

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 89 of 2009

In the matter of
Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)'s Petition for
determination of additional cost as Reliability Charge for withdrawal of load
shedding in the Thane II Urban Region including Kalwa sub-division

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

ORDER

Dated: May 24, 2010

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition dated December 24, 2009, under Sections 62(3), 62(4), 86(1)(b) and 94(2) of the Electricity Act, 2003 (EA 2003), and under Clause 8.2.1 of the Tariff Policy notified by the Government of India, for determination of additional cost as Reliability Charge for withdrawal of load shedding in the Thane –II Urban Region including Kalwa sub-division.

2. MSEDCL, in its Petition, prayed as under:

“

- a. Approve implementation of proposal of withdrawal of load shedding in the Thane Region including Kalwa Sub Division as per the revised proposal*
- b. Approve the proposal for determination of Reliability Charge for the above area as proposed by MSEDCL;*
- c. Permit MSEDCL to implement the proposed model within fortnight of the issuance of the Order till November 2010.*

- d. *Permit a detailed reconciliation of all costs and recovery on a quarterly basis.*
- e. *Permit adjustment for any under / (over) recovery which will be carried out in every quarter and recovery to be effected in subsequent quarter.*
- f. *Consider the above proposal for a favourable dispensation.*
- g. *Condone errors/omission, if any, and may please give an opportunity to rectify the same and to file additional data, information as may be required.”*

3. MSEDCL submitted that it had filed a Petition dated June 15, 2009, under Section 62(3), 62(4), 86(1)(b) and 94(2) of the Electricity Act 2003 (EA 2003), under Clause 8.2.1 of the Tariff Policy for determination of Additional Supply Charges for withdrawal of load shedding in the headquarters of the Revenue Divisions in MSEDCL license area, viz., Amravati, Nagpur, Aurangabad, Nasik, Pune, Thane and Vashi. The Commission, in its Order dated November 30, 2009, in Case No. 31 of 2009, on the above mentioned Petition observed that:

“In view of the positive response to MSEDCL’s proposal by the affected consumers in the Amravati region, Nagpur region, Aurangabad region, Pune Region, Navi Mumbai, and Thane Region (including Mulund and, Bhandup), the Commission has approved the Zero Load Shedding scheme for these regions as proposed by MSEDCL, with certain modifications, ...”

4. MSEDCL in its Petition for determination of additional cost as Reliability Charge for withdrawal of load shedding in the Thane II Urban Region including Kalwa sub-division submitted that:

- i) The Commission has approved the Reliability Charge of 28 paise per unit for Thane region.
- ii) MSEDCL had considered Bhandup, Thane, Mulund, Wagle Estate and Kopri sub-division of Kalwa division under Thane Urban Circle.
- iii) A division of Thane III, comprising of Mumbra and Shil sub division has been newly formed, and sub-division under old Thane, Wagle Estate and Kalwa Division are reshuffled from Thane I and Thane II division. The newly formed division Thane III, and modified divisions Thane I and Thane II and Wagle Estate has become functional w.e.f. September 2009.

- iv) As per the new pattern, the withdrawal of load shedding has been implemented in pursuance of the Order dated November 30, 2009, in Case No. 31 of 2009, in Bhandup, Mulund, Thane I, Wagle Estate division and under Vikas and Power house sub-division of Thane II division. The Kalwa sub-division under Thane II is the only sub-division where Zero Load Shedding (ZLS) model is not being implemented, and load shedding is implemented as applicable for D Group. Thane II division comprising of Kalwa sub-division is an integral part of restructured Thane II division, which is already covered under ZLS scheme. Hence, MSEDCL requested the Commission to consider the inclusion of Kalwa sub-division for withdrawal of load-shedding.
- v) MSEDCL submitted the detailed working of Reliability Charges for Thane including Kalwa sub-division on the same principles as considered by the Commission in its Order dated November 30, 2009. In addition, MSEDCL also submitted the details of distribution loss, consumption, average billing rate, and load requirement. The revised Reliability Charge for Thane region including Kalwa sub-division works out to be 41 paise per unit, as compared to 28 paise per unit for Thane region, excluding Kalwa sub-division.

5. Based on the above submissions made by MSEDCL, the Commission admitted MSEDCL's Petition for determination of additional cost as Reliability Charge for withdrawal of load shedding in the Thane II Urban Region including Kalwa sub-division, on January 20, 2010, and scheduled the Public Hearing at Sabhagruha, 5th floor, Office of the District Collector, Court Naka, Thane (West) 400 601 on Thursday, February 18, 2010 at 11.00 hours.

6. 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, Bhandup office as well as on MSEDCL's website.

7. During the Public Hearing, Shri. R.B Gautam representing MSEDCL, submitted that the ZLS model has been implemented on December 6, 2009 and December 10, 2009, in different ZLS areas and Scenario IV of Principles and Protocols of Load Shedding has been considered for computing Reliability Charges. He added that the Kalwa sub-division has moved from D Group to C Group and the Power Purchase rate is Rs. 6.75 per unit for 12 hours. He submitted that it has been proposed to increase the Reliability Charge from 28 paise per unit to 41 paise per unit for the period considered for calculation, and the scheme will be implemented within 15 days from the date of issue of the Order.

8. The Commission enquired about the distribution losses in Kalwa sub-division as compared to other sub-divisions. In response, MSEDCL submitted that there are total 17 sub-divisions under 6 divisions and the distribution loss in Kalwa sub-division for FY 2008-09 was 32.04% and that for other sub-divisions it was in the range of 9% to 19%. MSEDCL submitted that steps are being taken to reduce the distribution losses.

9. The comments and suggestions received during the Public Hearings along with MSEDCL's response have been summarised below:

- a) Shri. N. Ponrathnam representing Vel Induction Hardening, submitted that the Appellate Tribunal for Electricity (ATE) in its Order on Appeal No. 135 of 2009 filed by Ispat Industries Ltd. against imposition of Reliability Charge, in its Para no. 13 stated that:

“According to the Appellant, the concept of Reliability charge is not found either in the Act or in the regulations and as such the Reliability charge cannot be imposed on the Appellant especially when the Appellant has already been subjected to higher energy charges as it is a continuous industry which is not subjected to load shedding.”

Further, the ATE in Para no. 28 of the above mentioned Order stated that:

“In view of the above discussions, we are of the view that the order impugned passed by the State Commission dated 15.6.2009 is not valid in law and therefore, the same is liable to be set aside. Accordingly, the same is set aside.”

Shri. N. Ponrathnam and Shri. Rakshpal Abrol representing Bharitya Udhami Avam Upbhokta Sangh submitted that the Reliability Charges have been set aside by the ATE and the final verdict of the Honourable Supreme Court is awaited. Further, they added that MSEDCL has made a wrong statement under affidavit by stating:

“I say that there are no proceedings pending in any Court of Law/Tribunal or Arbitrator or any other authority, wherein the Petitioners are the Party and where the issues arising and/or relief sought are identical or similar to the issues arising in the matter pending before the Commission.”

Therefore, the Commission cannot take up the matter as it is sub-judice. Further, the ATE has also pointed out in Para no. 23 of the above mentioned Appeal that Section 23 of the EA 2003 does not support the levy of Reliability Charge and also admitted that the Humanist Consumer Council cannot enter into Power Purchase Agreement (PPA) and levy Reliability Charges. The Para no. 23 reads as under:

“As rightly pointed out on behalf of the Appellant that none of the factors mentioned under Section 62 (3) of the Act supports the levy of Reliability charge. Similarly, neither rules nor regulations framed by the State Commission would provide for the imposition of such Reliability charge on the continuous industries. Similarly, we find force in the contentions urged by the learned Senior Counsel for the Appellant that the Humanist Consumer Council cannot enter into any power purchase agreement with the Distribution Company with reference to the imposition of Reliability charge as it is not provided under the law.”

They added that the MSEDCL has failed to provide the road map for fulfilling their obligations as a distribution licensee under Section 19(1) of the EA 2003 to stop load shedding and supply uninterrupted power to the consumers in their licence area since June 10, 2003. Shri. Ponrathnam added that all the consumers have a right to get uninterrupted power supply. He added that the concept of Reliability Charge is illegal and the ATE has ruled that there is no provision in EA 2003 for levy of Reliability Charge and the Order has been stayed by the Supreme Court of India. Therefore, the Commission undertaking Public Hearing on Reliability Charge matters when it is held as illegal by the ATE is itself questionable.

- b) Shri. R.R Shenoy submitted that MSEDCL has proposed to increase the Reliability Charge for ZLS in Thane Circle from earlier approved 28 paise per unit to 41 paise per unit and the reason stated by MSEDCL is inclusion of Kalwa sub-division. It is evident from the Petition that the increase is solely due to the high distribution loss of 32.04% in Kalwa sub-division and excluding this sub-division, the distribution loss in Thane II division is only 14.95% and anything beyond 10% of distribution loss is theft of energy. The theft in Thane II division is as under:

Without Kalwa sub-division = 4.95% (14.95%-10%)

With Kalwa sub-division = 22.04% (32.04%-10%)

Thus, the losses in Thane II division including Kalwa sub-division is five times more than the losses of Thane II division without including Kalwa sub-division. He requested the Commission to take action against power theft. He added that it is necessary to set up guidelines for implementation of ZLS in future, which may include:

- i) ZLS should be implemented only within Municipal Corporation (MC) limits;
 - ii) ZLS should be implemented only in cities having distribution losses less than 20%;
 - iii) If there are more than one sub-division in cities in which ZLS is being implemented, it should be implemented in zones with loss level less than 20%;
- c) Shri. Vishwasrao U. Patil submitted that MSEDCL has not replied to his submissions. He added that he represented Kalwa sub-division and nobody has yet opposed the implementation of ZLS model in Kalwa sub-division. He added that Kalwa sub-division should be considered separately and if clubbed with Mumbra then it should be given to Torrent through Distribution Franchises system, which will help in reduction of the losses. He submitted that since the tariff cannot be revised more than once in a year, MSEDCL cannot revise the Reliability Charge, and should instead reduce the losses. He added that ZLS model should be implemented in Kalwa sub-division.
- d) Members of Thane Small Scale Industries Association submitted that the proposed increase of 13 paise per unit in the Reliability Charges will pose a burden on the consumers.
- e) Shri Vasudeo, representing Mumbai Grahak Panchayat (MGP), submitted that MSEDCL has failed:
- i) to reduce Transmission and Distribution (T&D) losses;
 - ii) to maintain efficient and economical distribution network system;
 - iii) to provide uninterrupted supply after implementation of ZLS Order and charging Additional Supply Charges (ASC);

He added that in accordance with Section 62 (6) of EA 2003, MSEDCL should refund the Reliability Charge imposed in the year 2005 along with bank Interest Rates to the consumers. Mumbai Grahak Panchayat requested the Commission to allow Open Access to MSEDCL consumers and to fix a maximum ceiling on Retail Supply Tariff in accordance with Section 62(1) of EA 2003. Further, Section 62 (4) of EA 2003, which states that no tariff or part of tariff except fuel surcharge can be amended more than once in a financial year, restricts the Commission from

- reviewing the Reliability Charges, therefore, the Petition should be rejected. Further, the average loss level in the Bhandup zone is 20%, which is higher as compared to the other areas where ZLS model has been implemented.
- f) Dr. S. L. Patil, representing Thane Belapur Industries Association (TBIA) appreciated MSEDCL's proposal for determination of additional cost as Reliability Charges for withdrawal of load shedding in the Thane II Urban Region including Kalwa sub-division. He submitted that Kalwa sub-division has moved from D Group to C Group only because of reshuffling and not due to any efficiency improvement. He pointed out that there will be substantial jump in the Reliability Charge from 28 paise per unit to 41 paise per unit due to inclusion of Kalwa sub-division under Thane II Urban Region. He stated that inclusion of Kalwa sub-division should be considered once the distribution loss comes below 15%. He added that some criteria have to be established for inclusion of any area under the ZLS model because such requirements will keep cropping up. Further, he submitted that increase in Reliability Charges is not in conformity with Section 61 of EA 2003, which mandates safeguarding the interest of the consumers.
- g) Shri Ashok Pendse, representing TBIA, submitted that basic criteria should be established, such as distribution losses within 15% to 16% and willingness of the consumers for introduction of ZLS model. He added that if Kalwa sub-division is added, then the losses will increase from 14.5% to 15.7% and around 7 to 8 Lakh consumers in Kanjur Marg and Bhandup area will have to pay additional Reliability Charge of 13 paise per unit. He stated that Reliability Charge for Kalwa should be calculated separately without burdening the other consumers. He submitted that TBIA is not opposing implementation of ZLS in Kalwa sub-division though TBIA is of the view that it is difficult to implement ZLS model in areas with higher distribution losses. He added that TBIA is opposing the increase in the Reliability Charges from 28 paise to 41 paise per unit.
- h) Shri. Ulhas P. Chaudhari submitted that the additional Reliability Charge should be levied on commercial consumers and Mantralaya.
- i) Shri. Prakash Padikkal submitted that increase in Reliability Charge is unjust to paying consumers. The Commission should reject the proposal, since the losses in the Kalwa sub-division are high. He added that implementation of ZLS model in different pockets promotes theft and hence, rather than ZLS, MSEDCL should strive to eliminate load shedding across the entire State of Maharashtra by procuring the requisite quantum of power and reducing losses.

- j) Shri. Jitendra Avhad, Member of Legislative Assembly (MLA), submitted that lot of efforts have been taken to include Kalwa under Thane division, but there were no intention to raise the Reliability Charge to other consumers. He submitted that the reason behind high distribution losses in Kalwa and Mumbra region is non-replacement of faulty meters and lack of proper billing mechanism. He added that MSEDCL has not taken any efforts for improvement of infrastructure. He submitted that a particular area in Kalwa is having high distribution loss and the distribution loss in rest of the Kalwa sub-division is only 8%. Technical losses contribute 20% of the total losses in Kalwa and Mumbra. He pointed out that, rather than purchasing power for 12 hours at Rs. 6.75 per unit, MSEDCL should buy power on Round-the-Clock basis at cheaper rate.
- k) Shri. Eknath Sonavane representing Thane Small Scale Industries Association (TSSIA), submitted that TSSIA is in favour of implementation of ZLS model in Kalwa but it opposes the increase of Reliability Charge for other areas.
- l) Shri. Hari Mauli representing Maharashtra Navnirman Sena (MNS) submitted that MNS supports implementation of ZLS model in Kalwa sub-division, but strongly opposes the increase of 13 paise per unit in Reliability Charges. He added that 13 paise per unit increase in Reliability Charge should not be done in order to recover the gap, which is due to low collection efficiency of MSEDCL.
- m) Shri Rajesh Gadkar representing Nidhan Foundation submitted that Demand Side Management (DSM) and energy efficiency initiatives need to be taken by MSEDCL.
- n) Shri. S.S. Mirjhe submitted that he strongly opposes the increase of 13 paise per unit in Reliability Charge. He enquired about the number of times the Commission is going to revise the Reliability Charges due to the increase in demand-supply gap and increase in number of consumers.
- o) Shri. Ravi Anand enquired regarding whether the increase of 13 paise per unit in Reliability Charge will ensure additional supply of power. He added that the losses in the Kalwa sub-division have not reduced. He added that the Commission's Orders are not being followed by MSEDCL in-toto. He enquired about the measures taken for increasing the generation capacity.
- p) Shri. Rajan Vichare, Member of Legislative Assembly (MLA), submitted that the Public Hearing should be scrapped and rescheduled after informing all elected Consumer Representatives. He welcomed the proposal of MSEDCL for implementation of ZLS model in Kalwa sub-division but, at the same time, opposed the increase in Reliability Charges payable by other consumers. He added that the reason behind increase in Reliability Charge is high distribution loss in Kalwa sub-

division and therefore, the marginal increase in Reliability Charge should be recovered from Kalwa sub-division only.

- q) MSEDCL, in its reply, submitted that MSEDCL is making every effort to control theft/ prejudicial use of electricity, since it directly affects the average distribution loss of the State. As a result of such efforts, MSEDCL has succeeded in reducing the distribution loss from 35.28% in FY 2004-05 to 22% in FY 2008-09. MSEDCL added that these efforts are ongoing and MSEDCL expects to further reduce distribution losses.

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

11. MSEDCL has submitted that the Petition to include Kalwa sub-division under the Thane revenue division for the purpose of ZLS has been necessitated on account of the creation of a new sub-division and re-categorisation of Kalwa sub-division, and the consequent situation of Kalwa sub-division being the only sub-division under Thane II Division where ZLS is not being implemented. The reorganisation by MSEDCL of jurisdiction in the Thane Revenue Divisional Headquarters, resulting in Kalwa sub-division being added to it, became effective from September 2009, and hence, could not have been included in the original Petition in Case No. 31 of 2009 filed in June 2009 by MSEDCL. Hence, the Commission has admitted this "supplementary petition".

12. As regards the Hon'ble Appellate Tribunal's Judgment dated December 14, 2009 setting aside the Reliability Charges payable by Ispat Industries, the operation of the said Judgment dated December 14, 2009 having been stayed by the Hon'ble Supreme Court vide its interim order dated 18th December 2009 in Civil Appeal No. 8413 of 2009 in the case of *MSEDCL vs. Ispat Industries & Anr*, the present Order is being issued, which is subject to the final outcome of the said Civil Appeal No. 8413 of 2009.

13. During the Public Hearing, most of the stakeholders submitted that though they prima facie supported MSEDCL's proposal to include Kalwa sub-division under Thane Revenue Division for the purpose of providing ZLS benefit, they did not support the proposal to increase the levy of Reliability Charges by 13 paise/kWh for all the consumers under Thane Revenue Division.

14. As regards the computation of Reliability Charges, in its Petition, MSEDCL projected an increase of 13 paise/kWh in the Reliability Charges payable by the consumers in the Thane region, on account of the inclusion of Kalwa sub-division. The Commission observed that MSEDCL had computed the Reliability Charge of 41 paise/kWh after inclusion of Kalwa sub-division by considering Scenario IV of PPLS, and had compared the same with the Reliability Charge of 28 paise/kWh approved in the Commission's Order in Case No. 31 of 2009. However, in the Order in Case No. 31 of 2009, the Commission had considered Scenario II of PPLS. Thus, the comparison presented by MSEDCL is incorrect, and the same Scenario of PPLS as well as power purchase rate has to be considered to assess the impact of inclusion of Kalwa sub-division on the Reliability Charges payable by all the consumers. Hence, the Commission, vide its letter dated March 23, 2010, directed MSEDCL to submit additional information regarding the MW, MU support and the Reliability Charges to be levied for implement ZLS scheme for the following scenarios:

- a) Excluding Kalwa from Thane Revenue Division for Scenario II and IV of PPLS
- b) Including Kalwa in Thane Revenue Division for Scenario II and IV of PPLS

15. MSEDCL submitted the desired data vide letter ref. no. 9358, received on March 31, 2010, as under:

PPLS	Power Purchase cost (Rs./kWh)	ZLS excluding Kalwa			ZLS including Kalwa		
		MU	MW	Reliability Charge (Paisa/kWh)	MU	MW	Reliability Charge (Paisa/kWh)
Scenario II	6.75	0.82	68.26	0.28	0.93	77.31	0.31
Scenario IV	6.75	1.15	95.80	0.38	1.28	106.89	0.41

16. The Commission has verified the computation of Reliability Charges, and the same is given in Annexure-1 to this Order. From the above calculation of Reliability Charges, it is clear that for Scenario IV of PPLS (the present Scenario), the Reliability Charge for Thane Revenue Division excluding Kalwa sub-division works out to 38 paise/kWh whereas Reliability Charge for Thane Revenue Division including Kalwa sub-division works out to 41 paise/kWh. Thus, the impact of Reliability Charge on the consumers of Thane Revenue Division on account of inclusion of Kalwa sub-division works out to only 3 paise/kWh, as compared to the 13 paise/kWh projected by MSEDCL in its Petition, and approves the additional Reliability Charges of 3 paise/kWh in respect of consumers in Thane Revenue Division including Kalwa sub-division.

17. However, in view of the increased demand-supply gap in the State and the prevailing uncertainty as regards the availability of additional power as well as the rate of the additional power requirement, the scheme be made effective from July 1, 2010, which will give sufficient time for MSEDCL to organise the additional power for Thane Revenue Divisional HQ (including Kalwa).

With the above, the Petition filed by MSEDCL in Case No. 89 of 2009 stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman

(K. N. Khawarey)
Secretary, MERC