

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 62 of 2009**

**In the matter of**  
**MSEDCL's Petition for In-principle approval of MoU route for selection of**  
**Distribution Franchisee and Bulk Supply Tariff (BST) for the area to be**  
**developed under Township Policy/ SEZ policy/ Industrial Policy**

**Shri. V. P. Raja, Chairman**  
**Shri. S. B. Kulkarni, Member**  
**Shri. V. L. Sonavane, Member**

**ORDER**

**Dated: May 24, 2010**

Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition under affidavit on September 25, 2009, under the seventh proviso of Section 14 of the Electricity Act, 2003 (EA 2003), for In-principle Approval of Memorandum of Understanding (MoU) route for selection of Distribution Franchisee and Bulk Supply Tariff (BST) for the area to be developed under Township Policy/SEZ Policy/Industrial Policy/I.T.Policy, etc.

2. The main prayers in the Petition are as follows:

“

- *Examine the proposals of the petitioner for a favourable dispensation;*

- *To approve the MoU route for appointment of distribution franchisee for the area to be developed under Township Policy/ SEZ Policy/ Industrial Policy/I.T.Policy/any planned development etc.*
- *To agree and approve or modify on the methodology to determine the Bulk Supply Tariff for Mixed Loads as well as Industrial Load wherein such Central / State Government policies are applicable, to be charged to the Distribution Franchisee for the power to be supplied at a single input point;*
- *To approve the Bulk Supply Tariff as determined by MSEDCL as an interim measure till the period the final order is issued for BST to be levied to the Franchisee, by the Hon'ble Commission.*
- *To determine any commercial terms and conditions for carrying out the Distribution Franchisee Activities;*
- *To provide the direction under which the Distribution Franchisee Agreement needs to be finalised by MSEDCL and Distribution Franchisee.”*

3. MSEDCL, in its Petition, submitted as under:

I. Background

- (a) MSEDCL is a Distribution Licensee under the provisions of the EA 2003 and has a licence to supply electricity in the State of Maharashtra, except in the specific licenced areas of Mumbai.
- (b) Many Townships as well as I.T. Parks, Industrial areas, etc., are being developed by different developers in the State of Maharashtra.
- (c) As per the Township Policy, infrastructure facilities such as Roads, Railways, Street light, Power, Drainage system, etc. needs to be provided by the Developer. Also, with respect to other Policies issued by the Central and State Government for development of the industrial and or commercial sector in the State, a prime responsibility is assigned to the developer to provide quality and continuous power to the customers in the respective areas to be developed by them.

- (d) In line with the above policy, certain developers have planned to undertake the supply of electricity in their area for which they have proposed the Distribution Franchisee route and sought approval from MSEDCL.
- (e) MSEDCL submitted that representations have been received from various developers, viz., M/s. Lavasa Corporation, M/s. City Corporation Limited (CCL) - Amanora Township and M/s. International Convention Centre (ICC) from Pune and nearby Districts, who have requested and shown their willingness to work as a Distribution Franchisee of MSEDCL through MOU route. The township/properties developed, proposed to be served through the Distribution Franchisee, will consist of mainly Residential and Commercial category of consumers. However, ICC will cater to the industrial consumers. Thus, the Franchisee may be required to cater to mixed loads in most of the cases, which would be generally Residential and Commercial.
- (f) MSEDCL further submitted that it will cover all the areas covered under any notified policy or direction by the State Government or any area that is being developed in a planned and integrated manner. It is envisaged that the authorities included will be Township, CIDCO, SEZ area, I.T. park, industrial area, any planned development, etc., who may be interested in adopting the Distribution Franchisee route for the given project area and therefore, this proposal intends to cover all such Distribution Franchisees through MoU route in general. This Franchisee arrangement is proposed to cover the Industrial area as well as Township whereby the primary condition is that the electricity infrastructure will be developed by Developer, and will not cover the area where the distribution infrastructure is already developed by MSEDCL or is proposed to be developed by MSEDCL. Moreover, the prime condition is that the Franchisee will avail supply at High Tension (HT)/Extra High Voltage (EHV) level at a single point.
- (g) MSEDCL has already awarded the Bhiwandi area to a Distribution Franchisee through the Competitive Bidding process. Since, the electricity distribution infrastructure in the township area is totally pre-developed/under development by the developer, as such it will be difficult for MSEDCL to carry out the Competitive Bidding process wherein a bidder who invested in infrastructure will be equated or will be competing with the bidder who has not made any investment in infrastructure. Thus, it will be necessary to consider such type of proposals where Distribution Franchisee activities needs to be carried out by the bidder who has made investment in distribution infrastructure and thereby MOU route is required to be adopted with prior approval of the Commission through a regulatory process. Against this background, MSEDCL proposed to evolve the Standard Franchisee

Arrangement on MOU basis.

- (h) It is submitted that even if the proposal is to be considered under the MOU route, the same will have to culminate in a Distribution Franchisee Agreement after the Commission's approval for the terms and conditions of MoU by way of a directive/Order so that the said arrangement is legally enforceable and binding on both the Parties.
- (i) Based on the approval and direction of the Commission, the Distribution Franchisee Agreement will be signed between MSEDCL and selected Franchisee;
- (j) The proposal for Distribution Franchisee from various developers will be in the form of seeking a single point supply to the specified area with clear physical demarcation whereby the developers will supply power to the different category of consumers within the given area from the given input point. Therefore, the process of determination of such Bulk Supply Tariff (BST) at the single input point to the developer needs to be formulated, such that it has no negative impact on MSEDCL and is also beneficial to the interest of the consumers of the Franchisee as well as other consumers of MSEDCL.
- (k) MSEDCL has decided to carry out the selection of Distribution Franchisee based on Input based Model with a pre-determined BST to be payable by the Franchisee to MSEDCL. MSEDCL further submitted that the Commission may pass an Order to approve the methodology to determine the BST.
- (l) MSEDCL requested the Commission to allow it to appoint the Distribution Franchisee under MoU route, under the approved commercial terms and other terms and conditions between MSEDCL and Distribution Franchisee.
- (m) MSEDCL proposed to Charge BST of Rs. 4.80/kWh to the Township Distribution Franchisee area or any other areas with mixed loads, and Rs. 4.41/kWh for the exclusive Industrial Distribution Franchisee area. In addition to the Energy Charges, the Franchisee has to pay Demand Charges of Rs.150/kVA/month of Billing Demand till the period the Commission determines the BST for each type of Franchisee (i.e., mixed loads and exclusive industrial usage) in the specified areas.
- (n) The consumers in all these segments namely, Township, Industrial Area, I.T. area, SEZ area or any such other area, generally fall under the high end consumers of MSEDCL and thus, if MSEDCL had supplied power directly to these consumers, they would have been subsidizing consumers. MSEDCL further submitted that the BST at present determined under HT VI category is exclusively for residential and commercial consumers, and not for mixed load. The present proposal of BST is for input based Distribution Franchisee for serving the mixed load of consumers.

- (o) MSEDCL further submitted that the commercial interest of MSEDCL needs to be protected and the Distribution Franchisee arrangement needs to be finalised without adversely affecting MSEDCL. Therefore, the BST of HT VI for residential and commercial needs to be rationalised upwards so that the consumers in the selected Franchisee area are not subsidised by the other consumers of MSEDCL.
- (p) MSEDCL submitted the draft Memorandum of Understanding (MoU) in the Petition.

## II. Legal Intent

- (a) Though many developers have initiated the process of development of distribution infrastructure, they cannot supply power to the consumers in their area as they are not Distribution Licensees. For the distribution and retail supply of electricity within the given area, the developer is required to have a Distribution Licence under Section 12 read with Section 14 of the EA 2003.
- (b) Section 2(27) read with Section 14, proviso 7 of the EA 2003 authorises the Distribution Licensee to appoint a Distribution Franchisee for distribution in specified Franchisee Area wherein there is no requirement to seek a separate licence for distribution.
- (c) In view of the above, one of the townships, viz., “Amanora Park Township” had submitted a proposal to carry out the Distribution Franchisee activity within the area to the Commission.
- (d) For single point connections with mixed load, in the Tariff Order dated June 20, 2008 in Case No.72 of 2007, the Commission has stated as under :

*“As regards creation of a separate tariff category for supply intended for townships under a Franchisee Agreement or otherwise, to enable the Township Developer or Franchisee to supply to mixed loads within the township, the Commission has already clarified that taking bulk supply at single point and supplying further to individual dwellings is legal only in case of Group Housing Societies, and in case there are other loads, such as commercial, industrial, etc., the same cannot be supplied through the same connection. Separate individual connections will have to be taken for such loads, as it is possible to supply to such consumers after taking supply at single point, only in case the supplier has a distribution licence or has been appointed as a franchisee by the distribution licensee.*

...

*The Commission reiterates that that HT-VI Residential would be applicable only to the Group Housing Societies. MSEDCL had been directed to ensure metering arrangements so that consumers currently classified under HT-VI Commercial Category, and requiring a single point supply, will have to either operate through a franchise route or take individual connections under relevant category. MSEDCL is directed to ensure compliance with this directive immediately” (emphasis added)*

- (e) On Amanora Park Township's interest to act as a Distribution Franchisee, in the same Order the Commission stated that,

*“As regards appointment of the franchisee and the tariff for supply to the franchisee at single point by the licensee, **the same has to be addressed by the licensee through an appropriate process**, as the franchisee, being only an agent of the licensee, is not regulated by the Commission and is an arrangement between the licensee and the franchisee and does not absolve the licensee of its obligations to the consumers of the franchisee area.” (Emphasis added)*

- (f) The salient features of various Orders issued by the Commission as well as Distribution structures adopted by MSEDCL in past, in relation to Distribution Franchisee arrangement, are outlined below:

- a. MSEDCL can appoint Distribution Franchisee at its own discretion and the Franchisee is not regulated by the Commission.
- b. An appropriate process needs to be adopted by MSEDCL for appointment of Distribution Franchisee.
- c. Distribution Franchisee will play the role of an agent to Distribution Licensee.
- d. Distribution Franchisee can arrange power for the specified area from other sources (Other than MSEDCL or the local licensee) as specified in the Distribution Franchisee Agreement with Torrent Power Limited for Bhiwandi area.
- e. Distribution Franchisee can arrange and supplement power procurement on its own to ensure Zero Load Shedding in its area of operation. This will however, be subject to prior approval of the Commission and its decision on Reliability Charges for such extra power.
- f. Distribution Franchisee to charge consumer for supply of electricity as per the tariff approved by the Commission for the respective licence area.

III. Relevant Policies issued by Central and State Government:

- (a) Township Policy
- (b) Industrial Policy, 2001
- (c) Special Economic Zone (SEZ)
  - (i) SEZ Policy:
  - (ii) Guidelines for Power Generation, Transmission and Distribution in SEZ:
- (d) IT and ITES Policy, 2003
  - (i) It is to be noted that in all the above Policies, though it is not mandatory for the Developer to supply power to the consumers, it is the prime responsibility of the Developer to provide quality and continuous power supply to the consumers in their area. Only SEZ policy and guidelines provides an option to the Developer or Co-Developer to carry out the distribution activity through a separate licence, whereas the other Policies assign responsibilities to the Developer to provide quality and continuous power to the consumer by supply through a dedicated Generation Plant or through any other source available.
  - (ii) Based on the above legal and statutory framework, MSEDCL, as a Distribution Licensee, has considered the proposal for awarding the Distribution Franchisee to the developer of Township area, SEZ area, Industrial area and IT Park. From the above mentioned policies and guidelines, the responsibility of good quality and continuous power is on the developer and in this respect various options are available with the developers including that of generation of power.

IV. Applicability

The selection of the Distribution Franchisee through MoU route will be applicable to the following authority/consumers:

- (a) Township – BST to be determined for mixed load of residential and commercial;
- (b) SEZ area - BST to be determined separately for Industrial and mixed load;
- (c) MIDC – Exclusive industry;
- (d) CIDCO – Exclusive for I.T. or Industrial load;
- (e) Information Technology Park (I. T. Park) - Exclusive for I.T. or Industrial load;
- (f) Software Technology Parks of India (STPI) - Exclusive for I.T. or Industrial load;

- (g) Any other consumers/ group of consumers at one location, together availing a single point supply of not less than 10 MVA from MSEDCL, at its sole discretion, will consider the appointment of such franchisee on case to case basis;
- (h) In case of CIDCO or any other developer applying for the area with a mixed load of residential, commercial and industrial consumer, the MoU route approved by the Board Members for the township will be applicable irrespective of the consumer mix.

The major criteria for availing the MoU route for selection of Distribution Franchisee is that the Applicant should have developed the distribution infrastructure in the given area at his own cost and that power will not be supplied to them by MSEDCL at subsidized rate.

V. Option to Developer for distribution of power:

- (a) In case the Franchisee option is not available, the Developer has an option to procure power through Open Access route or can be a Deemed Licensee (only in SEZ) by an application for Distribution Licence as provided under Guidelines for Power Generation, Transmission and Distribution in SEZ.
- (b) Further, under the Universal Service obligation (USO), it is the obligation of the Distribution Licensee to provide continuous and good quality of power supply to the consumers applying for the same. However, various policies also mandate that it is the primary responsibility of the Developer to provide distribution infrastructure.
- (c) In case, if the above option is availed by the developer, it will not be in the commercial interest of the MSEDCL, and to retain such subsidizing consumers, it will be beneficial to appoint Distribution Franchisee through MoU route for single point supply at a bulk rate. In the given way, MSEDCL will be able to safeguard the revenue by quoting a BST rate, which will have a positive impact on the revenue of MSEDCL;

VI. Franchisee Model:

- (a) In its various Orders, the Commission has suggested that MSEDCL should adopt an appropriate process to appoint Distribution Franchisees, and the same cannot be regulated by the Commission as the same is an arrangement between the Licensee and the Distribution Franchisee.



- (b) The key features of Franchisee Model proposed by MSEDCL are as follows:
- (i) In general, the model will be similar to the distribution franchisee model implemented in Bhiwandi except that instead of Competitive Bidding in Bhiwandi, the selection will be through MoU route, whereby all the activities related to Distribution Licensee will be carried out by the Distribution Franchisee.
  - (ii) Since, MSEDCL is entering into such arrangement for the first time and may require a proper review, it is proposed that initially the tenure of the Agreement will be for 5 years. The Agreement can be extended further at the discretion of MSEDCL, however, the Agreement and any terms and conditions thereof shall be subjected to a comprehensive review after 5 years at the time of such extension. MSEDCL shall have the sole discretion in deciding upon the issues that may come up after such review. The Agreement may be extended beyond the term of the arrangement at the discretion of MSEDCL based on additional terms and conditions as may be decided by MSEDCL, thus, MSEDCL will retain the deciding power for extending it beyond 5 years.
  - (iii) Moreover, the consumer mix considered by MSEDCL for BST is mostly residential and commercial for mixed loads and industrial consumers at HT and LT Level for industrial category. The BST will be reviewed at the start of every financial year and the BST will be restated in case the actual consumer mix in this area is advantageous to MSEDCL. This is necessary to avoid excessive profiteering and also considering the fact that had MSEDCL supplied them directly, the revenue to MSEDCL would have been higher. Besides, there will be no reduction in BST except as covered in the clause specified in “Indexation”. If there is change in consumer mix, which might not be advantageous for MSEDCL, there will not be any reduction in BST in such cases.
  - (iv) It is quite possible that the complete/partial Capital Expenditure for the development of distribution infrastructure might have been recovered from the end consumers and therefore, it may not be possible to consider individual Capital Expenditure of each Developer. Hence, a common BST approach has been considered for the developers who are in the process of developing similar township or industrial area.

- (v) The authorised representatives of MSEDCL and the Distribution Franchisee shall conduct joint calibration of the interface meters at the Input Points and will carry out meter reading jointly with designated Franchisee on a monthly basis at Input Points of the Franchise Area for making a payment at a pre-determined BST for the energy recorded at input points.
- (vi) A trajectory of distribution losses will be specified to maintain the operational efficiency of the Franchisee Area. The reward or risk due to any change in distribution loss in comparison with the loss trajectory will be automatically to the account of the Distribution Franchisee.
- (vii) Indexation  
The BST for every subsequent year will be equal to the increased percentage (%) of Average Cost of Supply (ACoS) on year to year basis or as per the Tariff Orders of the Commission from time to time. In case of decrease in ACoS in any year, the same will be passed on to the Franchisee, and the benchmark rate will be that of the first year rate and irrespective of any rate of ACoS, the Franchisee will be required to pay the first year BST rate without any reduction or the BST rate determined by above indexation method, whichever is higher.
- (viii) The collection efficiency will be considered as 100% for the Distribution Franchisee area.
- (ix) The pre-determined BST rate will not include Electricity Duty/Tax on Sale of Electricity and the same needs to be reimbursed additionally to MSEDCL by the Franchisee based on the electricity billed to consumers in the franchisee area.
- (x) Further, actual Fuel Adjustment Cost (FAC) Charge and any other new/additional Charges as applicable and approved by the Commission from time to time will be payable by Franchisee to MSEDCL over and above the BST payable for the energy input in the franchisee area.

VII. MOU arrangement:

(a) Broad Responsibilities of Distribution Franchisee:

(i) Purchase of power:

- From MSEDCL at Maharashtra State Electricity Transmission Company Limited's (MSETCL's) EHV substations at EHV/HT level
- Make payment to MSEDCL for the purchased power as per the agreed input rate

- (ii) Additional Power to mitigate Load Shedding:
- Franchisee to source additional power to mitigate load shedding in their township area and collect Reliability Charge after approval from the Commission. MSEDCL will assist in getting approval for determination and collection of Reliability Charge from the Commission
- (iii) Network Related:
- Network analysis and improvement planning
  - Operation and Maintenance of the Distribution Network
  - Make capital investment for renovation/upgradation of network
  - Replace defective meters with new meters
  - Distribution asset maintenance
- (iv) Consumer Related:
- Metering
  - Meter reading
  - Billing at the Commission approved Retail Tariff
  - Collection (both current revenues and arrears)
  - Issuing new connections
  - Adherence to all relevant Regulations of the Commission including MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 and MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005
  - Ensuring supply of power
  - Attending consumer grievances
- (v) Supply of power to Consumers:
- To undertake distribution and supply of power to all the Consumers in the Franchisee Area
  - The Distribution Franchisee will have to strictly follow the Load Shedding Protocol of the Commission unless there is an explicit Order from the Commission with regards to the Load Shedding Protocol for the areas of operation of Distribution Franchisee
- (vi) Other Responsibilities:
- To undertake all liabilities and perform all obligations of the distribution licensee in the Township in compliance with the Law, Regulations and directives under EA 2003 and as issued by the Commission from time to time

- To carry out demand estimation/ load forecast as well as energy audit of the Franchisee area
  - Any penalty imposed by the Commission or any other Government Authority on account of non-compliance by the Distribution Franchisee shall be borne by the Distribution Franchisee
  - The Distribution Franchisee shall grant new connections with a connected load equal to or more than 1.5 MVA and above only after obtaining approval from MSEDCL, at the corporate level
  - To initiate necessary action, in accordance with the procedure for anti theft, disconnection and control of commercial losses as defined in EA 2003 and applicable MERC Regulations and Directives
  - To allow MSEDCL to audit the operation of the Franchisee through a certified Auditor appointed by both the Parties;
  - To maintain and make available a techno-commercial MIS for the distribution franchisee area as per the information requirement stipulated by MSEDCL/Commission/GoM or any other concerned Authority.
- (vii) Sign the Distribution Franchisee Agreement as mutually agreed upon with MSEDCL in line with MoU.

**(b) Events of Default of Franchisee**

- (i) MSEDCL will appoint a Nodal Officer to ensure categorization and billing and any serious lapse will result in a breach of agreement leading to cancellation of the Franchisee Agreement
- (ii) Failure of Distribution Franchisee to make payments above one month
- (iii) Failure to maintain a performance guarantee /Security Deposit where the performance guarantee will be an unconditional and irrevocable Letter of Credit
- (iv) Failure to maintain minimum service quality due to inadequate network investments
- (v) If the Distribution Franchisee ceases to operate all and/or any substantial part of the Distribution System for a period of forty-eight (48) consecutive hours without the prior written consent of MSEDCL
- (vi) In the given default, MSEDCL will step in to provide services to the consumer and the Distribution Franchisee will have to hand over the infrastructure to MSEDCL without any liability.

(c) Broad Responsibilities of MSEDCL:

(i) Supply of energy to Distribution Franchisee at single point HT or EHV substation depending on the Sanctioned Load

- As per the pre-determined schedule of supply applicable to all circles of MSEDCL on a non discriminatory basis subject to the Commission approved load shedding protocol
- No minimum supply will be guaranteed by MSEDCL but power will be supplied based on identification of Township under A category based on the distribution losses and collection efficiency, which may be changed in case the loss is higher than the prescribed limit of the Commission
- To communicate to designated Franchisee any shortfall or inability to supply the power requirements of the Distribution Franchisee;

(ii) Consumer related:

- For all legal and practical purposes, the consumers in the franchisee area are the consumers of MSEDCL and hence, MSEDCL at all times will have over-riding powers, when it comes to consumer grievances.

(iii) Interface Meter Reading:

- The authorised representatives of MSEDCL and the Distribution Franchisee shall conduct a joint Calibration of the interface meters at the Input points.
- To carry out meter reading jointly with designated Franchisee on a monthly basis at Input Points of the Franchise Area;

(iv) Capital Expenditure:

- All future capital investment may require the Commission's approval as required by MSEDCL. Irrespective of the amount of Capital Expenditure incurred by the Distribution Franchisee, the same will be solely to the account of developer and MSEDCL will in no way be liable to take cognizance of the same. However, MSEDCL will assist the Franchisee in seeking an approval from the Commission for the Capital Expenditure to be incurred during the tenure of the Agreement in the given franchisee area;
- If any capital expenditure for development of distribution infrastructure is recovered from the end consumers, the same will be excluded from the capital expenditure claimed by the Developers.

- (v) Arrears to be reimbursed to Distribution Franchisee at the expiry/  
Termination of the Agreement
- One month arrears prior to expiry/termination of the Agreement to be reimbursed to the Franchisee. It is to be noted that no arrears to be reimbursed to Distribution Franchisee in case prepaid metering is implemented in the distribution franchisee area;
- (vi) Total Payment to Franchisee upon expiry
- For Capital Assets created during the Agreement term, at mutually agreed rate. No payment against the Capital Assets will be made by MSEDCL in case of termination/default of Franchisee;
  - For closing inventory, the payment will be at cost price but prime consideration will be given to the condition of inventory to decide the value;
  - Arrears for last one month, if applicable;
- (vii) Deputation of willing employees to DF
- In case support is required from MSEDCL by the Township Developer to carry out their distribution franchisee activity, MSEDCL can on deputation appoint some employees for the given franchisee area on the basis of existing MSEDCL Deputation Rules or deputation package of Franchisee, whichever is applicable;
- (viii) Other Responsibilities:
- To support the designated Franchisee initiatives to adopt innovative practices;
  - To facilitate the designated Franchisee to approach the Commission for various approvals such as procurement of power from other sources for expected shortfall in continuous power supply, calculation of Reliability Charges, approval of Capital Expenditure plans, etc;
  - To facilitate interaction and engagement of the designated Franchisee and of various agencies involved in the implementation of the Franchisee with the State Government, Central Government and other relevant agencies;
  - To facilitate decision making by arranging periodic joint meetings for discussion on issues of critical importance;
- (ix) Sign the Distribution Franchisee Agreement as mutually agreed upon with the designated Franchisee in line with the MoU

- (x) Facilitating Open Access in case of direct power procurement by the Franchisee, in case power is sourced from other sources to mitigate load shedding only.

**(d) Other Key Points**

(i) Interest on Security Deposit

- Since the Security Deposit will be retained by the Franchisee, Interest will be allowed on the amount held as Security Deposit from consumers of the franchisee area at the similar rate of MSEDCL. The Franchisee will be required to pay the interest to the consumers directly, as is paid by MSEDCL, as per Clause 76.8.3. of the MERC (Terms and Conditions of Tariff) Regulations, 2005.
- In case, the Payment Security provided to MSEDCL by Franchisee is only in cash, an interest on the same will be provided to the Franchisee.

(ii) T&D Loss

- a. The input energy will be adjusted with the normative T&D Loss calculated by MSEDCL to estimate Revenue Billed Energy;
- b. The methodology to calculate T&D Loss will be lower of the following:
  - The permissible losses will be either equal to average of three best Circles who have least T&D Losses;

Or

  - To calculate the technical loss based on the load flow study of the franchisee area and additional 1% as commercial losses;

(iii) Service Tax

At present Service Tax is not applicable for such arrangement and there are no clear directions of Central Board of Direct Taxes (CBDT) on the same. In case, the same is applicable, the cost of Service Tax may be applicable only on the service component of the Franchisee activities and not on the cost of power procurement. Therefore, the pre-determined BST rate will be considered as 90% against the power purchase cost and 10% as the service cost. The liability of the Service Tax (if made applicable in future) on MSEDCL will be limited to 10% of the pre-determined BST rate.

(e) Commercial Terms between MSEDCL and Distribution Franchisee

Receipt for MSEDCL	Payment by MSEDCL
<ul style="list-style-type: none"><li>• Revenue towards supply of energy to consumers - Pre-determined input rate;</li><li>• Security Deposit at the end of the Agreement;</li></ul>	<ul style="list-style-type: none"><li>• Specified payments upon termination / expiry to Franchisee;<ul style="list-style-type: none"><li>a. Depreciated value of assets;</li><li>b. Arrears for last one month;</li></ul></li><li>• An obligation to pay Electricity Duty, Government and statutory taxes, collected from the Franchisee, to the respective authority will be on MSEDCL;</li></ul>

To maintain the positive impact on revenue, MSEDCL will give due consideration to the determined BST rate for the energy billed, which will not be lower than the current ACoS.

(f) Reliability Charge

The basic intention of the Policy is to provide uninterrupted and quality power supply, since, due to the current deficit in the State, MSEDCL would not be able to supply power on a continuous basis. In line with the previous Orders of the Commission in relation to calculation of Reliability Charges for Baramati, Vashi, Thane, Bhandup, Pune, etc, and the Tariff Policy, MSEDCL will assist the Franchisee to procure power from other sources and charge the Reliability Charges. The details regarding the calculation of Reliability Charges will be submitted to the Commission, after tying up for alternate source of power as well as to calculate the actual quantum of the power. The responsibility of mitigating Load Shedding will be sole responsibility of the Distribution Franchisee.

VIII. Feasible Pre-determined Rate:

MSEDCL requested the Commission to allow MSEDCL to charge BST to the Franchisee for the power supplied at the single input point as determined under the Distribution Franchisee Agreement as an interim measure, till the Final Order is issued by the Commission.



- (a) The consumers in all these segments namely, Township, Industrial Area, I.T. area, SEZ area or any such other area, generally fall under the high end consumers of MSEDCL and thus, if MSEDCL had supplied power directly to these consumers, they would have been subsidizing consumers.
- (b) From this point of view, commercial interest of MSEDCL needs to be protected and the distribution franchisee arrangement needs to be finalised without adversely affecting MSEDCL.
- (c) In relation to points specified above, BST of HT VI Category for residential and commercial, also needs to be rationalised upwards so that the consumers in the selected franchisee area are not subsidized by the other consumers of MSEDCL.
- (d) **For Township and Mixed Load:**
- As per the Tariff Order for FY 2009-10, following is the Energy Charges for selected category of consumers for FY 2009-10:

Sr. No.	Consumer Category	Energy Charge ( Rs./kWh)
1	LT I : Domestic	Rs. 2.35/kWh to Rs. 6.85/kWh
2	LT II: Non Domestic	Rs. 4.20 /kWh to Rs. 8.10/kWh
3	LT V: Industrial	Rs. 3.50/kWh to Rs. 4.75/kWh
4	HT II : Commercial	Rs. 7.15 /kWh
4	HT VI : Group Housing Society Commercial Complex	Rs. 3.60/kWh Rs. 6.00 /kWh

- The option considered by MSEDCL to determine the BST rate for township is equivalent to average Energy Charges of HT VI category of Consumers, i.e., Rs.4.80/kWh (average of Rs.3.60/kWh and Rs.6.00/kWh), whereby the mixed load of residential and commercial consumers needs to be catered to by the franchisee.
  - Also, in addition to energy charges, Rs.150 per kVA as Demand Charge will be charged to the franchisee.
- (e) **For Industrial, SEZ, I. T. Park – Industrial Load:**
- As per the Tariff Order for FY 2009-10, following is the Energy Charges for industrial category of consumers for FY 2009-10:

Sr. No.	Consumer Category	Energy Charge
1	HT I : Industry – (Continuous)	Rs. 5.05/kWh
2	HT I : Industry – (Non-Continuous)	Rs.4.60/kWh
3	LT V: Industrial	Rs. 3.50/kWh to Rs. 4.75/kWh

- In the proposed area to be undertaken for Distribution Franchisee, the supply will be catered to the consumers of Industrial category mainly at L.T. level and partial at H.T. level.
- Therefore, the option considered by MSEDCL to determine the BST rate is equivalent to average Energy Charge of HT and LT mix of consumers, i.e, Rs. 4.41/kWh. The following consumer mix is considered:
  - HT Industrial consumption - 25%;
  - LT Industrial consumption – 75%, whereby
    1. Load below 20KW - 30%;
    2. Load above 20KW – 45%;

Category of Consumers	Ratio	Consn.	Energy Charge	Revenue
	%	MU	Rs./kWh	Rs. Crore
HT I: Industries	25.00%	1,457	4.88	711.02
LT Industries (LT V)	75.00%	4,371	4.25	1857.72
LT Industries (LT V) - below 20 KW	40.00%	1,748	3.50	611.80
LT Industries (LT V) - above 20 KW	60.00%	2,623	4.75	1245.92
Total Industrial Load	100.00%	5,828	4.41	2568.74

- Also, in addition to Energy Charge, Rs.150/kVA as a Demand Charges will be charged to the franchisee.
- (f) For categories of Consumer other than residential, commercial or industrial:
- The above BST is determined based on consumer mix of residential, commercial and industrial category. In case the consumers in the distribution franchisee area belong to the category of temporary or advertisement category or any other category, where the tariff determined by the Commission is higher than Rs.7.00/kWh, the differential of the tariff will be paid to MSEDCL by the Distribution Franchisee.

IX. Powers to Issue Orders:

- MSEDCL submitted the Petition under Section 14, Section 86 and Section 94 (2) of the EA 2003 as well as Regulation 85 of the MERC (Terms and Conditions of Tariff) Regulations 2005.
4. A Public Hearing was scheduled at Centrum Hall, 1<sup>st</sup> Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai- 400005 on Tuesday, April 6, 2010 at 11.00 hours.
5. The Commission directed MSEDCL to publish the Public Notice in the matter, and the copies of MSEDCL's Petition were made available to the stakeholders at the Head Office as well as on MSEDCL's website.
6. The issue-wise summary of the comments and suggestions received during the Public Hearing are as under:

**(a) Electricity Trading**

Shri. Anant Sardeshmukh, Additional Director General, Maharashtra Chambers of Commerce, Industries and Agriculture (MCCIA) requested the Commission to consider the option of Electricity Trader as against Distribution Franchisee, which will resolve the issue of providing single point supply to Industrial premises/Commercial Complexes with mixed load technically, legally and practically.

Shri. Sardeshmukh referred to Section 52 of the EA 2003 and submitted that the Commission has the power to specify the technical requirement, capital adequacy requirement and credit worthiness of Electricity Trader. Shri. Sardeshmukh added that the Electricity Trader should be a group of Chartered Accountant, Chartered Engineer and Energy Auditor, and requested the Commission to fix the margins for the Electricity Trader so as to protect the interest of the consumers.

**(b) Distribution Franchisee for SEZ**

Shri. R. C. Sinha, Vice Chairman and Managing Director, Maharashtra Airport Development Company Limited (MADC), Mumbai submitted that MADC is developing Multi Modal International Hub Airport at Nagpur (MIHAN). MIHAN SEZ is notified under Sub Section 1 of Section 4 of the SEZ Act, 2005 and MADC is the developer of MIHAN SEZ. MADC is the Deemed Licensee in the MIHAN SEZ area as per the Government of India notification dated March 3, 2010. Thus, in view of the above, MSEDCL should not consider Franchisee route as far as MIHAN SEZ is concerned.

Shri. Premkumar L. Kothari, President, SEEPZ Gems and Jewellery Manufacturing Association requested the Commission to give direction under which the Distribution Franchisee Agreement needs to be finalized by MSEDCL and Distribution Franchisee. Even other Distribution Licensees like Reliance Infrastructure Limited, The Tata Power Company Ltd., etc., may be directed to supply power to the Distribution Franchisee at provisional Bulk Supply Tariff determined by the Commission. Moreover, the Franchisee within SEZ may be allowed to procure power on behalf of the Deemed Licensee at BST from a Distribution License/Generator/Trader/Power Exchange, etc., under relevant Regulations.

Shri. Darshan Hiranandani, Hiranandani Group of Companies, Mumbai submitted that the recent amendment to the SEZ Act states that the SEZ developer is a deemed Distribution Licensee in the SEZ area. The input rate should be determined separately for different projects on case to case basis. Further, the input rate should include power purchase rate of MSEDCL and the losses till the point of supply if the developer has developed and maintained the network.

Shri. Sanjay Nagade, IndiaBulls Power Ltd., stated that Distribution Franchisee for SEZ should not be considered, in accordance with Government of India's notification dated March 3, 2010, where SEZs are already considered as Deemed Licensee. Further, single point supply should be allowed and IT parks should be given an option to procure power from sources other than MSEDCL.

**(c) Bulk Supply Tariff**

Yerrowda Investments Limited (YIL), Mumbai submitted that it is involved in construction of buildings that are/could be occupied by individual IT/ITES units. The larger power requirements of these IT/ITES units in the buildings are suited for single point HT supply, which is distributed to the IT/ITES units that occupy the buildings. Previously, a tri-partite arrangement was in force, where MSEDCL as a supplier, YIL as a developer and the IT/ITES units as consumers were considered. In the present situation, the same arrangement of tripartite agreement would create inconvenience due to multiple tenants. Hence, YIL requested the Commission to exempt the Franchisees serving IT/ITES units from this generalized scheme. YIL requested the Commission that the BST rate should not exceed to Rs.3.50/kWh.

Shopping Centres Association of India (SCAI), Mumbai, submitted that the BST has been proposed as Rs.4.13/kWh for mixed use, and Rs.3.96/kWh for Industrial use. SCAI further submitted that Malls/Commercial Buildings will not fall under Industrial category, but categorisation under the mixed use is also doubtful. Hence, Malls/Commercial buildings should be classified as under Bulk Supply Tariff-Commercial (HT-VI-B category).

Shri. Anurag Vashistha, Business-Power Head, GTL, submitted that the Bulk Supply Tariff should be determined through a Cost Plus approach, as mentioned by MSEDCL in their Discussion Paper. The Cost Plus approach will take into account all the variables required for fixation of tariff like Power Purchase Cost, Other Cost and Return on Equity. Moreover, it also justifies the cost incurred to maintain the required service facilities like consumer facilitation centre, call centre, continuous power, etc., which is expected from the Distribution Franchisee. This will avoid the unnecessary profiteering by the Distribution Franchisee and protect the interest of MSEDCL, Distribution Franchisee and the consumers while maintain the quality of service.

Shri. V.B. Dharurkar, Senior Manager, Bharat Forge Limited, Pune supported the Cost Plus approach for deciding the BST and requested the Commission to make it applicable to Distribution Franchisee and EHV Industrial consumers. Further, while fixing the charges under Section 45 (4) of the Electricity Act, 2003, there should not be any undue preference to any consumer or class of consumer subject to provision of Section 62. Therefore, Distribution Franchisee and EHV consumers are same on the following grounds:

- i) Bulk Supply Consumers supplied at EHV
- ii) Having Contract demand more than 10 MVA
- iii) Use of electricity for Industrial purposes

In view of the above, it was suggested that it will be justifiable to fix a separate Bulk Supply Tariff for consumers having Industrial loads like SEZ, IT parks and Township developers, etc., treating those as Distribution Franchisee or else the present Bulk Supply Tariff fixed by the Commission could be made applicable for present and prospective EHV consumers.

**(d) Contract Demand**

Shri. Sameer S. Muttha of M/s. Jain Constructions and M/s. ZEUS Infrastructure Pvt. Ltd., Pune submitted that the Commission should reduce the condition of Minimum Contract Demand from 10 MVA to 400 kVA for obtaining Distribution Franchisee as with a limit of 10 MVA only 1 % of IT Parks will be benefitted.

Shri. Muttha added that according to the IT Policy of Maharashtra, upto 40% of the consumers can be commercial consumers. In such a case, whether MSEDCL is suggesting that the Distribution Franchisee can supply power only to IT Companies or Industrial consumers, and Commercial consumers will have to take a separate connection directly from MSEDCL.

Shri. Muttha enquired whether the present proposal will benefit the consumers in case consumers are charged higher tariff than the current Industrial tariff charged by MSEDCL. In such scenario, MSEDCL will be the beneficiary by getting higher tariff and the IT Company will have to pay higher tariff for availing power from a Distribution Franchisee.

Shri. Muttha further requested the Commission to allow the Distribution Franchisee to give power to commercial consumers and determine tariff for Industrial, Commercial and Residential consumers within the same IT Park/IT SEZ.

Shopping Centres Association of India (SCAI), Mumbai, submitted that the proposal should also include the areas that are already developed along with the developing areas. The condition of 10 MVA Contract Demand should not be applicable to malls/buildings/complexes with mixed loads.

**(e) Single Point Supply**

Shopping Centres Association of India (SCAI), Mumbai submitted that Single Point Supply with a single transformer should be allowed for malls/buildings/complexes having multiple occupants with a single meter installed on the HT side and a separate meter for each occupant installed on the LT side. In case of a single HT connection of malls/buildings/complexes having Distribution Licensee's meter on the HT side and where the cost of internal sub-distribution system is incurred by the owner of the Mall/Building/Complex, the Distribution

Licensee should not levy any additional charges towards line loss, transformer loss, transformer operational and maintenance charges, etc.

Shri. Ponarathnam submitted that the Industrial, Housing Society or MIDC should be given an option to own their transformer and network in their premises and be charged at HT Tariff considering the point of supply at the input of transformer.

**(f) Grievance Redressal Cell and Unauthorized Connections**

Shri. Patil, BEST submitted that a Consumer Grievance Redressal Forum should be formed for consumers under the Distribution Franchisee area.

Shri. Vijay Ranjan, Great Eastern Plaza Condominium and Bajaj Alliance Life Insurance Co. Ltd. from Pune submitted that the Commission should direct MSEDCL that all the pending cases where the builder/developer is providing electricity to its purchasers by sub-metering should not be treated as unauthorized and accordingly all pending cases should be directed to be closed without any action.

Shri. Arun Krishnarao Patil from Dhule opposed MSEDCL proposal for appointing Franchisees till the power supply Companies in Maharashtra follow IE Rule 29 and 30 of 1956, which will reduce the power shortage and losses in the system.

**(g) Tenure of Agreement for Distribution Franchisee**

Shri. Darshan Hiranandani, Director, Hiranandani Group of Companies, Mumbai and Shri Patil, BEST submitted that the Distribution Franchisee Agreement tenure of 5 years as proposed by MSEDCL is too short for the recovery of cost, hence, the period should be increased to 15 years. Shri. Hiranandani further enquired whether the proposed Franchisee model is also applicable for existing township projects or only for upcoming projects.

**(h) Load Shedding and Reliability Charge**

Shri. Darshan Hiranandani, Hiranandani Group of Companies, Mumbai enquired that in case of Load Shedding, whether the Distribution Franchisee has to follow the Load Shedding protocol or it can source the power for mitigating the power scarcity, if the consumers are ready to pay the Reliability Charge.

Shri. Milind Devghare opposed MSEDCL's proposal and submitted that if Load Shedding is applicable then the proposal does not satisfy the Policy, as the Policy states that uninterrupted and good quality of power supply should be there, and assets of the developers may be rented to others.

Shri. Ponarathnam submitted that the ARR Petition of MSEDCL should not be accepted unless they are capable of giving uninterrupted power supply and the expenses incurred to file this Petition should not be included in the ARR of MSEDCL so that the consumers are not burdened.

**(i) Open Access**

SCAI, Mumbai submitted that while the owner/operator of a mall/building/complex may have to act as a Distribution Franchisee in respect of the electricity procured at single point and distributed to the occupants of the mall/building/complex, this arrangement should not restrict the right of the owner/operator to procure power from any source of its choice for supplying to the occupants. SCAI further submitted that by entering into a Distribution Franchisee Agreement with a Distribution Licensee, the owner of a Mall/building/Complex should not be made completely dependent on that Distribution Licensee for procurement of power. Therefore, where the Contract Demand for single point HT connection is above 1000 kVA, Open Access must be allowed.

SCAI, Mumbai added that the Distribution Licensee should be liable to pay a reasonable and cost reflective price to the owner/operator if the Distribution Licensee is required to take over the distribution infrastructure of the owner and provide services directly to the individual occupants. For separate accounting of energy supplied by the Distribution Licensee and by the DG set, a dual supply meter installation is suggested.

**(j) Distribution Franchisee – MOU Route**

Shri. Premkumar L. Kothari, President of SEEPZ Gems and Jewellery Manufacturing Association, Mumbai, M/s. L&T Seawoods Private Limited, Navi Mumbai, Dr. Chetan Sawant of NASSCOM, and Shri. Patil, BEST supported the MoU route for selection of Distribution Franchisee for Bulk Supply Tariff. Amanora Park Town, Mumbai and Shri. Dinesh Singh, Lavasa Corporation Ltd., also supported the MoU route proposed by MSEDCL, and requested the



Commission to issue an Interim Order as the consumers have already occupied the houses and will suffer if the decision is not taken immediately.

Ms.Swati Narkhede submitted that according to the Government of Maharashtra Regulations for development of Special Townships in area under Pune Regional Plan, a developer may draw the power from any existing supply system or may go in for arrangement of Captive Power Generation. Ms. Narkhede submitted that as per Section 62 (1), the Commission cannot determine BST and may determine only the Wheeling Charges and Surcharge for the category of consumers where Open Access has been permitted. She further requested the Commission to reject the proposal to appoint Distribution Franchisees through the MOU Route, and allow single point supply as allowed by the Commission.

MCCIA submitted that MSEDCL, in its Petition, has submitted that the appointment of Distribution Franchisee is at the sole discretion of the Licensee and MSEDCL will consider the applications for appointment of Franchisee on case to case basis, which will lead to discrimination amongst the consumers. Further, the proposal appears to be biased in favour of the Licensee, therefore, MCCIA opposed the proposal of MSEDCL.

MCCIA submitted that the Commission should consider the EA 2003 and other Policies/Regulations that are in place before coming to any conclusion. The consumers in such premises should be eligible for the benefits/concessions provided to various industries in the above mentioned Policies.

Shri. Ashok Pendse, TBIA stated that if the Distribution Franchisees are appointed through the MoU route, then there will be no chance for competition. Further, he stated that the model cannot be compared with the Bhiwandi Model as the need is not for MSEDCL but for the IT developer. He also pointed out that the BST should be much higher than that proposed in the Petition.

Shri. P. V. Shridharan, Mumbai stated that the cost of infrastructure is very high and there will be problem while fixing the tariff for such mixed load. Further, a competitive bidding procedure should be followed as it will work in the interest of the consumer and will not create monopoly. He also suggested that a Grievance Redressal Forum should be formed for consumers.

Shri. Ponarathnam submitted that the Commission should specify the methodology for determination of the tariff for electricity supplied by the Distribution Company and Public Hearing should be held for the same. He further added that the Cost of Supply should be based on the Voltage parameter.

Reliance Communications, Navi Mumbai submitted that the term of the Franchisee Agreement should be extendable based on mutual agreement and there should be an Exit Clause for the Franchisee to terminate the agreement/contract after giving one month notice if the Franchisee finds another source of power. Further, the Franchisee should also be able to propose renewal of agreement after 5 years. The collection efficiency should be considered at par with the actual efficiency achieved by MSEDCL rather than considering 100%. The assumption of LT: HT ratio of 75:25 may not continue, hence, it is necessary to introduce the concept of truing up at the end of the year. Moreover, the MoU should also include the return to the Franchisee for their investment including Operation and Maintenance costs.

7. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

- i) As regards MSEDCL's prayer for approval of the MoU route for appointment of Distribution Franchisee, the Commission holds that it is for the Distribution Licensee to adopt any method for selecting the Distribution Franchisee on such terms and conditions as it deems fit, and the Commission has no jurisdiction to approve either the process or the Party selected by the Distribution Licensee. However, as expressed by the stakeholders, the Commission is of the view that ideally, the Distribution Franchisee should be selected and appointed through a competitive bidding process to ensure complete transparency and competition.
- ii) Under the particular circumstances brought out by MSEDCL in the Petition that in respect of the Developer of the Township/IT Park, etc., who has already invested in the distribution infrastructure for the area under consideration, it may not be possible to appoint the Distribution Franchisee through a Competitive Bidding process, as it would amount to treating the developer who has already invested capital in the area at par with another Party who has not invested any capital in that area. Further, the issues of asset value and transfer price, etc., would also have to be addressed under such a situation.

The Commission, therefore, recognises that in such cases, appointment of Distribution Franchisee through a Competitive Bidding process may not be feasible and MSEDCL may initiate the MoU route for appointing the Distribution Franchisee. However, while doing so, MSEDCL, as a Distribution Licensee, should take care to protect its own interests and that of its direct consumers, as well as the interest of the consumers within the Distribution Franchisee area, who are also primarily its consumers.

- iii) MSEDCL has requested the Commission to approve the BST for supply to the Distribution Franchisee at single point for distribution to mixed loads within the Franchised area. MSEDCL has suggested that the BST be determined upfront by assuming a certain proportion of mixed loads, viz., residential, commercial, industrial, etc. However, this approach cannot be adopted as there are bound to be differences in consumption mix between one Distribution Franchisee and another, and obviously, the BST for each Franchisee will have to reflect its own consumption mix. Also, the Commission cannot determine BST for all the possible combinations of consumer mix.

Further, since the freedom to appoint Franchisees would be available to all the distribution licensees in the State, there are likely to be several Distribution Franchisees, and therefore, it is impractical for the Commission to determine the BST for all the Distribution Franchisees.

Further, the Commission holds that determination of BST is part of the process under Section 64 of the Electricity Act, 2003 for determination of Aggregate Revenue Requirement and tariff and hence, cannot be determined *dehors* the process under Section 64. Moreover, the Commission cannot undertake the exercise of BST determination on a case to case basis, and as when a distribution licensee decides to enter into a MoU with different entities at different points in time, and MSEDCL's proposal regarding BST determination is thus impractical on this ground.

- iv) MSEDCL has proposed the terms and conditions of the Distribution Franchisee Agreement, which is a matter to be decided by each Licensee. However, the Commission feels that every Distribution Licensee should evolve a Distribution Franchisee Agreement, which should be common to all its Franchisees selected through MoU route, and hence, non-discriminatory. Also, a Distribution

Franchisee cannot refuse if either the Developer or one of the Group of consumers comes forward to become a Franchisee.

The Commission further directs that the dispensation to become a Franchisee of the Distribution Licensee in the State will be available to all the following categories:

- a) Residential colonies
- b) Commercial buildings
- c) Multiplexes and malls
- d) Townships
- e) Other single point consumers like Railways, Defence, etc.

The period of Franchisee Agreement should neither be less than five (5) years nor longer than the validity of the licence period of the Distribution Licensee.

The Distribution Licensee should prescribe and obtain quarterly returns from the Distribution Licensee in the following format:

<b>Consumer Category</b>	<b>Number of Consumers</b>	<b>Sales in MU per month</b>	<b>Amount billed in Rs. lakh</b>	<b>Amount collected in Rs. lakh</b>

The Licensees may also prescribe and collect information such as interruptions, billing disputes, etc., to monitor and ensure the discharge of its duties regarding Standards of Performance, Consumer Satisfaction, etc.

- v) Over the past two to three years, the Commission has come across similar problems primarily in the case of existing Commercial and Office Complexes regarding supply at single point for distribution to mixed loads. In such cases, the distribution licensees have neither installed the individual meters nor the sub-distribution of electricity is being regulated in any manner. Though the Commission has directed the licensees to formulate a practical solution for this

problem, there has not been any significant progress. Hence, the Commission is of the view that the practical solution being considered in the present case should be adopted for all such cases of supply at single point for further distribution to mixed loads, wherein one agency can be appointed as the Distribution Franchisee through the MoU route, and can supply to the individual users within the complex. This will ensure that all such cases will come squarely within the provisions of the EA 2003, which is not the case now.

- vi) However, in respect of Distribution Franchisees to be selected through the competitive bidding process, the licensees are free to prepare separate terms and conditions for each Franchisee Agreement, on a case by case basis. It may be noted that in either case, the retail consumers cannot be charged a tariff higher or lower than that approved by the Commission for the same category of consumers in that licence area, and also, the responsibility of ensuring conformance with Standards of Performance, safety and all other relevant Regulations rests with the respective Licensees.
- vii) As regards availability of Open Access to the Distribution Franchisee to source power, the Commission holds that the right of eligible consumers to Open Access cannot be fettered in any manner irrespective of whether the Open Access is being sought for base power requirement or for sourcing the additional power to mitigate load shedding.
- viii) Subsequent to the filing of the present Petition on September 25, 2009, the Ministry of Commerce & Industry has issued a Notification dated March 3, 2010, which stipulates that the developer of SEZs shall be deemed to be a distribution licensee under Clause (b) of Section 14 of the EA 2003, as reproduced below:

*"In clause (b) of section 14 of the Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted, namely: -*

*"Provided that the Developer of a Special Economic Zone notified under subsection (1) of section 4 of the Special Economic zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone;"*

Thus, MSEDCL's proposal to make the SEZ developer a Distribution Franchisee is not in consonance with the above Ministry of Commerce & Industry Notification dated March 3, 2010, and hence, the same has become redundant.

Accordingly, with the above observations and necessary directions, the Commission disposes of MSEDCL's Petition in Case No. 62 of 2009.

Sd/-  
(V. L. Sonavane)  
Member

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman

(K. N. Khawarey)  
Secretary, MERC

**Annexure**  
**List of objectors who participated during the Public Process**

	<b>Name of the Objector</b>	<b>Organisation/Company</b>
<b>[A]</b>	<b>Consumer Representative u/s. 26 of the ERC Act, 1998</b>	
1	Shri .Shantanu Dixit	Prayas Energy Group
2	Adv. Shirish Deshpande	Mumbai Grahak Panchayat
3	Dr. S.L. Patil	Thane Belapur Industries Association
4	Shri R.B. Goenka	Vidarbha Industries Association
<b>[B]</b>	<b>Objections / Suggestions</b>	<b>Organisation/Company</b>
5	Maharashtra Airport Development Company Ltd. (MADC),Mumbai	
6	Nomura Services India Pvt. Ltd.,Mumbai	
7	Yerrowda Investments Ltd., Mumbai	
8.	GTL Limited, Pune	
9.	Mahratta Chamber of Commerce, Industries & Agriculture, Pune	
10.	Jain Constructions, Pune	
11.	Zeus Infrastructure Pvt. Ltd., Pune	
12.	Great Eastern Plaza Condominium, Pune	
13.	Bajaj Allianz Life Insurance Company Ltd., Pune	
14.	Bajaj Allianz General Insurance Company Ltd., Pune	
15.	Vel Induction Hardenings, Mumbai	
16.	Shopping Centers Association of India (SCAI),	
17.	Bharat Forge Ltd., Pune	
18.	Shri Arun Krishnarao Patil, Dhule	
19.	Hindustan Electricity Generation Co.Pvt. Ltd. Mumbai	
20.	Amanora Park Town, Pune	
21.	P.N. Sridharan, Mumbai	
22.	Smt. Swati Narkhede,Mumbai	
23.	Seepz Gems & Jewellery Mfrs. Association, Mumbai	
24.	L&T Seawoods Private Ltd., Navi Mumbai	
25.	Reliance Infocomm Infrastructure Pvt. Ltd., Navi Mumbai	