

BEFORE THE MEGHALAYA STATE ELECTRICITY REGULATORY
COMMISSION, SHILLONG

MSERC Case No. 10 of 2020

Meghalaya Power Distribution Corporation Ltd.
Integrated Office Complex
Lumjingshai, Short Round Road,
Shillong-7930

... ..**Petitioner**

-Versus -

Byrnihat Industries Association,
13th Miles, Tamulikuchi, Byrnihat,
RiBhoi District, Nongpoh,
Meghalaya

... ..**Respondent**

Coram:

P.W.Ingty, IAS (Retd.) Chairman, MSERC

Roland Keishing, District & Sessions Judge
(Retd), Member, MSERC

Counsel for the Petitioner : Gilbert A Dkhar, Advocate

Counsel for the Respondent : P. K Shome, Advocate

Date of hearing : 07/10/2020.

Date of Order : 19/10/2020.

ORDER

Dated 19th October, 2020.

This is a Miscellaneous Petition filed by Meghalaya State
Power Distribution Corporation Ltd. Shillong, represented by Shri

Synram Singh Kharmih, Superintending Engineer (R.A) Meghalaya Power Distribution Corporation Ltd (hereinafter referred to as the Petitioner and or MePDCL in short) for special Tariff for Industrial consumers other than Ferro Alloys Industries.

2. The brief background leading to the present Petition as per the Petitioner is that, in exercising its powers conferred under Sections 131 and 133 of the Electricity Act 2003, the State Government of Meghalaya notified “The Meghalaya Power Sector Reforms Transfer Scheme 2010” on 31 March 2010 leading to restructuring and unbundling of the erstwhile Meghalaya State Electricity Board (MeSEB) into four entities namely:

a.Meghalaya Energy Corporation Limited (MeECL): the Holding Company;

b.Meghalaya Power Distribution Corporation Limited (MePDCL): the Distribution Utility;

c.Meghalaya Power Generation Corporation Limited (MePGCL): the Generation Utility;

d.Meghalaya Power Transmission Corporation Limited (MePTCL): the Transmission Utility.

However, the holding company - MeECL carried out the functions of distribution, generation and transmission from 1st April 2010 onwards, even after re-structuring. Through notification dated 31ST March 2012, the State Government notified the amendment to The Power Sector Reforms Transfer Scheme leading to effective unbundling of the MeECL into the MeECL (Holding Company), MePDCL (Distribution Utility), MePGCL (Generation utility) and MePTCL (Transmission Utility) from 1st April 2012.

On 23rd December 2013, the Government of Meghalaya notified the vesting of the Assets and Liabilities as on 1st April 2010, in the MeECL. Subsequently, the Government of Meghalaya notified the 4th Amendment to the Notified Transfer Scheme on 29th April 2015, wherein the opening balances of all the four entities namely, MePGCL, MePTCL, MePDCL and MeECL as on 1st April 2012 WERE indicated.

The MePDCL began commercial operations as an independent entity and the sole distribution licensee in the State of Meghalaya, from 1st April 2013.

The Petitioner also avers that over the past years, there has been a reducing trend of industrial consumption which has been further aggravated by the Covid-19 pandemic. This is affecting the HT:LT ratio of sales, AT&C losses and the overall operational efficiency of the MePDCL. Rather than selling its surplus power outside the State at a lower rate, the Discom wants to encourage industrial consumption in the State and improve its operational efficiency by increasing its HT: LT sales mix. The licensee files the instant petition with a humble aim to promote industrialization and boost industrial power consumption within the State.

The Board of Directors of the MePDCL has also accorded approval for filing the present Petition.

3. The Petitioner also states that, the supply of electricity to all the people is an essential driver for development and influences social and economic change. The licensee has erected adequate distribution system to cater to the growing demand in the State. Lower than expected returns from its investment are making it difficult for the Discom to achieve financial and operational turnaround, especially in the face of mounting power purchase dues. In more than one instance, the utility had to resort to non drawal of power from costly generating sources but is still required to pay the fixed charges associated with the same source. The utility therefore is exploring fresh avenues to find appropriate buyers to effectively sell its available power at the desired cost reflective tariffs thereby, improving its operational efficiency and bringing down its losses.

4. The NTPC Bongaigaon Thermal Power Project (3 x 250 Mw) has allocated power to Meghalaya for which the PPA was signed in

the year 2007. The NTPC is currently regulating the allocated power on account of non-payment of dues by the MePDCL. Despite this, allocation of power to Meghalaya from this Plant, has been further enhanced from 53 MW to around 87 MW. This additional power should be effectively utilised, which is the reason for the instant petition.

5, The industries over the last 5 years have been important consumers in the State, catering to an average of 35% of the total consumption of power in the State. If the existing industrial consumption can be increased, revenue for the Discom will also increase which will lead to a positive impact on the financial health and overall performance of the power distribution utility. This can happen if the rates for energy charges are lowered for the Industries (other than ferro alloys) in the State.

The Licensee from time to time introduces incentives to benefit different categories of consumers. In 2018-19, ‘Time of Day Tariff’ was introduced to incentivize industrial consumers to shift the load from peak to off-peak hours. There was a separate tariff for ferro alloys to boost their consumption. The licensee wants to provide benefits to the other industrial consumers (apart from ferro alloys consumers) as well. Therefore, the Discom has taken a conscious decision to introduce a special tariff for these industries.

The Contours of the Revision of Tariff for Industries for FY 2020-21 may be recalled as follows:

As per the tariff order for FY 2020-21, the tariff rates for industries are:

	Fixed Charges Rs. /kVA/month	Energy Charges (Rs./kVAh)
Industrial HT	230	6.6
Industrial EHT	230	6.2

The licensee wants to promote industrial consumption and growth in the State as well as improve its operational efficiency. Increasing industrial consumption will in turn increase the HT:LT sales mix which will help the licensee bring down its T&D losses. The licensee in this regard has already initiated communication with the Byrinhat Industries Association (BIA) on the contours of the plan.

As part of the package, the licensee will revise the energy charges for the Industries at a rate of Rs 6 per KVAh for HT & EHT Industrial consumers, with the fixed charges remaining the same. The discounted energy charges will encourage the industries to increase their consumption as well as their contract demand. However, the industries will have to assure the licensee that they will maintain their monthly load factor at 64% or above. If the industries fail to enhance their load factor to the floor of 64% or higher every month, they will have to pay the Discom an amount of Rs 1.70 per KVAh for non-drawal of units up to the agreed load factor of 64% as compensation for the deficit units (in order to attain the load factor of 64%). This is applicable to all the HT and EHT industries (excluding Ferro Alloys which have a separate tariff category). The licensee will keep records of the industries' load factors every month and the amount to be compensated, as applicable, by the industries (if load factor < 64%) will be included in their monthly electricity bills to be paid to the Discom.

The revised energy charges will be applicable for an initial period of 3 years with yearly enhancement, to accommodate the effect of inflation. Thereafter, the tariff structure may be revised by the licensee, based on the financial situation of the licensee and its power procurement options, with due approval by the Hon'ble Commission.

The above plan with riders has been prepared by the licensee to ensure that the incentives offered to industries don't adversely

impact the existing revenues of the Discom which would, in that case, increase the burden of the Discom and other categories of consumers. This proposal of revision of energy charges for industries (other than Ferro Alloys industries) has been initiated by the Discom on the condition of payment of Rs 1.70 per KVAh for non-drawal of units up to the agreed load factor of 64% and the payment of energy charges at the rate of Rs.6.00 per KVAh or as may be mutually agreed upon by both the parties.

Thus, the Petitioner, MePDCL humbly prays before the Hon'ble Commission to kindly pass appropriate orders thereby (a) approve Special Tariff for Industrial Consumers other than Ferro Alloys Industries and to pass such order/s as the Hon'ble Commission may deem fit and proper.

6. In the meantime, the Byrnihat Industries Association (BIA in short), an interested party, being an association of industrial consumers who would be affected by a Special Tariff, filed an intervention application under Regulation 12 of MSERC Regulations, 2007 read with Section 62 and Section 86 of Electricity Act, 2003, praying that BIA may be impleaded as a Party in fixation of special tariff filed by the Petitioner MePDCL.

7. The BIA, in its application states that, it is an Association of industrial consumers having its registered office in Byrnihat, Meghalaya. It represents EHT Industrial, HT Industrial and Ferro Alloy Consumers. The members of BIA also source power through open access.

The BIA, further sought the Commission's approval to procure NTPC Power at INR 4.90/KVAH for a period of three years, from the date of implementation of such arrangement.

8. BIA also narrated the brief background of facts, by stating that the Petitioner, MePDCL, vide its letter dated 05/06/2020, offered 53 MW of power from NTPC Plant at the rate of INR 6/KWh to the BIA. The petitioner stated that no additional demand

charge will be imposed for drawal of this power and that while 50% of the price will be fixed and the remaining 50% will be variable. The relevant extract of letter dated 05.06.2020 is below:

“ As you are aware, the Meghalaya Power Distribution Corporation Limited has an obligation to procure power from the NTPC BgTPP. The present allocated power from the said station is around 53 MW for which the cost is comparatively higher than that procured from other power generating plants. The present average cost of sale to the consumers of the State is around Rs. 7.66/unit. Considering the overall benefit to the consumers of the State, the MePDCL has decided to offer the above mentioned power to the Industries, if they wish to avail of it.”

9. The BIA responded, to the afore mentioned offer letter, vide email dated 14/06/2020. In its email the BIA states that even the offered price of INR 6/KWh, including demand charges, was very high and unviable for members of the BIA. Besides, the BIA pointed out that power tariff for industrial units in neighbouring areas of Bhutan and Durgapur DVC power was extremely low due to which industrial units were flourishing there. The BIA further states that increasing the load factor of the existing industries to 73% at the rate of INR 4.90/KVAh instead of the offered rate of INR 6/KWh would generate revenue of INR 172 Crores per annum from existing open access and captive power plant consumers. Relevant extracts of the BIA's email are as under:

“That, the other side of the story is that around 25-30 Units had to shut down their factories during the period 2009-2016 for continuous rise of Power tariff every year which resulted in putting their sustainability at stake.

The other industries tried their best to survive by switching over to Captive Power plant or Open Access, etc.

That, after detail discussions and their Power consumption figures for the financial year 2019-20 it is revealed that an average load factor of 22% was recorded with a total contract load of 44.6 MVA in Byrnihat generating a total revenue of 5.42 crores per month @ Rs. 6.60 paise per KVAh including 75% of demand charge. A detailed sheet of Power consumption and revenue paid to

MePDCL between April 2019 to March 2020 is attached herewith as Annexure-1, for your kind perusal and information.

That the reason behind for such a low load factor was due to higher power tariff and heavy competition with neighbouring country Bhutan and Durgapur in the State of West Bengal.

That, the Power tariff in Bhutan is only Rs. 2.24 paisa per KWH for industries at 66 Kv voltage level and Rs. 3.45 paisa per KWH in Durgapur DVC Power. The only reason for heavy industrial growth in Bhutan and Durgapur area is due to the reason of cheap and quality power. Copy of Power tariff as Annexure 2 & 3.

That, your offer of Rs. 6 per KWH including demand charge is also very high and unviable as compared to even TOD tariff in Meghalaya for 2020-21 which is in the range of 15% less during off peak hours which comes to Rs. 5.61 paisa per KVAH and Rs. 5.27 at 33 and 132 Kv level respectively.

That, your offer for 50% price of Rs. 3 fixed on contract load and 50 % price of Rs. 3 on drawal of power is also not possible for the purpose of calculation and drawal of power to run the Industries.

The eligibility criteria for additional load to the old Industrial consumers for expansion of their existing units is time consuming for extension of their Units since they are unable to draw full power at the existing rates for the reasons stated above.

However, we would like to offer our solution to your offer of 53 MW to the existing Industries as well as Open Access consumer and a new consumer who is not yet your consumer and operating their Captive Power Plant in Meghalaya.

A. That, the increase in load factor by the existing industries to a tune of 73% LF at our offer rate of Rs. 4.90 per KVAH instead of Rs. 6 including demand charge may generate a revenue of Rs. 107 Crores and 65 Crores from existing open access and captive power plant consumers of Meghalaya totaling 172 Crores per annum. A copy of detailed calculation is attached as Annexure 4 for your kind perusal and ready reference.

B. It is also pertinent to mention that if this additional power of

53 MW is allotted to the Industrial consumers as stated in the para A above, the 71.99 lakh KVAH Units which are consumed at present per month by the Industries in Byrnihat may be diverted to the Domestic consumers in Meghalaya, those who are suffering because of load shedding, which will also avoid any loss to MePDCL.”

10. Accordingly, the BIA submits that, their members operate industries that are essentially power intensive in nature. Due to high electricity charges the members are currently unable to run their industrial units at the maximum capacity due to high production cost. The industries are also facing stiff competition from industries located in neighbouring areas of Bhutan and Durgapur where electricity is available at highly discounted cost of INR 2.24/KWh and INR 3.45/KWh.

Consequently, the BIA, pursuant to the petitioner’s offer, seek to implead as party and also seek this Commission’s permission to procure cheaper power for a period of three years, from the date of implementation of such arrangement. Making such power available at reduced cost for a period of three years will give the members of the BIA certainty and confidence to invest in the industry. It will also help them compete with industries located in the neighbouring areas.

11. Furthermore, the BIA submits that their members are extremely vulnerable on account of the COVID-19 pandemic. The members across the State, had to shut down operations in their respective factories/manufacturing units/commercial establishments in compliance with the nation-wide lockdown imposed by the Central Government due to the occurrence of the novel COVID-19 virus. On account of this the members have suffered huge financial loss. This situation is expected to continue for at least another year due to the contraction in the economy. In such dire circumstances the members of the BIA will greatly benefit if the Hon’ble Commission was to approve the proposed power procurement. The members of the BIA that greatly contribute to the State economy will be able to sustain and thus, continue to provide employment to the citizens of the State. Further, the consumers of the State will benefit greatly as they will not be obliged to bear the burden of the

NTPC power.

12. Evidently, the members of the BIA is an affected party and ought to be added as a Respondent in the present matter. BIA also respectfully submits that any direction(s)/order(s) in the present proceeding shall materially and legally prejudice the rights and interest of the BIA herein, which is a necessary party for the purpose of the present proceedings.

13. Thus, the BIA submits that it is in the interest of justice that the BIA be permitted to be impleaded as a Respondent and/or be allowed to join these proceedings to assist this Hon'ble Commission and to safeguard its own rights.

14. The BIA furthermore submits that the Hon'ble Commission, while determining the terms of tariff has to be guided by the principles mentioned, under Section 61 of the Act, including encouraging efficiency, economical use of resources and safeguarding consumers' interest while ensuring reasonable recovery of the cost of electricity. Relevant provisions of Section 61 are as under:

“ Section 61. (Tariff regulations): The appropriate 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:-

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(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; ”

The Hon'ble Commission is, thus, obligated to protect the consumers' interest, like that of the members of the BIA, while ensuring reasonable recovery of cost by the Petitioner.

Section 62 (3) of the Act allows the Hon'ble Commission to differentiate consumers according “ to consumer's load factor,

power factor, voltage total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.” Thus from a conjoint reading of Section 61 (b) and Section 62 (3) of the Act it is clear that the State Commission is empowered to make a reasonable differentiation between the consumers.

The Hon’ble Commission is, thus, empowered to approve the revised tariff, for a period of three years, for the members of the BIA and that such revision will also help the other consumers of the State since the proposed tariffs will lead to generate INR 172 Crores as revenue for the Petitioner. Further, the power currently being consumed by the industrial consumers could be diverted to domestic consumers currently suffering from issue of load shedding and thereby further reducing the loss suffered by the Petitioner. The members of the BIA have also undertaken to increase their load factor which would improve the overall grid security and also lead to efficient use of electricity.

Lastly but not the least, the BIA submits that the Hon’ble Commission vide successive tariff orders has considered the cost of surplus power as INR 3/KWh (2015-16), INR 3.25/KWh (2016-17 and 2017-18), and INR 2.50/KWh (2018-19 and 2019-20) and INR 2.86/KWh (2020-21). The Hon’ble Commission has thus approved sale of surplus power at INR 3.25/KWh. The BIA on the other hand is offering to procure power at rate of INR 4.9/KVA on such power which the petitioner despite being unable to use has to pay penal charges. It is thus, the proposed revision in tariff would not only benefit the BIA but also the petitioner and all its consumers.

BIA also submits that in the event of the proposed revision of tariff is not approved by the Hon’ble Commission the industrial sector of Meghalaya will be unable to continue its operations in the future. This will cause a dire situation resulting in mass State unemployment which will further exacerbate the deleterious effect the COVID-19 virus is already having on the State economy. Further en-masse permanent shut down of industries will also have deleterious effect on the future liquidity of the Petitioner. As the industrial sector heavily subsidizes the domestic/agricultural consumers in the State, the later will also greatly suffer from closure of industries.

The present application is being filed bona fide and in good faith. The BIA undertakes to make good any short-fall in payment of court-fees if required.

The BIA prays that the Hon'ble Commission may be pleased to :

- (a) Allow the present application and implead the BIA as a Respondent in the Petition dated 07.08.2020 of the Petitioner;
- (b) Approve the revised tariff proposal for the industrial sector and open access consumers for a period of three years as per the Petitioner's offer dated 14.06.2020;
- (c) Pass any such order(s) and or direction(s) which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

15. With the above facts and circumstances, on hearing the Petitioner and the BIA along with their respective Ld. Counsel and on perusal of the petitions filed by the parties, we find that the members of the BIA being an industrial consumers would invariably be affected in the event of fixing special tariff as sought by the Petitioner.

16. Accordingly, in the course of hearing on 14/09/2020, we find that the BIA is a necessary party and as such BIA is being impleaded as Respondent and posted the case for further hearing.

17. This Commission issued Notice dated 23/09/2020 to the Industrial Consumers of the State by way of publication in Local daily "The Shillong Times" dated 24/09/2020 thereby notifying that the MePDCL had filed a petition for Special tariff for all industrial consumers, and that any industrial consumers who are interested may apply and make representation before the Commission on or before the hearing.

18. Non of the industrial consumer of the State appears nor apply in response to the said Notice published on 24/09/2020 in local news paper "The Shillong Times" except the Respondent/BIA.

19. Thereafter, the Petitioner filed additional application, stating that excepting the BIA, no other industrial consumer of electricity supplied by MePDCL had responded to the public notices issued by the MePDCL and also by the State Commission, and that in view of this, the MePDCL and the industrial consumers represented by the BIA had come to an understanding for a revised Special Tariff on the terms and conditions that are laid down in an MOU that is now being placed before the Commission for approval.

20. The terms and conditions for the special tariff, as proposed in the MOU placed before the Commission is reproduced herein below:-

MEMORANDUM OF UNDERSTANDING
AMONGST
MEGHALAYA POWER DISTRIBUTION CORPORATION LIMITED
AND
BYRNIHAT INDUSTRIES ASSOCIATION

For sale of power to Industrial Consumers at special power rates

This Memorandum of understanding (hereinafter referred to as the “**MoU**”) is made on this 7th day of October, 2020 between Meghalaya Power Distribution Corporation Limited (hereinafter “**MePDCL**”), a government of Meghalaya undertaking, having its office at LumJingshai, Short Round Road, Shillong - 793 001 Meghalaya

and

Byrnihat Industries Association (hereinafter “**BIA**”), an association of industries registered under the Meghalaya Societies Registration Act,1983, having its registered office at 13th Mile, Tamulukuchi, Byrnihat, RiBhoi District, Nongpoh, Meghalaya – 793101. MePDCL and BIA are hereinafter collectively “Parties”.

Preamble:

- a. In terms of Power Purchase Agreement with NTPC Bongaigaon Thermal power project (3 x 250 Mw), at present MePDCL is allocated 53 MW power from the said plant every year as per the terms of PPA.
- b. MePDCL is however unable to off-take the allocated power from NTPC Bongaigaon Thermal power project (hereinafter “NTPC Plant”) and is thus, incurring losses in form of the fixed costs payable to NTPC. This fixed cost is being borne by the consumers of Meghalaya.
- c. That, there was fast-paced industrialization of small medium and heavy Industries in Meghalaya in the year 1999 - 2005 and many entrepreneurs established their Industries for cheap power and NEIIPP 1997 and MIIPP 1997 Industrial Policy. However, the State experienced high closure of industries during 2009 to 2019 due to continuous rise of Power tariff every year.
- d. MePDCL is, thus, desirous of drawing such power from the NTPC Plant and supplying the 53 MW to members of the BIA who are Industrial Consumers and open access consumers at discounted rates. This would not only provide an impetus to industries, but would also benefit the consumers of the state. Such exercise would help MePDCL in reducing its losses on account of liability against fixed cost, variable cost and other penal charges billed by NTPC.
- e. MePDCL communicated its desire of supplying power to Industrial Consumers/members of BIA vide its Letter dated 05.06.2020. BIA replied to the said Letter with its Counter Offer dated 14.06.2020.
- f. MePDCL and BIA are consequently, entering into this MoU.

Commitments/Understanding:

The Parties set forth their understandings under this MOU as under:

1. That MePDCL is desirous of providing incentives to industries in the State to promote industrial consumption and growth while improving overall operation efficiency of MePDCL.
2. That increasing the industrial consumption will in turn increase HT: LT sales mix which will help MePDCL in reducing its T&D losses.
3. That it is agreed the power will be supplied to BIA Industrial Consumers those who are drawing MePDCL power, as Open Access Consumer or from their Captive Power Plant in the State of Meghalaya.
4. That it is agreed upon that the special power rate applicable to the BIA Industrial Consumers will be charged at the rate of INR 4.90/KVAH inclusive of demand charges, for an initial period of three years, from the date of implementation of this MOU, subsequent to approval by the Ld. Meghalaya State Electricity Regulatory Commission.
5. That this period of three years may be further extended by another three years subject to approval of Ld. Meghalaya State Electricity Regulatory Commission and with mutual consent of both Parties.
6. That in turn Industrial Consumers undertake to increase their load factor to a tune of 68% minimum.
7. That in case the BIA member Industries fail to maintain minimum load factor of 68%, for reasons other than force majeure and/or grid failure or major breakdown at consumer end, a penal charges of INR Rs. 1.20/KVAH and INR Rs. 1.00/KVAH will be applicable on 33 Kv level IHT Consumer and 132 Kv EHT level Consumer respectively, for non-drawl of units upto the agreed load factor of 68%. The load factor of 68% would be calculated pro rata on the actual power supplied by MePDCL. That load factor of 68% would be adjustable +/- over each six months consumption period in each year i.e. Oct. – March & April – Sept.

8. That MePDCL undertakes to supply uninterrupted, unrestricted and stable quality power supply to the BIA Member Industries.

9. That in case NTPC power is not available for any reason whatsoever the MePDCL will not stop supply of this special power to BIA member Industries under the terms & tariff agreed upon in this MoU, the reason for such non availability of power will not have any impact on MePDCL's obligation to supply power to BIA member Industries and will continue to supply out of their any other power purchases availability.

10. That MePDCL will incorporate the special power tariff rate as decided in this MoU while filing their ARR or business Plan or MYT to Meghalaya State Electricity Regulatory Commission.

11. That this MoU is without prejudice to the rights of the members of BIA to take power through open access for which NoC would be issued by MePDCL (subject to members fulfilling the conditions of the open access regulations).

12. That the parties may amend or vary any of the Clauses of this MoU as required from time to time by mutual consent by duly obtaining approval from the Ld. Meghalaya Electricity Regulatory Commission.

13. That in case of dispute the provisions of Electricity Act, 2003 will be applicable with the jurisdiction lying with the Ld. Meghalaya State Electricity Regulatory Commission.

14. That the parties undertake to abide by the rules, regulations and orders of the Ld. Meghalaya State Electricity Regulatory Commission.

15. That this special tariff shall be applicable to the BIA Members from the date of execution of MSERC Order against Petition filed by MeECL / MePDCL and intervention Petition filed by BIA on 14.09.2020.

16. The special tariff will be available / provided to only those

industries who are :-

- a) Members of Byrnihat Industries Association, who express their consent to draw power in this special tariff.
- b) Who are paying energy bills regularly and have no overdue bill payments.
- c) For Byrnihat Industries Association members, who have outstanding over dues, this Special Tariff will be made available to such members only if they express consent to one time settlement of clearing all outstanding dues under applicable scheme. In case one opts for the one time settlement and drawl of discounted power, but does not pay any dues as per the OTS terms and conditions, the Special Tariff will be withdrawn for such industry and the said industry shall be liable to pay the energy cost as per the original / prevailing tariff for the usage done in the preceding months.

17. This arrangement can be terminated by either of the two parties after giving 3 months advance notice.

18. Force majeure - Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations due prior to occurrence of force majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a force majeure event) beyond the reasonable control of the party experiencing such delay or failure, including the occurrence of the, Acts of God; Typhoons, floods, lightning, cyclones, Hurricanes, draught, famine, epidemic, or other natural calamities; Acts of war or Civil Unrest; Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority; Earthquakes, explosions etc.

IN WITNESS WHEREOF, by their signatures below, the parties have caused this Memorandum of Understanding to be executed and effective as of the Effective Date.

[MePDCL]

1.[NAME], [TITLE]
Sd/- EB Kharmujai
Director MePDCL

Witness

Sd/- Gilbert A Dkhar, Advocate

2.[NAME], [TITLE]

[BIA]

Sd/-

1.BAJRANG LOHIA
PRESIDENT

Witness
Sd/- G.S. Mukherjee,
Company Secretary MeECL

Sd/-

2.SHYAM SUNDER AGARWAL
SECRETARY GENERAL

21. We have perused and considered the entire materials on record and conclude as follows:

The Commission examined the proposal for special tariff submitted by the Petitioner MePDCL, and also the views and responses of the Respondents BIA. The MOU between the Petitioner and the Respondent based on a consensus agreement between the parties was also taken into consideration.

The other factor taken into consideration was the priority of protecting the Consumers' interests and the Commission noted the views expressed by the industrial consumers represented by the Respondent BIA regarding the rate for power.

It is also the Commission's duty to take into consideration the need to ensure that the distribution and supply of electricity by MePDCL is done on commercial principles, and that the cost of electricity is recovered in a reasonable manner.

The Commission noted that the proposal of the petitioner MePDCL for a special tariff, was based on the objective of

promoting and encouraging industrial consumption of electricity, and that this could also provide an impetus for industrial growth and development. It is also expected to increase HT: LT sales mix, which will go towards helping MePDCL in reducing its T&D losses, and thereby leading to overall operational efficiency of MePDCL up to some extent.

At this stage, it is also pertinent to state that under the National Tariff Policy 2016, the Ministry of Power resolution dated 28/01/2016, vide Para 8.4 reads as- "Licensee may have the flexibility of charging lower tariffs than approved by the State Commission if competitive conditions require so without having a claim on additional revenue requirement on this count in accordance with section 62 of the Act." Thus, charging lower tariffs than approved by the State Commission is permissible provided the conditions are fulfilled.

In the instant case, the Petitioner has clearly differentiated for the proposed special tariff, based on consumer's load factor, power factor, voltage, total consumption, the nature of supply and the purpose for which the supply is required.

The petitioner and the respondents have arrived at a consensus for a special power rate that will be applicable to BIA industrial consumers, who will be charged at the rate of INR 4.9/KVAH including demand charges, as against the original proposal of INR 6/KVAH that was submitted by MePDCL. This will be for an initial period of three years.

Among other terms and conditions, the MOU also includes the condition that the Industrial Consumers undertake to increase their load factor to the tune of 68% minimum, and that in case the BIA member industries fail to maintain minimum load factor of 68%, for reasons other than force majeure, a penal charge of INR 1.2/KVAH and INR 1.00/KVAH will be applicable on 33 KV IHT consumer and on 132 KV EHT level consumer respectively.

The MePDCL undertakes to supply uninterrupted, unrestricted and stable quality power to the BIA member industries.

The MePDCL will also incorporate the special power tariff

rate as decided in the MOU while filing their Business Plan or MYT to MSERC.

Amendment or modification of any clause in the MOU will only be done with the mutual consent of the parties involved and with the approval of MSERC. In case of any disputes the Electricity Act, 2003 will apply and shall be within the jurisdiction of MSERC.

The Commission perused all documents and materials submitted, including the petition, the additional petition and the MOU, and we find that the proposed special tariff of INR 4.9/KVAH for the industrial consumers, and that the terms and conditions of the MOU are just and reasonable. Besides, we also find that the terms and conditions agreed upon between the parties which are reduced in writing as Memorandum of Understanding, signed by the respective parties along with witnesses and that the terms and conditions agreed upon between the parties are legal and enforceable between the parties and accordingly the MOU dated 07/10/2020 is allowed, accepted and incorporated in the present order.

In the result the Commission approves the petition for special tariff for an initial period of 3 years to the industrial consumers of the Respondent, BIA as per the terms and conditions provided in details of the MOU executed between MePDCL and BIA, as reproduced at para 20 above.

Parties are directed to complete all the formalities on or before 31st October, 2020 and the implementation of load supply shall commence from 1st November 2020 onwards.

Sd/-
Roland Keishing

Sd/-
P.W.Ingty