

as under the Bombay Public Trust Act, 1950 challenging the order dated 20.10.2006 passed by the Maharashtra Electricity Regulatory Commission (MERC or the State Commission) in the matter of approval of Maharashtra Electricity Distribution Company Ltd.'s (hereinafter to be referred to as 'MSEDCL') Annual Revenue Requirement (ARR) for the FY 2004-05, 2005-06 and 2006-07 and determination of tariff for the FY 2006-07. The Appellant has 83 Industrial Consumers as its members falling in the licensed area of Respondent No. 2, MSEDCL.

2. Brief facts leading to the present appeal are as under:
 - a) The State Commission notified the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 notified on 26th August 2005. Regulation 12.1 under Part C of these Regulations stipulates that the State Commission shall determine the tariff, inter-alia, for wheeling of electricity and for retail supply of electricity by the various licensees in the State of Maharashtra under a multi-year tariff framework with effect from 1st April, 2006.
 - b) In line with the Tariff Regulations, the State Commission directed MSEDCL to submit the first Application for determination of multi year tariff for the first Control Period of 3 financial years, i.e., FY 2006-07, FY 2007-08 and FY 2008-09, by 30th November 2005. By a subsequent Order, the State Commission stipulated that it shall determine tariff for the period beginning April 1, 2007 instead of April 1, 2006.
 - c) Accordingly, MSEDCL filed Petition for approval of Annual Revenue Requirement (ARR) for FY 2004-05, FY 2005-06 and FY 2006-07 on 28th February 2006 before the State Commission. After compliance of further directives given by the State Commission by MSEDCL, the State Commission admitted the ARR and Tariff Petitions of MSEDCL on July 20, 2006.
 - d) After due scrutiny and following the procedure laid down by law, the State Commission determined the tariffs for retail supply of electricity by

MSEDCL by its impugned order, which was applicable with effect from 1st October 2006 until March 31, 2007.

- e) In the Tariff Order dated 20.10.2006 (impugned order), the State Commission considered transmission losses at 4.85% and distribution losses at 34.97%, aggregating to 39.82% for FY 2006-07.

3. To appreciate the issues in appeal, the appellant has taken us through some of the tariff orders passed by the State commission in the past. A brief of these orders, to the extent having bearing on the issues under appeal is given below:

- a) The State Commission in its order passed on 05.05.2000, at page 196, observed that MSEB's (predecessor of MSEDCL) proposal estimates transmission and distribution (T&D) loss of 29% in the year 1999-2000, based on agricultural consumption norm of 1750 hours of operation per annum (based on the energy audit data on 192 feeders). The State Commission considering agricultural consumption at 1600 hours per annum estimated the T&D loss to be 31.87%. Higher the T&D losses allowed to MSEDCL, higher would be cost of supply and would result in a higher tariff for the consumers. The State Commission stated that *it considers it unfair to ask the consumers to pay the price for the MSEB's inefficiency, but the MSEB needs sufficient time to improve its operations and reduce its T&D loss.* In this background, the State Commission set a T&D loss reduction target for MSEB to reach a loss level of 15% (which the State Commission recorded was as per the norms of the Central Electricity Authority, the CEA) in a period of four years. Accordingly for 2000-01, MSEB was expected to reduce its T & D loss by 5%, which came to be 26.9%. The State Commission also directed MSEB to complete meter installation programme covering all consumers within a period of 3 years by 31.03.2003. On 31.03.2003 the MSEB filed a review application of the order of 05.05.2000, inter-alia stating that CEA norms of T&D loss level of 16% was not achievable in Maharashtra and target of

21% would be more realistic. This review application was rejected by the State Commission.

- b) Meanwhile, the State Commission in its order passed on 10.01.2002 observed that based on sample metering, T&D losses have gone up from 31.87% in FY 1999-2000 to 39.49% in FY 2000-01. The State Commission gave many directions to MSEB for reducing T&D losses and observed that *'the CEA had laid down that for Indian conditions the maximum permissible figure for T&D losses for any SEB in the country should be 16%.'* For energy balancing, the State Commission adopted T&D loss level of 39.49% for FY 2001-02. However, for the purpose of determination of tariff the State Commission apportioned the excess losses of 12.6% (39.49%-26.87%) equally between MSEB and consumers i.e. cost of additional power purchases relating to 50% of the said excess T&D losses were recovered from consumers in the form of 'T&D loss charge' and the remaining 50% was to be borne by MSEB. MSEB's viewpoint was that the losses have actually not increased but have been better estimated. In other words, losses in earlier years were under estimated. As there were some non-compliance on the part of MSEB, including those relating to metering program, the State Commission disallowed Rs. 7 crore of revenue due to MSEB.
- c) For 2003-04, MSEB estimated T&D loss level of 36.62%. the State Commission in its order dated 10.03.2004, observed that *'in the absence of any certainty on this issue, the MERC is constrained to accept the target loss level at 26.87%'*.The State Commission introduced the concept of Regulatory Liability Charge (RLC) through which the State Commission allowed MSEB to recover around Rs. 947 crores, towards the excess losses, which was to be refunded in future. MERC again emphasized on various measures for reduction of T&D losses and for metering program.
- d) Through orders dated 03.08.2005 and 10.01.2006 in the matter of Principles and Protocol to be adopted for load shedding, the State

Commission again reiterated the need for reduction of T&D losses and the directions given to MSEB in this regard in the past.

- e) In the Tariff Order dated 20.10.2006 (impugned order), the State Commission considered transmission losses at 4.85% and distribution losses at 34.97%, aggregating to 39.82% for FY 2006-07.
- f) Aggrieved by the above order of the State Commission, some consumers of MSEDCL sought review of the above order before the State Commission, which was dismissed by the State Commission observing that the review petitions were *an appeal in disguise*.
- g) Hence, this appeal.

Relief Sought for

- 4. The Appellant has sought the following relief through the instant Appeal:
 - a) Disallow 10.85% T&D loss over and above the base T&D loss of 26.97% as allowed by the State Commission in the impugned order;
 - b) To charge only base tariff and provide 24 hours uninterrupted supply of power to industrial consumers who have extremely low T&D loss and excellent collection efficiency.
 - c) To true up following issues for the period December, 2003 to September, 2006.
 - i. Deduction of excess T&D loss level from true up and refund of excess Fuel Cost Adjustment (FCA) collected by MSEB/MSEDCL;
 - ii. Deduction of aged Bad Debts for FY 2003-04, 2004-05 and 2006-07;
 - iii. Interest on additional receivables over and above 60 days allowed by the State Commission.

Issues Involved :

- 5. The above stated issues can be broadly classified as under:

- A. Whether the State Commission considered a higher level of T&D loss for the purpose of procurement of electricity by MSEDCL and for determination of tariff;
- B. Whether the industrial consumers represented by the appellant should pay only base tariff for 24 hours of uninterrupted supply of power; and
- C. Whether the State Commission allowed high level of Receivables for determination of tariff; and
- D. If the issues relating to T&D loss level and collection efficiency are decided in favour of the appellant, whether the State Commission should revise the tariffs for the financial years 2003-04, 2004-05, 2005-06 and 2006-07.

Issue-wise Contention Of the Appellant And the Respondents And Analysis Thereof :

6. Now, we take up the above issues along with the rival contentions of the parties.

Issue A: Distribution losses

7. The Appellant has submitted that above factors are resulting into high tariff for the Appellant's association members and hence for the purpose of determination of tariff lower level of T&D loss and better collection efficiency should be considered by the State Commission. The Appellant has submitted that National Electricity Policy (NEP) stipulates completion of 100% metering by 31.03.2007. Therefore, by not achieving full meterisation, MSEDCL not only failed to comply with the directions of the MERC but also violated the provisions of NEP. The appellant has submitted that for FY 2006-07, MERC allowed T&D loss level of 37.82% (comprising of 32.97% of distribution losses and 4.85% of transmission losses). This way the MERC liberally allowed losses of 10.85% (37.82% minus 26.97%) over and above the base T&D loss levels set in the previous tariff orders.

8. Per contra, MSEDCL has submitted that trend of distribution losses for the year 2002-03 to 2005-06 was reducing as given below:

Particulars	2002-03	2003-04	2004-05	2005-06	2005-06 (as per new norms)
T&D	33.24%	33.12%	31.14%	27.98%	31.72%

9. MSEDCL has submitted that the decreasing trend changed due to the change in numbers for un-metered agricultural consumption. As regards metering, MSEDCL submitted that it is in the process of 100% metering and that in FY 2001-02 about 1.25 lakh consumers out of 17.5 consumers were metered, which increased to 5.335 lakhs consumers out of 22 lakhs. MSEDCL explained about the public resistance and the efforts it is making in this regard. In respect of the appellant's view that an incentive scheme should be implemented for reduction of T&D losses, MSEDCL has submitted that performance based employee incentive/disincentive scheme is already devised by MSEDCL and issued on 29.05.2007. Further, towards improving efficiency in its operation, MSEDCL submitted that it has prepared infrastructure work plan covering areas of such reduction in distribution losses, etc. It also gave details of initiatives taken towards theft control to reduce losses, which included lodging of FIR and disciplinary cases against its employees.

10. The State Commission in its submission has explained that transmission and distribution losses cannot be added arithmetically to derive the T&D loss in the state and referred to the aspect of assessment of un-metered consumption in the impugned order (pages 91-95, 97-99) to explain that the determination of distribution losses by the State Commission was a reasoned exercise.

11. We are of the opinion that the issue of 100% metered connections is closely linked with the determination of distribution losses. Till sale of entire electricity is routed through properly working meters, distribution losses cannot be determined accurately and would only be guesswork. We have gone through the provisions of the

Act, particularly section 55 and the Tariff Policy issued vide Notification dated 6th January, 2006 by the Government of India. Section 55 of the Act mandates sale of electricity through properly working meters only. This was again emphasized through the National Electricity Policy (NEP) of the Government of India, notified on 12.02.2005. Relevant extracts of the NEP are given below:

“5.4.8 The Act mandates supply of electricity through a correct meter within a stipulated period. The Authority should develop regulations as required under Section 55 of the Act within three months.

5.4.9 The Act requires all consumers to be metered within two years. The SERCs may obtain from the Distribution Licensees their metering plans, approve these, and monitor the same.”

12. The NEP desired SERCs to monitor the metering plan of the distribution licensees with a view to expedite 100% metering program. From the Order of the State Commission, we observe that the State Commission has been laying special emphasis on 100% meterisation by MSEDCL and also closely monitoring the progress. In the impugned Order, while summarizing the salient features of the Order, the State Commission observed as under:

‘19. The Commission rules that MSEDCL should comply with the statutory provisions as well as the National Tariff Policy in respect of individual consumer metering’.(page 16)

13. While the legislature through Section 55 desired that supply should be through installation of correct meters only, the legislature was also conscious of the need to avoid rigidity and provide for flexibility in the matter so that the State Commission may take stock of the ground realities, and if need be it may suitably extend the period. Second proviso to Section 55 (1) of the Act reads as under:

“55. (1)

***Provided further that the State Commission may, by notification extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.”** (emphasis supplied)*

14. From the above, it is clear that the State Commission is empowered to extend the period of two years for supply of electricity except through installation of a correct meters for a class or classes of persons or for such area as may be specified in that notification. Also, MSEDCL has submitted that new connections are being released only on installation of meters, which is a step in the right direction. In this regard, the State Commission has observed in the Order as under:

'para 3.2

....

With reference to the objection on increased unmetered consumption, MSEDCL submitted that the quantum of un-metered consumption is increasing as the consumption norm is increasing with depletion of water levels and with cultivation of more water intensive crops. MSEDCL also confirmed that since FY 2001-02, new connections are being released only on metered basis and further submitted that it has partly succeeded in converting un-metered connections to metered connections over the past three to four years." (Page 32)

15. Keeping the above in view, we do not feel any need to give any direction to the State Commission in regard to meterisation of all consumers.

16. Now coming to the issue of determination of distribution losses, we feel that in the absence of the 100% metered supply of electricity; the exercise of determination of distribution losses would be only an estimation of the distribution losses. The accuracy of such estimation would largely depend upon the proportion of metered supply and size of sample for un-metered connections. The Appellant has submitted that the State Commission has liberally allowed distribution losses of 10.85% (37.82% minus 26.97%) over and above the targets set in previous Orders. The target of 26.97% set in earlier Orders was based on assumptions regarding the level of agricultural consumption. When the estimate for quantum of consumption by agriculture category of consumers has changed, obviously there would be a corresponding effect on the level of distribution losses and there would be a need to adjust or re-calculate the distribution losses. Distribution loss level is derivative of energy input in the system and sale of energy billed by the distribution licensee. Difference between energy fed into the system and energy

billed by the licensee is accounted for as distribution losses. Unless the entire sale is properly metered, quantity of energy billed cannot be accurate. This inaccuracy would in turn affect the determination of distribution losses. The issue has been analyzed in the Order in greater detail. We would like to reproduce relevant extracts from the Order, as under:

“The Commission, in its previous Tariff Orders for MSEB, had determined the consumption of un-metered agricultural consumption based on the analysis of sample energy audit of the agricultural feeders. In the previous Tariff Orders, the Commission has considered the following consumption norm for un-metered agricultural consumption.

Table 34: Agricultural Consumption Norm in past years

<i>Tariff Order</i>	<i>Consumption Norm (hours/hp/annum)</i>
<i>FY 1999- 2000 Tariff Order</i>	<i>1600</i>
<i>FY 2001-02 Tariff Order</i>	<i>1250</i>
<i>FY 2003-04 Tariff Order</i>	<i>1300</i>

However, in the Tariff Order for FY 2003-04, the Commission has expressed few concerns in using the sample data. The relevant extracts (page 133 of the Order) are as below:

Page 133 of the Order:

“The Commission is of the opinion that though the sampling has not been done properly, there is no alternative but to use the available sampling data to assess the LT agricultural consumption in the State. Ideally, the entire consumption should have been metered, had the MSEB met its own commitments given in earlier Tariff Petitions under affidavits and adhered to the directives of the Commission in earlier Tariff Orders. In the absence of 100% metering, the Commission has been constrained to proceed based on the data submitted by the MSEB.”

Page 143 of the Order:

- “1. The sampling coverage across circles is non-uniform and the sample does not represent a statistical random sample. For arriving at a zone-wise and the State-wide norm, the sampling bias was countered by using total connected load of the circle in place of the connected load of the sample in the circle.*
- 2. The MSEB should improve the quality of the sample using random sampling techniques and make sample more representative of the LT-agricultural load in the circle/zone/State.”*

The Commission makes a serious note that the concerns expressed in the earlier Orders have not been addressed by MSEB/MSEDCL and finds that even till date the sample size

is non-uniform and therefore not representative of the statistical sample coverage for estimating the agricultural consumption. Further, MSEDCL has not made any adjustments for the losses on the agricultural feeders. Hence, the Commission does not accept the methodology and agricultural norm proposed by MSEDCL.

Therefore, the Commission has revisited the methodology of estimation of unmetered agricultural consumption for FY 2006-07, and has decided to rely only on recorded consumption of metered consumers for estimating agricultural consumption. In the Petition, MSEDCL submitted that about 5.4 lakh consumers out of 22.9 lakh agricultural consumers are metered. The Commission is of the view that as this represents 23.6% of agricultural consumers, it is a better representative sample when compared to MSEDCL's sample data. MSEDCL also submitted that post March 31, 2002, as per the Commission's directive, MSEDCL has not released any new connections on un-metered basis and all un-metered agricultural connections are being gradually converted to metered connections. Hence, the Commission considers it appropriate to use the consumption of metered consumers for estimating agricultural consumption".

17. Thereafter, the State Commission analyzed zone-wise consumption pattern of metered and un-metered connections and estimated the agricultural consumption, as reproduced below:

The Commission has estimated agricultural consumption for FY 2006-07 at 9702 MU, which works out to a CAGR of 7.74% as against the MSEDCL projection of 29%. The agriculture sales as submitted by MSEDCL and that considered by the Commission are as given in the table below:

Table 37 Estimation of Agriculture consumption for FY 2006-07

<i>Sub-Category</i>	<i>Petition</i>	<i>Approved</i>
<i>Un-Metered Agricultural MU</i>	<i>12349</i>	<i>7186</i>
<i>Metered Agricultural MU</i>	<i>2619</i>	<i>2516</i>
<i>Total Agricultural MU</i>	<i>14968</i>	<i>9702</i>

...

6. Distribution Loss

MSEDCL has projected distribution losses for FY 2006-07 at 27%. While projecting 27% distribution loss levels, MSEDCL has assumed that the consumption norm for agriculture in FY 2006-07 would be 2290 hrs/hp/annum on best judgement basis. The Commission has neither accepted the methodology nor the consumption norm submitted by MSEDCL. The Commission has reassessed the distribution losses based on the revised agricultural consumption norm of 1318 hrs/hp/annum and sales to agriculture category at 9702 MU. With the revised estimates, distribution loss levels works out to 34.97%.

.....

....

The Commission has reassessed the distribution loss levels to 34.97% based on the agriculture consumer metering information. With this level of distribution losses, the transmission and distribution losses works out to 38.12% as against the earlier approved loss levels of 26.87% (if the T&D loss equivalent to RLC is included, the earlier loss T&D loss level works out to 36.62%). The Commission is of the opinion that the loss levels have been under-projected by MSEB/MSEDCL over the previous years in the absence of consumer metering information and the sample data being non-representative.

18. The State Commission has summarized the above position in para under salient features of the Order as under:

“18. The Commission has revisited the methodology of estimation of unmetered agricultural consumption for FY 2006-07 and has neither accepted MSEDCL’s methodology nor the estimation of consumption in this regard. The Commission has decided to rely only on consumer metering information for estimating agricultural consumption. The Commission has adopted the respective zone wise consumption norm for projecting the zone wise agricultural consumption. The Commission has adopted the zone wise consumption norm, arrived from recorded consumer metering information, for estimating unmetered consumption of that particular zone as well. Based on the zone wise consumption norm and connected load, the Commission has worked out the consumption norm for the State (1318 hrs/HP/annum), which has been used only for the purpose of tariff categorisation and not for estimating agricultural consumption.

19. The Commission rules that MSEDCL should comply with the statutory provisions as well as the National Tariff Policy in respect of individual consumer metering. The Commission also rules that, recorded consumption of metered consumers would form the basis for estimating agricultural consumption or as an alternative information based on complete DTC metering would form the basis for estimation of agricultural consumption and hereby directs MSEDCL to follow the same methodology in the subsequent filings.” (Page 16 and also appearing as part of State Commission’s direction at page 164)

19. We find that the State Commission is also not quite satisfied with the approach of MSEDCL but tried to assess the distribution losses based on the data available before it. Under the circumstances, we are satisfied with the approach of the State Commission and are of the opinion that the State Commission has properly assessed the distribution loss level considering inputs available before it.

Here, we may also refer to the Tariff Policy notified by the Government of India, which states at para 5.3, as under:

(h) Multi Year Tariff

*1) Section 61 of the Act states that the Appropriate Commission, for determining the terms and conditions for the determination of tariff, shall be guided inter-alia, by multi-year tariff principles. The MYT framework is to be adopted for any tariffs to be determined from April 1, 2006. The framework should feature a five-year control period. The initial control period may however be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. **In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available.***

*2) In cases where operations have been much below the norms for many previous years **the initial starting point in determining the revenue requirement and the improvement trajectories should be recognized at “relaxed” levels and not the “desired” levels.** Suitable benchmarking studies may be conducted to establish the “desired” performance standards. Separate studies may be required for each utility to assess the capital expenditure necessary to meet the minimum service standards. **(emphasis supplied)***

20. The Tariff Policy recognized the problems faced due to lack of availability of accurate data and therefore provided that the State Commissions may state assumptions in the MYT and further desired that relaxed norms in place of desired norms should be recognized. In view of the above, we feel that there is no case for this Tribunal to disturb the distribution loss level assessed by the State Commission.

Issue B: Charging only base tariff for 24 hours uninterrupted supply

21. The Appellant has calculated that the above referred higher distribution losses resulted into additional power purchase cost of Rs. 3012 crore being allowed to MSEB and burdened the consumers with the levy of Additional supply Charge (ASC) and Incremental Additional Supply Charge (IASC). This levy of ASC and IASC is not a tariff which reflects the efficient costs and thus against the principles of Tariff Policy (clause 8.2.1(1)). Hence, it is illegal, void and arbitrary, thus contended the appellant. The appellant has also submitted that out of total arrears of Rs. 7752 crore (equivalent to more than 200 days' sales equivalent) as on September 2005, the arrears of HT consumers are only Rs. 226 crore (equivalent to 11 days' sales equivalent) and the arrears of LT consumers are only Rs. 156 crore (equivalent to 55 days' sales equivalent). Therefore, imposition of ASC and IASC on industrial consumers *'amounts to robbing honest Peter to pay dishonest Paul'*.

22. To refute the allegation of arbitrariness of ASC and IASC, MSEDCL has drawn this Tribunal's attention towards para 28-32 of the MERC order. The State Commission has submitted that the State Commission has designed a pragmatic formula, which ensures a link between the percentage of ASC levied and the reduction in load shedding enjoyed by different consumers located in different regions.

23. Before we proceed further, we may refer to the relevant provisions of the Tariff Policy emphasized by the appellant, which are given below:

8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

(1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system upgradation. Consumers, particularly those who are ready to pay a tariff

which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.

24. In our view, the above stated provisions are generic in nature and do not suggest any bar on the levy of charge in the nature of ASC. The appellant has drawn our specific attention to the phrase ‘*a tariff which reflects efficient costs*’ in the above provisions and tried to convince us that since the State Commission has allowed a liberal level of distribution losses and collection efficiency level, the tariff determined by the State Commission does not reflect the efficient costs. To understand the true meaning of the above words, we have to keep into consideration that tariff as determined by the State Commission is directly linked to the costs allowed to be recovered from the consumers. One of the important components of the costs is the level of distribution losses allowed by the State Commission. Therefore, efficient cost relevant for tariff fixation would be determined after considering distribution loss level. As stated earlier, in the absence of 100% metered supply, assessment of distribution losses would involve estimation. We are satisfied with the approach adopted by the State Commission in assessing the distribution losses for the purpose of determination of tariff. Therefore, it is difficult to assume that due to distribution losses allowed by the State Commission in determination of tariff, the tariffs do not reflect efficient costs. We find that the State Commission in its Order has dealt with the issue of ASC and IASC in detail under Chapter 8: Determination of Additional Supply Charge (Page 153-155). Relevant extracts from the Order are given below:

*In the existing protocol, depending on the geographical location and the grouping made, the consumers are being subjected to differential load shedding hours. For instance, in the present protocol, continuous process industries connected through express/dedicated feeders are exempted from the weekly staggering day of load shedding and are ensured zero load shedding hours while industries not connected through express feeders are being subjected to one-day staggering load shedding. **Despite the differential load shedding hours, the consumers were paying similar tariffs.***

The Commission, through this Order, has decided to apply uniform load shedding hours, considering only less costly power purchase. However, selected consumer categories would continue to be benefited from the reduced load

shedding hours, based on the availability of costly power and level of distribution losses and collection efficiency. The Commission is of the view that this benefit of reduction in load shedding hours is only possible by MSEDCL making purchases from costly sources to supply to such consumers. Therefore, the Commission has decided to determine the retail tariffs based on uniform load shedding hours and purchases from less costly power only as discussed in Chapter 6 and 7 of this Order.

In cases, where the consumers are receiving the benefit of reduced load shedding hours, the Commission is of the view that they have to pay for the costly power separately through the Additional Supply Charge.

25. Thereafter the State Commission discussed the principles for determination of ASC, which included reference to the above provisions of Tariff Policy stating that

To reflect the efficient costs, the Commission considered the existing load shedding protocol including the groupings, i.e., A, B, C and D, based on weighted average of distribution losses and collection efficiency while allocating the costly power.

- *The Commission is of the view that if MSEDCL has to supply the costly power to divisions where the distribution losses are high and collection efficiency is low, it will not only provide a significant tariff shock to the consumer but also will affect the financial viability of MSEDCL. In other words, regions with higher weighted average of distribution losses and collection efficiency will not be given additional supply unless the requirement of regions with lower weighted average of distribution losses and collection efficiency is met. Thus, levy of Additional Supply Charge (ASC) for reduction in load shedding hours through supply of costlier power, is consistent with the earlier approach of differentiating between regions in terms of load shedding hours on the basis of the weighted average of distribution losses and collection efficiency.*
- *There should be no discrimination between different consumers or category of consumers, If only non-costly power is allocated equally irrespective of categories or regions, the average Load Shedding applicable across the State works out to 9 hrs per day and hence uniform load shedding of 9 hours should be applied, for the base retail tariffs. **Consumers benefiting from the reduced load shedding hours vis-à-vis the uniform load shedding hours should pay for the costly power through Additional Supply Charge in addition to the base retail tariffs.***
- *Given the present supply deficit situation, the Commission is of the view that the prescribed load shedding protocol (12 hours) applicable for agriculture dominated regions should not be altered. This reduces the uniform load shedding hours applicable to other regions from 9 hours to 7.25 hours. The Commission has determined the tariffs for retail sale of electricity for FY 2006-07 by considering only the non-costly sources of power, uniform load shedding hours of 7.25, and 12 hours of load shedding for agriculture dominated region. In this*

context, the Commission has decided that agricultural tariffs should not be increased owing to higher burden of load shedding and poor quality of supply.

26. From the above, we find that the State Commission has linked the levy of ASC with the reduction in number of hours of load shedding, which we feel indicates a reasonable nexus between the cost of such additional power and the class of consumers who would be benefitted by purchase of such costly power. The benefit is available in the form of reduction in the load shedding hours when there is shortage of power. Therefore, we do not find that the ASC or IASC based on the criteria adopted by the State Commission is arbitrary in nature.

Issue C: Collection Efficiency

27. The appellant has submitted that as per clause 17.6.2 (b) of the Tariff Regulations issued by MERC, bad debts are controllable factors. The appellant has further submitted that MSEB has receivables of Rs. 6077 crore, which are in arrears for more than 3 years, with the following break-up:

Arrears for >>	Upto 6 months	6-12 months	1-2 year	2-3 years	More than 3 years	Total
Rs. in crores	547	268	634	385	6077	7912

28. According to the Appellant, as per standard principles and other provisions, debts of more than 6 months are considered as 'doubtful' and more than 3 years as 'bad debts'. In the tariff order dated 05/50/2000, the State Commission has stated that the debts which are time barred under the Law of Limitation and in respect of which a civil remedy is not available are considered for write-off. Therefore Rs. 6077 crore are aged bad debts, which is a huge amount and contended that permission of continuation of bad debts is bad practice and therefore, has prayed to consider arrears outstanding for more than 3 years as bad debts and deduct for the purpose of determination of tariff in tune with various provisions of the Electricity Act, 2003 (the Act) and the Tariff Policy for encouraging efficiency of operations and good performance. The appellant has taken us

through various tariff orders of the State Commission, to emphasize the point that the State Commission has been unhappy with high levels of receivables of MSEB/MSEDCL. The appellant has drawn our attention towards the provisions of section 61 (c) and (e) of the Act. Allowing receivables for more than 2 months amounts to encouraging inefficiency and uneconomical use of resources, bad performance, etc. and against section 61 of the Act.

29. MSEDCL has submitted that it has improved its collection efficiency from 88.33% in FY 2004-05 to 92.66% in FY 2005-06. The State Commission in its submission has explained that tariff has been determined considering collection efficiency at 98.5% (with 1.5% as provisioning for bad debts) and accordingly no trajectory for collection efficiency has been given. Also, that the working capital requirement is zero due to large amount of consumer security deposit with MSEDCL.

30. Huge amount of receivables, stated to be more than 200 days' sales equivalent is definitely a matter of concern to the appellant as it has an impact on the financing costs to MSEDCL. Lower level of receivables would definitely have a positive impact at the financial position of MSEDCL and with improved liquidity it may be possible that need for borrowings goes down for MSEDCL. However, reduction in level of receivables is dependent upon the will of and measures adopted by MSEDCL. MSEDCL has submitted that its collection efficiency has improved compared to the previous year. We observe that the State Commission has determined Interest on Working Capital and Security Deposit for FY 2004-05 and FY 2005-06 based on FY 2003-04 Tariff Order principles. The MERC has submitted that for the purpose of determination of the tariff, the State Commission has considered collection efficiency as 98.5% and allowed 1.5% as provision for bad debts. Hence, we do not see any direct impact on the tariff for the appellant on account of high level of receivables. The case may be argued that had there been lower level of receivables, there would have been a case for lesser borrowings and thus may be lower cost of operation. However, in the present case the tariff is determined on cost plus basis after due diligence of the individual cost components and taking into consideration the requirement of Regulations.

31. For ready reference purpose, relevant provisions of Section 61 of the Act are reproduced below:

61. The Appropriate State Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) ...

(b);

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

.....

(i) the National Electricity Policy and tariff policy:

32. The State Commission has determined the tariff considering collection efficiency at 98.5% and allowing bad debts provision of 1.5%. The appellant has alleged that continuing with high level of receivables is not an economical use of resources and hence violation of the provisions section 61 (1) (c) and (e) of the Act. We observe that despite MSEDCL having a very high level of receivables, the State Commission did not allow that and allowed only 1.5% towards provision of bad debts. This way the State Commission is not allowing inefficiency on the part of MSEDCL with regard to low collection efficiency being passed on to the consumers. For the purpose of determination of tariff, the State Commission has considered what it felt was an optimum level of collection efficiency level under the circumstances and not the actual level of collection efficiency of the MSEDCL. Therefore, we feel that adoption of collection efficiency level at 98.5% is not violative of the above provisions as alleged by the appellant.

Issue D: Distribution loss and Collection Efficiency level – Impact on Truing up for the period December 2003 to September 2006

33. The Appellant has submitted that fuel cost adjustment (FCA) charges deserved to be re-calculated from Dec 2003 to September 2006 on the basis of the target loss level of 39.82% and the excess amount recovered deserved to be refunded along with interest. As per clause 17.6.2 (b) of the Tariff Regulations issued by MERC, bad debts are controllable factors. Hence, bad debts above 1.5% are to be deducted from True up mechanism for each year.

34. The State Commission has submitted that provisions of 17.6.2 of the MERC Regulations are not applicable for tariff of the FY 2004-05 and FY 2005-06. These Tariff Regulations were notified in August 2005 and were made effective from FY 2006-07 onwards. The truing up of expenses and revenue for FY 2004-05 and FY 2005-06 was done as per mechanism in place as per previous tariff orders. Hence, the provisions relating to controllable and uncontrollable elements have no relevance for truing up for FY 2004-05 and FY 2005-06.

35. We agree with the submission of the State Commission, as the appellant has not led any evidence to suggest that the said Tariff Regulations are effective retrospectively from FY 2004-05. The tariff regulations require strict interpretation as accepting the contention of the appellant would result in adverse financial implications for MSEDCL in the form of reduction in revenue from sale of electricity to the consumers. Unless the liability is established as per the tariff regulations already in place, the same can not be imposed subsequently circuitously. As the tariff regulations have come into force subsequently, we are not inclined to accept the contention of the appellant for truing up of the revenue requirement of MSEDCL for earlier period.

36. In view of the above, the Appeal is dismissed with no order as to costs.

37. Before parting with this judgment we would like to clarify that the above judgment should not in any way be construed as our views on the performance of MSEDCL. The reforms in the electricity sector were introduced in the backdrop of mounting losses, unsustainable financial position of state power utilities, increasing transmission and distribution losses, perceived or actual. The State Commission was constituted in terms of the Electricity Regulatory Commission Act, 1998. As per the preamble, the Act was enacted '*to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto*'. Subsequently, on the coming into force of the Electricity Act, 2003, the Act of 1998 was repealed. The Act of 2003 was enacted '*to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto*'.

38. The above statutes lay special emphasis on rationalization of tariff for electricity, transparent policies regarding subsidies and protection of consumers' interest. We feel that in the absence of sale of entire electricity only through properly functioning meters, the assessment of distribution losses in the system would remain an estimation exercise only. We all know that tariff structure of MSEDCL provides for cross subsidization of certain category of consumers by certain other categories of consumers. However, the level of cross subsidization would be known only when the distribution losses of MSEDCL are correctly determined. Till such time, achievement of one of the key objectives of the Act of 2003 of having transparent policies regarding subsidies would not be achieved. Though we recognize that the process requires some time to achieve the level of 100% meterisation. However, we need to be alive to the other

important objective of the Act i.e. protection of consumers' interest. Non-implementation of meterisation programme in a time-bound manner means that the achievement of these objectives would remain a distant dream and would test the efficacy of the regulatory system. At the end of the day, if the consumer remains unsatisfied, there is a need for introspection as to why the consumer is not satisfied? The Apex Court has many a times in the past observed that justice should not only be done but should also be seen to have been done. May be, there is a need for the State Commission to analyze that despite the State Commission regulating so closely the progress of meterisation, why the consumers are feeling that MSEDCL has been allowed more time than required? Hence we deem it fit to advise the State Commission to sharpen its focus for accelerated meterisation of consumers and reduction of Distribution losses in a time bound manner, with renewed drive and vigor with an in-built system of strong incentive to the licensee, MSEDCL.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 21st July, 2009.

Reportable/Non-reportable.