

RECORD OF PROCEEDINGS

DATE OF HEARING : October 23, 2007 at 15.00 hrs
CASE No. : 17 of 2007
PETITIONERS : Maharashtra State Power Generation Company
Limited (“MSPGCL”)
RESPONDENTS : None
MATTER : Petition filed by MSPGCL seeking approval for
Revision in lease rent for Hydro Power Plants
 (“HEPs”) leased out to them by the Government of
 Maharashtra, as per notification issued by the
 Government of Maharashtra (“GoM”)
CORAM : Chairman and Members

The second hearing in the matter was scheduled for October 23, 2007 in the presence of consumer representatives authorised on a standing basis under the Electricity Act, 2003 (“EA 2003”). Notices were issued accordingly.

2. At the second hearing held in the matter on October 23, 2007, Shri. Gyanendra Thakur, M/s CRISIL, consultants to MSPGCL, referred to the affidavits filed by the Water Resources Department, GoM (“GoM-WRD”) and refuted that fixation / revision in the lease rent applicable for HEPs was done by GoM-WRD as per guidelines / Regulations issued by the Central Electricity Regulatory Commission (“CERC”). It was further submitted that there are no guidelines / Regulations which have been issued by the CERC on the lease rent to be charged for hydro stations.

3. Shri. Thakur submitted that the GoM-WRD have proposed 14% RoE on the HEPs leased out to MSPGCL. It was submitted that MSPGCL makes considerable financial investments in the operation and maintenance of the said leased out HEPs. MSPGCL should therefore, be allowed favourable financial benefit while the existing lease rent is proposed to be revised, considering that amounts towards RoE shall be entirely retained by the GoM. A certain amount of money, in all fairness, should be sanctioned for MSPGCL considering the high operation and maintenance costs on the said HEPs. It was submitted that MSPGCL has taken the said HEPs on lease only to meet their commercial interests. Shri. G.L. Narkhede, Chief General Manager (H), MSPGCL, submitted that GoM-WRD has not considered reimbursing MSPGCL on the said operation and maintenance costs. The Commission observed that such commercial issues should be settled between MSPGCL *qua* GoM.

4. Shri. V.M. Kulkarni, Superintending Engineer, KDC - GoM-WRD, referred to Regulation 5.1 of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 (“the Tariff Regulations”). Shri. Kulkarni submitted that in terms of the said Regulation, a generating company may agree to any terms and conditions at variance with the Tariff Regulations, provided that long-term benefits of consumers are secured. The proposal for revision in lease rent as submitted by

MSPGCL under the present petition has been agreed by the GoM-WRD. The Commission has to assess whether the terms and conditions as agreed by and between the GoM-WRD and MSPGCL secure the long-term interests of electricity consumers in Maharashtra.

5. Shri. Kulkarni submitted that lease rent / tariff proposed by MSPGCL under the present proceedings, and agreed by the GoM-WRD, is low in comparison to the generation tariff approved by the Commission vide Order dated June 26, 2007 passed in Case No. 27 of 2006 (in the matter of MSEDCL's Petition for Approval of Power Purchase Agreement with M/s Lanco Energy Private Limited for purchase of saleable energy from their 500 MW Teesta VI Hydro Electric Project in Sikkim). It was submitted that under the said Order the estimated landed tariff @ Rs. 2.75/- per kWh in the periphery of MSEDCL was approved by the Commission owing to the submissions of MSEDCL that generation of energy from the 500 MW Teesta VI Hydro Electric Project in Sikkim shall considerably mitigate the power shortage prevailing in the area of supply of MSEDCL. It was submitted that considering the prevailing power shortage, the Commission should consider revising the lease rent on HEPS leased out to MSPGCL, which shall require electricity consumers of MSEDCL to pay a tariff lower than the tariff set in effect of energy generation from the 500 MW Teesta VI Hydro Electric Project in Sikkim.

6. Shri. V.M. Kulkarni submitted that it is quite a unique situation as no provision from the EA 2003 is directly applicable on the incidence of revision in the lease rent for the said HEPS which have been constructed by the GoM and leased out to MSPGCL. At present, there are 27 HEPS that have been so leased out to MSPGCL, out of which 8 HEPS are new projects in the sense that no lease rent has been paid on these 8 HEPS till date. It was submitted that no lease agreement has been executed by the GoM with MSPGCL. The present lease rent that is being paid by MSPGCL to the GoM is inadequate and thus, need to be revised. The present petition thus needs to be allowed under Regulation 5.1 of the Tariff Regulations. It is essential for the GoM to recover actual costs on the construction of the said leased out HEPS. In this regard, the Commission should revise tariff in accordance with Section 61 (d) of the EA 2003.

7. On an enquiry made by the Commission, Shri. Kulkarni submitted that on approval of the proposed revision in lease rent, the same shall stay fixed for a period of 35 years. A lease agreement shall be executed by the GoM with MSPGCL for a period of 35 years. Shri. Gyanendra Thakur submitted that as per the terms and conditions proposed by the GoM for execution of a lease agreement, an annual escalation of 5% of the existing lease rent has been proposed. Shri. Thakur submitted that the arithmetical calculations of levelised tariff as prepared by M/s. CRISIL reflects a declining trend. The said calculations are at variance from the calculations prepared by the GoM. The calculations made by the GoM-WRD reflect an increase in lease rent by 5% annually. Shri. Kulkarni submitted that it is incumbent on GoM to fix the applicable lease rent on the HEPS owned by the GoM. The calculations made by M/s. CRISIL in this regard need not be given any consideration. The Commission enquired of Shri. Thakur as to whether MSPGCL agrees with the lease rent as proposed by the GoM. Shri. Thakur admitted that

ideally the applicable lease rent should be fixed by the GoM and the calculations made by M/s. CRISIL may not be considered. Shri. Thakur submitted that the revised rent as proposed by the GoM is not disputed should MSPGCL be kept revenue neutral. The said revisions should be allowed as pass through in tariff.

8. The Commission observed that MSPGCL has not clearly presented their case under the present proceedings. MSPGCL should clarify the reliefs sought by them under the present proceedings. The duty to workout revenue neutrality vests on MSPGCL and not with the Commission. If the main relief of MSPGCL is that the revised lease rent need to be allowed as pass through in tariff, then the calculations made by M/s. CRISIL need not be considered for disposal of the present matter. On an enquiry made by the Commission, Shri. Thakur admitted that the calculations made by M/s. CRISIL are not of any significance to the present proceedings. On a further enquiry made by the Commission, Shri. Thakur admitted that it is agreed by MSPGCL that the proposed lease agreement with the GoM shall be executed for a period of 35 years.

9. The Commission observed that during the last hearing held on July 18, 2007, MSPGCL was directed to issue notice (with a copy of the present petition) to MSEDCL. On an enquiry made by the Commission as to whether necessary actions have been taken by MSPGCL in this regard, Shri. Thakur submitted that a copy of the petition together with the record of proceedings pertaining to the hearing held on July 18, 2007, as sent by the Commission to MSPGCL, have been served upon MSEDCL. Shri. Kulkarni submitted that notices to MSEDCL have also been sent by the GoM-WRD. The Commission observed that no representative from MSEDCL was present at the hearing.

10. Shri. Kulkarni submitted that execution of a lease agreement has been delayed by MSPGCL on their citing periodical procedural difficulties. It was submitted that owing to non-revision of lease rent since 1999, the GoM-WRD have been sustaining annual negative cash flow of about Rs. 75 crore, while making repayment of loans obtained from the World Bank for construction of the said leased out HEPs. The approval on the amount of lease rent, as proposed to be revised by GoM, should be granted by the Commission. The issues concerning with whether the said approved revised rent shall operate with prospective effect or retrospective effect shall be addressed thereafter. Shri. Kulkarni further submitted that the present proposal for revision in lease rent should be further allowed, as in the alternative, the GoM may be left with the sole option of selling the power generated from the said HEPs through competitive bidding route under Section 63 of the EA 2003. Such an event would fail to safeguard the interests of electricity consumers in Maharashtra.

11. Shri. Palaniappan M., regulatory expert of the Commission enquired of Shri. Kulkarni as to whether it would be possible for GoM to submit any documentary evidence on actual project costs, and the date of commissioning, with respect to each HEP leased out to MSPGCL. Shri. Kulkarni submitted that the said details may be found in the books of accounts of the GoM-WRD, which shall be filed in due course.

The hearing in the matter concluded thereafter.

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List of Persons present at the hearing held on October 23, 2007

1. Shri. V.M. Kulkarni, Supt. Engineer, Koyna Design Circle, GoM.
2. Shri. Anant D. Sant, Sect. Engineer, Koyna Design Circle, GoM.
3. Shri. G.L. Narkhede, Chief General Manager, MSPGCL.
4. Shri. R.D. Kadam, Suptd. Engineer (Pune), MSPGCL.
5. Shri. B.G. Gandhi, Suptd. Engineer (Hydro), MSPGCL.
6. Shri. S.A. Narkhede, Chief General Manager, MSPGCL.
7. Shri. R.R. Kulkarni, MSPGCL.
8. Shri. L.N. Ambekar, Suptd. Engineer (Reg. Cell), MSPGCL.
9. Shri. V.J. Patil, Asst. Engineer, GoM-WRD.
10. Shri. M.M. Nandkaw, GoM-WRD.
11. Shri. V.R. Sonar, Exe. Engineer, GoM-WRD.
12. Shri. S.R. Bavaskar, Under Secretary, GoM-WRD.
13. Shri. Gyanendra Thakur, Manager, M/s. CRISIL.
14. Shri. B.K. Bhojani, Asst. Engineer, GoM-WRD.
15. Shri. R.D. Adhya.