

## **RECORD OF PROCEEDINGS**

DATE OF HEARING : August 1, 2007 at 12.00 hrs

CASE No. : 23 of 2007

PETITIONERS : M/s. Empire Industries Limited (Vitrum Glass Division) (“Empire Industries”)

MATTER : Petition filed by Empire Industries seeking review of Order dated April 30, 2007 passed in Case No. 70 of 2006 (in the matter of the Multi-Year Tariff Petition of TPC-D for the Control Period from FY 2007-08 to FY 2009-10)

QUORUM : Chairman, Member-Technical, Member-Finance

M/s. Empire Industries filed a Petition on June 29, 2007 seeking review of Order dated April 30, 2007 passed in Case No. 70 of 2006 (in the matter of the Multi-Year Tariff Petition of TPC-D for the Control Period from FY 2007-08 to FY 2009-10) (“the impugned Order”). The Commission scheduled an admissibility hearing in the matter for August 1, 2007 in the presence of representatives from TPC, and four consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“EA 2003”). Notices were issued accordingly.

2. At the admissibility hearing held in the matter on August 1, 2007, Shri. A.B. Ketkar, Advocate for Empire Industries, submitted that vide order dated May 18, 2007 in Case No. 70 of 2006, an errata was issued in continuation to the impugned Order. The period of limitation for maintainability of the present Review Petition shall therefore be computed from the date of issuance of the said errata, which being May 18, 2007. The Commission observed that the present Petition has been filed within limitation.

3. Shri. A.B. Ketkar further submitted that the Empire Industries are a continuous processing industry and a HT-II consumer of TPC. The Vitrum Glass Division of Empire Industries manufactures amber glass bottles for the pharmaceutical industry, from their factory premises located at Vikhroli and energy cost is a major cost of production. Empire Industries employs over 600 employees (skilled and unskilled) at the said factory premises for the manufacturing activity of amber glass bottles. The severe tariff hike which has effected from the impugned Order adversely affects the feasibility of Empire Industries in providing such large-scale employment and in the long run, many such employees currently employed by Empire Industries, may lose their employment.

4. Shri. A.B. Ketkar further submitted that the energy cost of Empire Industries has risen by about 50% on account of implementation of the impugned Order. The energy cost of Empire Industries for the month of April, 2007 was in the vicinity of Rs. 41 lakh

which has increased to about Rs. 63 lakh in the month of May, 2007. It was submitted that the impugned Order fails to safeguard consumer interest as contemplated under the EA 2003. Further, subsidies have been provided to the railway, small-scale industries and residential consumers at the cost of HT industrial consumers, which approach is contrary to the spirit of the EA 2003.

5. Shri. A.B. Ketkar further submitted that the impugned Order does not ensure uniformity in tariff and is discriminative. The applicable tariff rate on HT-II Industrial consumers located in Bhandup (Rs. 4.60/- per unit) is less than the applicable tariff rate on Empire Industries (Rs. 6.10/- per unit), which is situated in Vikhroli, the immediate railway station before Bhandup. This discriminative approach under the impugned Order is in violation to the spirit of the EA 2003 and in particular, not contemplated under Section 63 of the said Act. It is well settled that neglect of statutory provision qualifies for review.

6. Shri. A.B. Ketkar further submitted that Empire Industries are putting their best efforts to minimize their demand though the scope of minimizing demand is very less for a continuous processing industry.

7. Shri. A.B. Ketkar referred to the two main components of Reliability Charge as mentioned under the impugned Order, being (i) Stand-by Charges and (ii) Approved Cost of Expensive power. It was submitted that the levy of a charge in the nature of Approved Cost of Expensive power is outside the scope, spirit and legislative contemplation of the EA 2003.

8. Shri. A.B. Ketkar referred to the following extracts in the impugned Order

*“6.2 TARIFF PHILOSOPHY*

*.....Commission has determined the tariffs such that there is an in-built incentive to consumers to reduce their consumption, as the impact on the bills is designed to increase as the consumption increases.....*

*.....Further, considering the severe energy deficit situation of Mumbai and rest of Maharashtra, Commission would like to put a high cost on unwarranted commercial consumption like flood lights, shopping malls, multiplexes, advertising and hoarding, etc. by charging a higher tariff. The Commission feels that these are non-critical services and have higher capacity to pay. These categories also have a huge potential to conserve energy and a high price of power would send the economic signal for minimizing consumption.”*

It was submitted that the table denoting the existing cross-subsidy and the reduction in cross-subsidy excluding reliability charges, that have been considered under the impugned Order reflects nil tariff hike for HT-IV Railways and a tariff hike of 41% for HT-II industrial consumers. It was contended that arguably, the approach of the Commission that the consumer which has a capacity to pay more shall be required to pay

more is not judicious. However, accepting the said approach considering the demand-supply situation in Maharashtra, it would not be judicious to conclude that unlike HT-II industrial consumers, HT-IV Railways have no potential to conserve energy and should therefore not be subjected to any tariff hike. This reflects an apparent error on the face of the impugned Order, in terms of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004.

9. Shri. A.B. Ketkar further submitted that the impugned Order is not in consonance with the provisions of Clause 4.0 of the National Tariff Policy dated January 6, 2006 which reads as under:

*“4.0 OBJECTIVES OF THE POLICY*

*The objectives of this tariff policy are to:*

*(a) Ensure availability of electricity to consumers at reasonable and competitive rates; ....”*

It was submitted that the impugned order should be reviewed considering adverse social impact and social repercussions. Further, as per the said policy, so far as multi-year tariff fixation is concerned, 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.....”*. The impugned order underlines a contrary approach of fixing tariff as per the desired levels. Suitable desired levels of improvement trajectories may not be achieved during the first financial year of the three-year control period.

10. It was further submitted by Shri. A.B. Ketkar that while the Commission has considered the effect and impact of controllable and uncontrollable factors under paragraph 4.4 in the impugned Order, in terms of Regulations 17.6.1 and 17.6.2 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, the impugned Order may further be modified/ reviewed in terms of Regulation 17.8 of the said Regulations, which reads as hereunder:

*“17.8 The Commission may, as a result of additional information not previously known or available to the Commission at the time the forecast under Regulation 15 was developed, if it so deems appropriate, either suo motu or on an application made by any interested or affected party, modify the approved forecast of aggregate revenue requirement and expected revenue from tariff and charges for the remainder of the control period, as part of the annual performance review.....”*

Regulation 15.2.1 holds that the forecast for aggregate revenue requirement may be developed by the licensee based on the *“assumptions relating to percentage annual change in a suitable macro-economic or market index, or combination thereof, to which the aggregate revenue requirement”* of the licensee *“is correlated.”* Thus, on a

harmonious consideration of the said provisions and the National Tariff Policy dated January 6, 2006, review or modification of a tariff Order may be considered under the cited provisions even if the requirements of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 are not met out. Regulation 17.8 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 vests express power upon the Commission to review any tariff order. In this context, reference was made to the order that was passed by the Commission on December 21, 2006 in Case No. 49 of 2006 (in the matter of Review of Load Management Charges imposed by the Commission through the Tariff Order for TPC for FY 2006-07 in Case Nos. 22 of 2005 and 56 of 2005), on a Petition filed by Empire Industries. In the said Order, directions to TPC for imposition of load management charges were modified considering adverse tariff hike and social impact.

11. Shri. T.P. Mohan, Asst. GM, TPC, submitted that the contract demand of Empire Industries is 3 MW and their extent of power consumption per annum is about 14 MUs. On an enquiry made by the Commission as to the maintainability of the present Petition of Empire Industries, Shri. Mohan submitted that it appears prima facie that the present Review Petition may not be admitted under Regulation 85, though the admissibility under Regulation 17.8 cited by the Petitioner would have to be verified.

12 The Commission observed that TPC needs to submit legal submissions in response to the contentions of Shri. A.B. Ketkar and granted a period of one week to TPC for filing reply.

The admissibility hearing in the above-mentioned matter was adjourned thereafter.

X-----X

**List of Persons present at the admissibility hearing on August 1, 2007**

1. Shri. B.G. Maheshwari, M/s. Empire Industries Limited.
2. Shri. A.B. Ketkar, Advocate for M/s. Empire Industries Limited.
3. Shri. T.P. Mohan, Asst. GM, TPC.
4. Shri. P.V. Anvekar, Sr. Ex. Engineer, TPC.
5. Shri. H.A. Kapadia, TPC.
6. Shri. S.M. Kothari, New Haven Steel Ball Corporation Pvt. Ltd.
7. Shri. Praveen Choudhury, G.M. (Fin), Rashtriya Metal Industries Limited.
8. Shri. G.S. Karnani, M/s. M S Patel & Co.