

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 5 OF 2010

In the matter of
Petition filed by Maharashtra State Electricity Distribution Company Limited for
Continuation of Pen Zero Load shedding Model and recovery of Reliability Charge

Shri. V. P. Raja, Chairman
Shri. Vijay L. Sonavane, Member

ORDER

Dated: November 15, 2010

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted a Petition under affidavit before the Commission on March 29, 2010, under Sections 62 (3), 62 (4), 86 (1) (b) and 94 (2) of the Electricity Act, 2003 (EA 2003) and Clause 8.2.1 of the Tariff Policy, seeking approval for continuation of Pen Zero Load Shedding (ZLS) Model and recovery of Reliability Charge.

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

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- a. *The Hon'ble Commission may be pleased to permit MSEDCL to continue implementation of withdrawal of load shedding in the Pen Circle.*

- b. *The Hon'ble Commission may be further pleased to approve the determination of Reliability Charge for the above areas as proposed by MSEDCL;*



- c. *The Hon'ble Commission may determine a ceiling rate for procurement of power purchase on a yearly basis, beyond which the power is not to be purchased;*
- d. *The Hon'ble Commission may approve implementation of such model for the period one year from the date of issue of the order;*
- e. *The Hon'ble Commission may permit a detailed reconciliation of all costs and recovery of any shortfall on a quarterly basis whereby the reconciliation will have to factor in full recovery of power purchase cost irrespective of the additional consumption against additionally procured power for Pen circle or otherwise;*
- f. *Pending final decision on the present proposal, the Hon'ble Commission may, as an interim arrangement, permit MSEDCL to continue implementation of Zero Load shedding Model, for the period beyond 31st March 2010 and may further permit MSEDCL to levy & recover Reliability Charge at the rate of 127 paise per unit as proposed with effect from 1st April 2010, instead of 19 paise per unit as prevailing, subject to reconciliation after the present petition is disposed off by the Hon'ble Commission.*
- g. *The Hon'ble Commission may consider the above proposal for a favourable dispensation;*
- h. *The Hon'ble Commission may allow to implement normal Load Shedding as per existing PPLS to all Agricultural and Rural feeder in areas wherever zero load shedding is not proposed;*
- i. *The Hon'ble Commission may please also allow to exempt agricultural & domestic consumers having monthly consumption up to 100 units, and in line with the APTEL Order along with all High Tension consumers having express feeder power supply from levy of Reliability Charge.*
- j. *The Hon'ble Commission may condone errors/ omissions, if any, and may please give an opportunity to rectify the same and to file additional data, information as may be required”.*

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

- a. MSEDCL had filed a Petition (numbered as Case No. 143 of 2008) before the Commission on February 24, 2008 under Section 14 read with Section 2(27) of the EA 2003, for implementing the ZLS model for the area covered under Pen Circle,



and for approval of Reliability Charges to be recovered in accordance with the Commission's directions issued in its Order dated March 13, 2008 in the matter of MSEDCL's Petition for recovery of additional cost as Reliability Charge for mitigating load shedding in Pune City (Case No. 51 of 2007 and Case No. 90 of 2007).

- b. MSEDCL submitted the Petition based on the request of the Humanist Consumers Council (HCC), Alibag, a Non-Governmental Organization (NGO) working for the protection of consumer's rights, and which represents consumers in Raigad District in the Raigad District Consumers Protection Council, formed under the Consumer Protection Act.
- c. HCC approached MSEDCL vide its letter dated February 17, 2009 expressing its interest to be appointed as an Interim Franchisee to mitigate load shedding in Pen Circle. HCC also submitted an offer from M/s. Tata Power Trading Company Ltd. (TPTCL) to supply additional power for mitigating load shedding of Pen Circle.
- d. Further, HCC submitted the Memorandum of Understanding (MoU) signed with TPTCL for purchase of power required to mitigate load shedding. HCC proposed that the additional cost that would be incurred in procurement of power shall be recovered from all the consumers situated in the beneficiary area, except agricultural consumers, and residential consumers with consumption up to 100 Units per month.
- e. Based on the interest expressed by HCC, MSEDCL filed the Petition for implementation of ZLS Model for the area covered under Pen Circle, and for approval of Reliability Charges to be recovered thereof for compensating the expenditure that would be incurred for procurement of power necessary to mitigate the load shedding in Pen Circle.
- f. The Commission after following due regulatory process, including Public Hearing, allowed ZLS scheme in the area covered under Pen Circle by its Order dated June 15, 2009 in Case No. 143 of 2008, and recovery of Reliability Charges thereof for a period from June 15, 2009 to March 31, 2010.



- g. MSEDCL submitted that HCC by its letter dated March 26, 2010 has again approached for continuation of ZLS model for the area covered under Pen Circle, as the same is expiring on March 31, 2010.
- h. HCC on March 26, 2010 also entered into a MoU with TPTCL for procurement of power on Round The Clock (RTC) basis for a period of one year from April 1, 2010 to March 31, 2011 along with offer letter dated March 26, 2010 from TPTCL, which has quoted a rate of Rs. 7.04/kWh.
- i. Accordingly, MSEDCL has estimated the Reliability Charge that would be payable by the beneficiary consumers if the ZLS Model for Pen Circle area is permitted to be continued beyond March 31, 2010. MSEDCL has estimated the Reliability Charge on the same principles/assumptions as approved by the Commission in its Order dated June 15, 2009, except following issues where MSEDCL has deviated for obvious reasons:
- i) Power requirement has been estimated based on Principles and Protocol of Load Shedding (PPLS) - Scenario IV;
 - ii) Distribution loss and Average Billing Rate (ABR) of Pen Circle area has been considered based on latest data;
 - iii) HCC in its previous proposal in Case No.143 of 2008 has excluded agricultural consumers and residential consumers having monthly consumption upto 100 Units. MSEDCL in the present proposal has excluded agricultural consumers, residential consumers having monthly consumption upto 100 Units and all High Tension (HT) consumers having power supply through express feeder from levy of Reliability Charge.
 - iv) In part B of the Calculation of Reliability Charge, only average cost of power purchase has been set off and the estimated revenue generated out of sale of extra power has not been considered.
 - v) Since, City of Alibag has already been included in ZLS proposal of District Head Quarters submitted by MSEDCL and which is under consideration of the Commission, the power requirement as well as Distribution Loss and ABR has been considered excluding the City of Alibaug.

4. The Commission, vide its Notice dated April 26, 2010, scheduled a hearing in the matter on May 12, 2010, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives, Humanist Consumers



Council, Alibag and M/s. Ispat Industries Ltd, in view of the Appeal filed by M/s. Ispat Industries Ltd. before the Hon'ble Appellate Tribunal for Electricity (ATE) on the Order passed by the Commission in Case No. 143 of 2008.

5. The Commission vide its Notice dated May 11, 2010, postponed the hearing on the request of MSEDCL to June 24, 2010 at 11:00 hours in the office of the Commission. Further, the Commission vide its Notice dated June 3, 2010 scheduled the hearing on July 1, 2010 at 15:00 hours in the office of the Commission.

6. M/s. Ispat Industries Ltd., vide its letter dated June 30, 2010 submitted that Reliability Charge is not proposed to be levied on M/s. Ispat Industries Ltd. and HT-I Continuous Industry (on Express Feeder) consumers in the present Petition. However, M/s. Ispat Industries Ltd., being a necessary and interested party, made the following submissions:

- a) The legal issue whether Reliability Charges could be validly levied by a distributor of electricity is presently pending for hearing and final disposal by the Hon'ble Supreme Court in Civil Appeal No. 8413 of 2009. The Commission in its Order dated June 15, 2009 permitted levy of Reliability Charges in Case No. 143 of 2008 at 19 Paise/kWh upto March 31, 2010 from the consumers in Pen Circle except agricultural consumers, and residential consumers having monthly consumption upto 100 Units. The above decision passed by the Commission was the subject matter of Appeal No. 135 of 2009 filed by M/s. Ispat Industries Limited before the Hon'ble Appellate Tribunal for Electricity (ATE).
- b) The ATE in its Judgment dated December 14, 2009 held that the Commission's Order dated June 15, 2009 in Case No. 143 of 2008 is not valid in law and the same is liable to be set aside and accordingly the same was set aside.
- c) Being aggrieved by the above Order of ATE, MSEDCL filed Civil Appeal No. 8413 of 2009 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its Judgment dated December 16, 2009 stayed the operation of the Impugned Order passed by ATE, and made it clear that the payments that are required to be made in terms of the Impugned Order will be subject to the result of the appeal.



- d) In the circumstances, subject to outcome of the pending appeal, MSEDCL has been collecting Reliability Charges of 19 paise/Unit from all the consumers in Pen till March 31, 2010.
- e) Further, the Public Hearing for determination of tariff for FY 2010-11 has been held in June 2010 and the Order is awaited. In the said circumstances, in order to appreciate the impact of costs and supply of electricity to the consumers, it will be prudent and desirable to wait for the Tariff Order for FY 2010-11. Hence, the present Petition is premature.
- f) M/s. Ispat Industries Ltd., therefore, prayed that the Commission may defer the hearing/decision on the present Petition as the subject matter is sub-judice before the Hon'ble Supreme Court vide Civil Appeal No. 8413 of 2010 and also premature for adjudication.
7. M/s. Konkan Synthetic Fibres (KSF), as an Intervener submitted as under:
- a) KSF manufacturing facility is situated at Mahad, Pen Circle of MSEDCL, and is a consumer of MSEDCL.
- b) MSEDCL's proposal for exempting all HT consumers connected to Express Feeder power supply from levy of Reliability Charges, is justified and is in line with the ATE Order and therefore, it should be approved by the Commission.
- c) The grounds for justifying the above exemption for all HT consumers connected to Express Feeder power supply from levy of Reliability Charges are as under:
- i) The continuous process industries, which are connected to Express Feeder are not subjected to the load shedding including the staggering day, and the tariffs are substantially higher than that for HT-I: Industries (Non-Continuous). The Commission, in its Tariff Order dated June 20, 2008 in Case No. 72 of 2007 observed that:

"Since the continuous process industries are getting supply on a continuous basis, and are not subjected to load shedding, including staggering day, the tariff for HT continuous industry has been specified slightly higher than that applicable for HT non-continuous industry."



- ii) KSF further submitted that they have invested heavily in capital expenditure on infrastructure for availing continuous power supply in addition to paying higher tariff than non-continuous industries.
- iii) KSF further added that the Commission in its Tariff Order dated August 17, 2009 in Case No. 116 of 2008 has laid down the following findings which are supporting their contentions for approval of the said prayer:

"The Commission finds merit in MSEDCL's rationale that consumers who are getting preference in supply of electricity, i.e., 24 x 7 supply, when other consumers are being subjected either to daily load shedding or one-day staggered load shedding, should be charged a higher rate as compared to the other consumers. However, consumers connected through express feeders have incurred additional capital expenditure to avail this facility and the extent of premium charged for this preferential supply has to keep this aspect in mind."

...

Keeping all these factors in mind, the Commission has determined the tariffs of HT industrial category in such a manner that HT I consumers connected on express feeders will be required to pay around 7% higher than HT I consumers connected on non-express feeders."

- iv) The Reliability Charge cannot be levied on HT Consumers availing power supply on Express Feeders, and Reliability Charges are meant for consumers who are subject to load shedding.
- v) The Commission, in its Tariff Order dated October 20, 2006 in Case No. 54 of 2005 has imposed Additional Supply Charge (ASC) for uninterrupted power supply to the bulk consumers like the intervener KSF, which was discontinued by the Commission in its Tariff Order dated June 20, 2008. The Commission has directed MSEDCL to refund the ASC collected from bulk consumers during FY 2006-07 and FY 2007-08.
- vi) The Reliability Charge is in the nature of ASC, which was not justified and has been withdrawn by the Commission.
- vii) The Commission should approve the prayer of MSEDCL on the ground that in the existing Pen ZLS Model, the Reliability Charge collected and paid by KSF and the other HT consumers availing power supply on Express Feeder, is not a valid levy as is confirmed by the decision dated December 14, 2009 of Hon'ble ATE, and also on the factual and equitable criteria.



viii) The Commission, while deciding the matter should exempt HT consumers availing power supply on Express Feeder from levy of Reliability Charge. The Commission has accepted the rationale and has exempted such categories from levy of ASC in Case No.31 of 2009 dated November 30, 2009.

8. At the hearing held in the matter on July 1, 2010, Shri. S.V. Bapat, SE (TRC) and Shri. S.S. Katkar, EE (TRC) appeared on behalf of MSEDCL, Shri. Mushtaq A. Ghatte, President, appeared on behalf of Humanist Consumer Council, and Advocate Shaunak Thacker appeared on behalf of Ispat Industries Ltd.

9. During the hearing, MSEDCL reiterated the submissions made in the Petition. HCC submitted that at most, a Reliability Charge of Rs. 0.50 per kWh may be levied on the consumers of Pen Circle, for implementation of the ZLS Scheme.

10. The Commission directed MSEDCL to examine the impact on the category of consumers on whom the Reliability Charge of Rs.1.27/kWh is proposed to be levied. The Commission also directed MSEDCL to assess the prima facie implementability of the ZLS Scheme as proposed by MSEDCL, based on the numbers as well as discussions with the Interim Franchisee, i.e., Humanist Consumer Council. The Commission further directed MSEDCL to revisit its proposal after examining the impact and decide on its future course of action in this regard.

11. Further, the Commission vide its Notice dated October 6, 2010 scheduled the hearing on October 21, 2010 at 15:00 hours in the office of the Commission.

12. MSEDCL vide its reply dated October 21, 2010 submitted as under:

- a) MSEDCL proposed to exclude all HT Express Feeder consumers who are already exempted from Load Shedding from levy of the Reliability Charge, which has substantially increased the estimated Reliability Charge from 19 paise/Unit (previously charged in Case No. 143 of 2008) to 127 paise/Unit as per Scenario IV of PPLS .
- b) MSEDCL has submitted that it has not received any revised proposal from Interim Franchisee i.e., HCC for procurement of power at a rate less than the rate considered by MSEDCL.



- c) MSEDCL submitted that if the scope of levy of Reliability Charge is extended by including all residential consumers except BPL residential consumers, the Reliability Charge may reduce further; since, the present proposal excludes residential consumers having consumption upto 100 Units/month along with all HT Express Feeder consumers from levy of Reliability Charge.
- d) Further, MSEDCL submitted that unless Express Feeder Industrial consumers and all such other similarly placed consumers (who are not otherwise subjected to Load shedding) unconditionally agree to participate in the scheme and show willingness to share the burden of cost of implementation of ZLS model will only result in reduction of Reliability Charge.
- e) MSEDCL submitted that it on its own can neither initiate any action for procurement of cheaper power for implementation of ZLS in Pen Circle area nor can propose to levy Reliability Charge to all Express Feeder Industrial Consumers and all other such similarly placed consumers (who are not otherwise subjected to Load Shedding), who are presently excluded from the levy of Reliability Charge in the proposal submitted by MSEDCL.
- f) MSEDCL submitted that it would be more appropriate if the Interim Franchisee i.e., HCC submits a revised proposal of procurement of power at a rate below the rate considered by MSEDCL for estimating Reliability Charge and further persuades Express Feeder Industrial consumers and all such other similarly placed consumers (who are not otherwise subjected to Load Shedding) to unconditionally participate in the ZLS Scheme, for reducing the estimated Reliability Charge.

13. At the hearing held in the matter on October 21, 2010, Shri. N.B. Wadekar, SE, Pen, Shri. M.M. Digraskar, EE (TRC) appeared on behalf of MSEDCL and Dr. Ashok Pendse, Thane Belapur Industrial Association (TBIA) appeared as Consumer Representative.

14. During the hearing, MSEDCL reiterated the submissions made in the reply dated October 21, 2010.

15. Dr. Ashok Pendse submitted that MSEDCL has been recovering the Reliability Charge from the Express Feeder Industrial Consumers during the previous year as per the Order dated June 15, 2009 in Case No. 143 of 2008. Dr. Pendse further added that an Appeal filed by MSEDCL in M/s. Ispat Industries Ltd. case, is sub-judice and pending before the Supreme Court.



16. Dr. Ashok Pendse also submitted that impact of the case before Supreme Court along with interest should be examined, Shri. Pendse further enquired that the said impact would be levied on the Consumers or borne by MSEDCL.

17. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the reply filed by MSEDCL and the issues /contention raised in the matter are without any merits because firstly no such revised proposal has infact been submitted by the Interim Franchisee i.e., HCC of procurement of power at a rate below the rate considered by MSEDCL for estimating Reliability Charge. Secondly, the Commission cannot base its decision on any hypothesis as to whether Interim Franchisee persuades Express Feeder Industrial consumers and all such other similarly placed consumers (who are not otherwise subjected to Load Shedding) to unconditionally participate in the ZLS Scheme, for reducing the estimated Reliability Charge. As regards, the proposal to levy Reliability Charge of Rs.1.27/kWh, during the hearing, HCC submitted that at most, a Reliability Charge of Rs. 0.50 per kWh may be levied on the consumers of Pen Circle, for implementation of the ZLS Scheme. The Commission notes that as directed MSEDCL has yet not assessed the *prima facie* implementability of the ZLS Scheme as proposed. No proposal has been submitted in regard to revisitation of MSEDCL Proposal after examining the impact and on its future course of action in this regard.

18. In view thereof, the Commission is unable to further process MSEDCL's Petition in Case No. 5 of 2010 for lack of full information, assessment and requisite data. For the said reasons, the present petition stands dismissed with a liberty to MSEDCL to file a fresh Petition after assessment of (1) impact on per unit cost of electricity viz-a-viz the ability of consumers to pay; (2) the response to proposal of HCC that Reliability Charge of Rs. 0.50 per kWh may be levied on the consumers of Pen Circle; (3) feedback of Express Feeder Industrial consumers to participate in the ZLS Scheme for reducing the estimated Reliability Charge; and (4) viable solution for implementability of the ZLS Scheme in Pen Circle.



19. The above observations have been made in light of Hon'ble Supreme Court's stay order in Civil Appeal No. 8413 of 2009.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman



(K.N. Khawarey)
Secretary, MERC