before passing the impugned orders. We find that the tariff has been revised since the passage of the tariff order for FY 2010-11 as under:

- i) 12.9.2010 Main tariff order for FY 2010-11.
- ii) 2.12.2010 Review of main tariff order. It is not a fresh tariff determination but a review.
- iii) 28.1.2011 Fuel Adjustment charge order
- iv) 31.3.2011 To correct certain errors in the main tariff order of the Distribution Licensee in pursuance to the liberty granted by the Tribunal in Appeal no. 199 of 2010.
- v) 26.7.2011 Implementation of judgment dated 24.5.2011 of the Tribunal.

Thus, after the main tariff order dated 12.9.2010 for FY 2010-11, the other orders were either on account of review of the order, fuel adjustment charge as permitted under Section 62(4) of the Act, or implementation of the judgments of the Tribunal. Thereafter, the tariff was increased by interim order dated 31.10.2011 in the extraordinary circumstances. Thus, we do not find any violation of Section 62(4) of the Act by the State Commission. The State Commission has also followed the procedure as laid down in the Section 64 of the Act by publishing the application of the Distribution Licensee and seeking objections and suggestions of the public and considering the same before passing the interim and final orders.

8.22 In view of the emergent circumstances faced by the Distribution Licensee resulting in difficulty in procurement of power for meeting the demand of the consumers, the State Commission has allowed interim relief by means of increase in tariff. We do not find any illegality in the interim order dated 31.10.2011 as well as in the final order dated 30.12.2011.

9. Let us now take up the third issue regarding justification for allowing additional expenses.

9.1 The main issues raised by the Appellant in true up proceedings are:

- i) Failure to consider submissions of the Appellant with regard to power purchase cost.
- ii) Failure to collect arrears from various consumers by the Distribution Licensee.

iii) Failure to consider the objections of the Appellant.

9.2 According to the learned counsel for the Distribution Licensee the primary objection of the Appellant in arguments was in relation to increase in tariff of the Distribution Licensee over the years as also in relation to the frequency of revision. The Appellant has entirely failed to present any cogent challenge to the true up of ARR of the Distribution Licensee for the previous years.

9.3 Learned counsel for the State Commission submitted that the impugned order has undertaken the true up and Annual Performance Review of the expenses of the concerned years strictly in terms of the Tariff Regulations. It is not correct that the State Commission has treated all

expenses as uncontrollable. Regarding non-consideration of various objections and suggestions raised by the various industrial consumers, it was submitted that since the State Commission was concerned only with the true up and Annual Performance Review it could consider objections and suggestions that pertained to the true up and APR only and could obviously not address various tariff design related issues. The State Commission in the next tariff order dated 16.8.2012 determining the tariff has considered and addressed all such tariff related objections. In the Appeal no. 119 of 2012 the Appellant has not challenged or even questioned any of the items of costs and revenue which have been trued up in the impugned order.

9.4 We find that the various objections filed in the true up/APR proceedings were related to tariff design. The State Commission has dealt with these objections in the impugned order dated 30.12.2011 as under:

*“All the suggestions and objections made by various objectors as referred to in the foregoing paragraphs have been considered by the Commission and addressed as follows.*

*The Commission observed that the objections raised were mainly in relation to increase in MSEDCL’s tariff over the years and also in relation to the frequency of tariff revision that has happened in the recent past. Some objectors, who are affected by increase in Fixed/Demand Charges, have objected to the idea of any increase in such charges suggested by MSEDCL. Some objectors have proposed design of tariff with linkage to voltage of supply and fulfilling the objectives of the Tariff Policy to bring down cross*



*subsidization amongst categories. Also, objection has been raised against unmetered agricultural consumption with suggestion that it tends to increase tariff for the paying consumers. Tariff design has been proposed linking it with circle wise distribution loss level.*

*While, the Commission finds merit in some of the objections, it cannot but observe that MSEDCL, as a Licensee, is faced with increasing input costs on various fronts. Also, it cannot be denied that the distribution loss level in MSEDCL's system has reduced over the years to some extent, though not up to the desired level. Therefore, increase in tariff of a distribution Licensee may not be avoidable. However, the Commission always carries out due diligence before approving any cost incurred by the Licensees in Maharashtra, before passing that cost into Tariff. In relation to suggestions of designing Tariff fulfilling the objectives of the Tariff Policy, it may be noted*

*that the Commission is carrying out a study for designing a roadmap for reducing cross subsidy in Maharashtra. Regarding unmetered agricultural connection, the Commission has made its observation in Section 2.14 of this Order dealing with unmetered agricultural connections.*

*It must be noted, that the present Petition of MSEDCL is for Truing Up of FY 2009-10 & APR for FY 2010-11 only and not about tariff fixation. Therefore, the objections raised are not relevant for this Petition. However, the objectors may come up with their objections/suggestions/comments during the proceedings of tariff fixation”.*

9.5 We agree with the findings of the State Commission that tariff design related issues could not be dealt with in the true up and APR proceedings and could only be addressed in the tariff proceedings.

9.6 Let us examine the objection raised by the Appellant regarding power purchase cost which is reproduced from impugned order dated 30.12.2011.

*“Federation of Industries Association, Vidharbha submitted that for FY 2010-11, MSPGCL supplied 8,251 MUs lower and collected additional approved amount of Rs. 261 Crore. After making lower power purchase & collecting FAC, MSEDCL is claiming the requirement to collect additional amount of Rs. 1,076 Crore. Also, MSEDCL has purchased 2,470 MUs from Traders at the average rate of Rs. 4.21 per unit and 1,333 MUs under UI & IBSM with average cost of Rs. 3.48 per unit during FY 2010-11, which was not approved by MERC.*

*So MERC should defer allowing of additional cost of Rs. 178 Crore and 1076 Crore in power purchase expense for FY 2009-10 and*

*FY 2010-11, and direct MSEDCL to reduce power purchase expenses during FY 2011-12”.*

9.7 The Distribution Licensee’s response clearly indicates the reason for increase in power purchase cost due to impact of Central Commission’s order regarding tariff of RGPPL, reduction in generation of MSPGCL due to unavailability of water at Chandrapur Thermal Power Station resulting in procurement of power from traders and Power Exchange at higher rates, etc.

9.8 The State Commission in its orders dated 31.10.2011 and 30.12.2011 has also examined the power purchase expenses in details. We find that the State Commission has done detailed analysis of source-wise power purchase expenses

for the FY 2009-10 and 2010-11 in paragraph I of the order dated 31.10.2011 and has noted the reasons for increase in power procurement cost. The State Commission has further analysed the power purchase expenses in paragraphs 3.3 and 4.4 of the order dated 30.12.2011 and after prudence check has allowed the power purchase cost for FY 2009-10 and 2010-11. The Appellant has not pointed out any specific objection regarding the power purchase cost. We find that the State Commission has allowed the power purchase cost after due prudence check. Thus, we do not find any infirmity in the impugned orders.

9.9 As regards the arrears of the Distribution Licensee from consumers, it is to be pointed out that the ARR/tariff and true up/APR of the Licensee is

carried out on accrual basis. Thus, non recovery of dues by the Distribution Licensee would not affect the ARR and retail supply tariff of the Licensee. We find that the State Commission has given directions to the Distribution Licensee to submit a road map for recovery of the arrears. We hope that the Distribution Licensee will take the directions of the State Commission seriously and make all efforts to recover the arrears from its consumers to improve its liquidity.

9.10 We do not find any infirmity in determination of true up and APR of the Distribution Licensee in the impugned orders.

**10. Summary of our findings:**

- i) The State Commission has exercised its powers under Section 97 of the Electricity**

**Act, 2003 to pass interim order allowing increase in tariff after considering the urgency of situation and after satisfying itself about the quantum of interim relief that too after hearing all concerned.**

**ii) In view of the emergent circumstances faced by the Distribution Licensee resulting in difficulty in procurement of power for meeting the demand of the consumers, the State Commission has allowed interim relief by means of increase in tariff. We do not find any illegality in the interim order dated 31.10.2011 and in the final order dated 30.12.2011.**

**iii) We do not find any infirmity in determination of true up and APR of the**

**Distribution Licensee in the impugned orders.**

11. In view of above, we hold that both the Appeals have no merits. Accordingly, Appeal nos. 197 of 2011 and 119 of 2012 are dismissed. However, there is no order as to costs.

12. Pronounced in the open court on this **3<sup>rd</sup> day of May, 2013.**

**( Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

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**REPORTABLE/NON-REPORTABLE**

vs