

**Before the
MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION**

World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai - 400 005

Tel. No. 022 22163964/65/69 – Fax 022 22163976

E-mail mercindia@mercindia.org.in

Website: www.mercindia.org.in

Case No. 26 of 2009

In the matter of

MRVGS' Petition for non-compliance of the Tariff Order dated 20.06.2008 read with earlier Orders dated 20.10.2006 and 18.05.2007, passed by the Commission

Shri. V. P. Raja, Chairman

Shri. S. B. Kulkarni, Member

ORDER

Dated: March 5, 2010

The Maharashtra Rajya Veej Grahak Sanghatana (MRVGS) filed a Petition under affidavit before the Commission on May 13, 2009, seeking directives of the Commission against the Maharashtra State Electricity Distribution Company Limited. (MSEDCL), for non-compliance of the Tariff Order dated June 20, 2008 read with earlier Tariff Orders dated October 20, 2006 and May 18, 2007, passed by the Commission.

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

- “
- a. *MSEDCL be directed to issue future bills of LT-V consumers having sanctioned load above 20 KW/27 HP as per the H.P. based Tariff, till all the three conditions precedent are 100% complied with to the satisfaction of this Hon'ble Commission.*
 - b. *MSEDCL be directed to revise the energy bills of all LT-V consumers above 20 KW/27 HP since August 2008 as per the HP based tariff and be further directed to refund the excess amount collected towards Demand Charge, PF Penalty etc. with interest.*
 - c. *Heavy penalty be imposed upon the MSEDCL for intentional and deliberate disobedience of the order of this Hon'ble Commission.*



d. All other just and equitable reliefs be granted for the effective adjudication of the subject matter involved in this petition and for its implementation.”

3. The MRVGS, in its Petition, submitted as under:
- a. The Petition has been filed under Section 62(6) of the Electricity Act, 2003 (EA 2003) against MSEDCL for recovery of the excess amount from consumers covered under LT-V category having Sanctioned Load above 20 kW/27 HP with interest; and under Section 142 of the EA 2003, for breach of Tariff Order in Case No.72 of 2007 dated June 20, 2008, read with earlier Tariff Orders dated October 20, 2006 and May 18, 2007.
 - b. MSEDCL has collected excessive amounts from consumers covered under LT-V category by incorrect implementation of Tariff Order, and has caused grave injustice and damage to those consumers. The Tariff Order dated June 20, 2008 has been passed by this Commission and, the subject matter of this Petition is within the jurisdiction of this Commission.
 - c. The Petitioner is seeking corrective action as well as penal action against MSEDCL in respect of non-implementation of the directives of the Tariff Order dated June 20, 2008. There is no specific time limit provided in the EA 2003, therefore, this Petition is filed in time.
 - d. The Petitioner is an organisation of electricity consumers within the State of Maharashtra. The welfare of the members is the prime object of the Petitioner and it makes all possible efforts to protect the legal rights of its members in particular and of all small residential, agricultural and industrial electricity consumers within the State of Maharashtra in general.
 - e. The L.T. Industrial consumers were earlier billed according to the Horse Power (H.P.) based tariff (i.e., fixed charges on the basis of H.P.), which was termed as LTP-G. The Commission, in its Tariff Order in Case No.1 of 1999 dated May 5, 2000, introduced optional Maximum Demand (MD) based tariff for these consumers. This position remained unchanged by the subsequent Tariff Orders, viz., Tariff Orders dated January 10, 2002 and March 10, 2004. However, the Commission in its Tariff Order in Case No. 54 of 2005 dated October 20, 2006 laid down three conditions for effective implementation of MD based tariff, which are as follows:
 - i. To initiate Awareness programme
 - ii. To install appropriate tri-vector (M.D.) meters
 - iii. To declare/register the Contract Demand (CD).

- f. MSEDCL did not fulfill these conditions, neither within the span prescribed for these conditions nor thereafter.
- g. The Commission has considered this aspect in Tariff Orders dated May 18, 2007 and June 20, 2008.
- h. Thereafter, MSEDCL filed a Petition, seeking clarification in respect of Tariff Order dated June 20, 2008. The Commission in its Order in Case No.44 of 2008 dated September 12, 2008, laid down the Principle of implementation of MD based Tariff.
- i. Thereafter, the MSEDCL issued letter No.32150 dated August 14, 2008, and subsequently issued Commercial Circular No.88 dated September 26, 2008. Thus, without complying with all the conditions precedent for implementation of M.D. based tariff to LT-V category, MSEDCL levied M.D. based tariff from the billing month of August 2008.
- j. The Petitioner is aggrieved by MSEDCL's breach of the Order of the Commission in Case No.72 of 2007 dated June 20, 2008, read with earlier Tariff Orders dated October 20, 2006 and May 18, 2007, by implementing the M.D. based tariff for LT-V consumer category without complying with the conditions precedent for the implementation and thereby collecting excess amount, and hence, preferred this Petition on the following grounds.
- k. The act of issuance of bills by MSEDCL as per LT-V (M.D. based Tariff) without fulfilling the conditions precedent, is unjust and is contrary to the Orders and directions of the Commission.
- l. MSEDCL has not 100% complied with any of these conditions. Partial and half-hearted attempts have been made as far as all these three conditions are concerned.
- m. The Chief Engineer (Distribution), MSEDCL has informed that MD meters have been already installed to all LT-V consumers above 20 kW (27 HP) from the billing month August 2008 for which the following guidelines are issued.
- n. The MSEDCL has applied this Tariff only on the basis of partial completion of one condition out of the three stipulated conditions. The Petitioner further submitted that the consumer awareness and education programme is only on paper and there is no practical implementation of the same.
- o. While applying the M.D. Tariff to LT-V category, the monthly billing demand is to be calculated as follows:
 - i. 65% of the Actual Maximum Demand recorded in the month during 0600 hours to 2200 hours

or



ii. 40% of the Contract Demand, whichever is higher

However, MSEDCL has not registered the Contract Demand of the consumers, because of which proper implementation of M.D. based tariff is not possible.

p. The Commission has defined “Contract Demand” in the Supply Code [Clause 2.1(f)], and also in the MERC (Standard of Performance) Regulations [Clause 2.1(e)]. The definition is as follows: -

“Contract Demand means demand in Kilowatt (kW)/Kilo-Volt Ampere (kVA) mutually agreed between the Distribution licensee and the consumers as entered into in the agreement or agreed through other written communication.”

From the above definition, the words ‘mutually agreed’ between the Distribution licensee and the consumers as entered into in the agreement or agreed through other written communication are important, and in the absence of an agreement or other written communication to that effect, there would be no Contract Demand. The above said process is yet not completed.

q. The MSEDCL, vide its Commercial Circular No.88, has circulated the directions of the Commission regarding applicability of Power Factor (PF) penalty and Incentive. For imposition of PF penalty there are two conditions viz.,

i) Installation of meter capable of measuring PF, and

ii) Applicability of MD based tariff.

r. However, it is observed that MSEDCL has levied PF penalty on the basis of installation of meters only, which is incorrect.

s. The Petitioner submitted that unless and until MD based Tariff is made applicable by fulfilling all the three conditions, PF penalty cannot be levied, and all those consumers on whom this penalty is charged are entitled to refund.

t. The act of MSEDCL is also contrary to the directions/observations of the Commission in its Order in Case No.44 of 2008 dated September 12, 2008.

4. The Commission, vide its Notice dated June 16, 2009, scheduled a hearing in the matter on July 7, 2009 at 12.00 hours, and directed the Petitioner to serve a copy of its Petition to the Respondent and the four authorised Consumer Representatives.

5. The Commission also directed MSEDCL to file its comments, if any, on the above Petition latest by June 30, 2009 and serve the copy of the same on the Petitioner and the four authorised Consumer Representatives.

6. At the hearing held in the matter on July 7, 2009, Shri. Pratap Hogade appeared on behalf of MRVGS and Shri. Abhijit Deshpande, CE Commercial, appeared on behalf of MSEDCL.

7. The Commission heard both the Parties and directed the Respondent to submit their reply within 2 weeks from the date of hearing. The Commission also directed the Respondent to serve a copy of the said reply to the Petitioner.

8. During the hearing, Shri. Hogade reiterated his submissions that there should be refund of the excess amount recovered by MSEDCL and the concerned officers should be punished under Section 142 of EA 2003 for breach of the Commission's Order dated 20.6.2008 read with earlier Tariff Orders dated 20.10.2006 and 18.5.2007.

9. Shri. Hogade submitted that in 2006, the Commission introduced MD based tariff in Case No. 54 of 2005, wherein the Commission gave specific instructions as reproduced below:

“Further, the Commission directs MSEDCL to initiate an immediate awareness programme wherein the LT Industry V consumers would be required to declare/register their contract demand, within two months of the issue of this Order. MSEDCL should install appropriate tri-vector meters capable of recording Maximum Demand for all the consumers in this category, within three months of the issue of this Order. Till the MD meters are in place, MSEDCL shall bill the consumers on the following basis.

...

LT-V General Motive Power:

The Commission directs MSEDCL to initiate an awareness programme wherein the consumers of LT-V category would be required to declare their contract demand within two months of the issue of this Order.

Further, the Commission directs MSEDCL to install appropriate tri-vector meters capable of recording Maximum Demand for all the consumers in LT-V category, within three months of the issue of this Order.”

10. Shri. Hogade added that Review Petitions were filed against the above Order of the Commission in Case Nos.50, 55 and 56 of 2006 by Chamber of Small Industry Association, Laghu Udyog Bharati, and Kolhapur Engineering Association. The Commission in its Order dated March 3, 2007 revoked the MD based tariff and stipulated the following:

“At the same time, the desired implementation of MD based tariff for LT-V category is directly linked to the installation of MD meters for this category.

...

it has completely failed to install MD meters for around 34850 out of 39600 LT-V consumers as stated above.

...

The Commission finds it hard to place any reliance on MSEDCL’s submission that significant progress has been made subsequent to December 31, 2006, given the tardy progress in metering achieved by MSEDCL over the last three years as highlighted above.

...

The efforts taken by MSEDCL in communicating with its consumers and educating them regarding the concept of Contract Demand also appear to be very lackadaisical, as no evidence has been submitted regarding the efforts taken to educate the consumers. Also, given the number of representations received by the Commission in this regard, it is clear that MSEDCL has failed completely, for reasons best known to them, in its duty to create awareness amongst the consumers about this very significant change in billing procedure.

...

directs MSEDCL to revert back to the earlier prevailing tariff of Rs. 60 per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL.”

11. Shri. Hogade added that MSEDCL filed an Appeal No. 130 of 2007 before the Appellate Tribunal for Electricity. Hon’ble Tribunal passed its Judgment on March 27, 2008 wherein it upheld the observations of the Commission as follows:

“The grievance of the consumers relating to bills for the intervening period between the date of the order of the MERC, viz. October 20, 2006 and installation of MD meters is justified. Therefore, we are of the view that the relief granted by the MERC by directing MSEDCL to revert back to the earlier

prevailing tariff of Rs. 60/- per HP per month applicable for 50% of the sanctioned load, till such time as 100% MD metering is completed by MSEDCL cannot be faulted. However, in so far as the MERC has decided that the revenue loss due to the modification of its order in review will be to the MSEDCL's account and MSEDCL will not be entitled to claim recovery of the shortfall in revenue on this account at a later stage needs modification as in our view in case of any revenue loss after truing up will need to be recovered from the consumers. We order accordingly”.

12. Shri. Hogade added that the Commission passed its Tariff Order on May 18, 2007 with the following observations:

“However, given the earlier experience narrated in above referred review Order, MSEDCL will not be permitted to charge the demand charges specified in this Order, till such time MD meters are installed and the demand has been contracted for all the consumers' premises for whom MD based tariff is applicable.”

13. Further, the Commission in its Tariff Order dated June 20, 2008, made the following observations:

“In line with the Commission's ruling in the MYT Order, since MSEDCL is yet to achieve 100% MD metering for LT V industrial consumers above 20 kW (around 97% completion has been indicated by MSEDCL till date), the MD tariffs for LT V industrial consumers will not be made effective. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs, though the revenue has been assessed based on MD based tariffs.”

14. Shri. Hogade submitted that MSEDCL recorded on July 25, 2008 that 100% metering had been done. Further, MSEDCL implemented LT MD tariff through letter to all Chief Engineer, O&M Zones dated August 14, 2008, as reproduced below:

“Implementation of LT MD Tariff to LT-V Industrial category consumers as per Tariff Order dated 20.6.2008: Vide above referred Office Note, Chief Engineer (Distribution) has informed that LT MD meter have been provided to all the LT-V Industrial category consumers as on 25.7.2008. Hence LT MD based tariff is to be made applicable to all the LT-V consumers above 20KW (27HP) from the billing month August-2008 for which the following guidelines are issued.”

15. Shri. Hogade submitted that from the above, it is amply clear that MSEDCL has made MD based tariff applicable from July 25, 2008. Shri. Hogade further submitted that the definition of Contract Demand in the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 is reproduced below:

*“**Contract Demand**” means demand in kilowatt (kW) / kilovolt ampere (kVA), mutually agreed between Distribution Licensee and the consumer as entered into in the agreement or agreed through other written communication;”*

16. Shri. Hogade further submitted that MSEDCL has not entered into an agreement or even undertaken any written communication. Therefore, they have not implemented Contract Demand. Hence, MSEDCL has not fulfilled all the three pre-conditions for implementing MD based tariff.

17. MRVGS, vide its letter dated July 20, 2009, submitted as under:

a. **Consumer:**

There are about 45000 consumers in LT-V category, whose Connected Load is above 20 kW (27 H.P.). The consumers in this category are fabrication shops, repair workshops, power-looms, job making workshops, and other different small manufacturers. The H.P. based tariff was applicable for about 48 years, i.e., upto August 1, 2008 to all these consumers on the basis of Connected Load. The majority of these consumers are illiterate or semi-literate and are carrying their business based on traditional skills. M.D. based tariff has been made applicable for the first time to these consumers.

b. **Awareness and training:**

Before filing this Petition, MRVGS had made an application in this matter before MSEDCL on October 10, 2008. The meeting was held in the office of MSEDCL on November 18, 2008. During the meeting, MVVGS requested MSEDCL to submit a detailed instruction and notice regarding,

- *“What is M.D. based tariff?*
- *How many capacitors and what type of capacitors are to be installed?*
- *How to give Contract Demand?”* to all these consumers.

However, MSEDCL did not implement the above request. The Commission has considered this change as a very significant change and clearly observed that MSEDCL has failed to initiate and implement consumer awareness and training programme, in its Order dated March 3, 2007. In spite of readiness of consumers and Consumers' Associations to co-operate, MSEDCL did not create consumer awareness and training by instruction letter, notice, meeting, public meeting, advertisement, etc. MSEDCL has only provided one line instruction in the bill. The Commission may please take on record that this is a breach of the Commission's directive.

c. **Contract Demand:**

It is necessary to have an Agreement or correspondence in writing as per definition of 'Contract demand' given under the provisions of both MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 in order to determine the Contract Demand. For this, independent written notice has to be sent and after that if within given time frame the consumer does reply, the load has to be taken for granted, but this has not been done. While providing power supply, the agreements of all these consumers were linked to the Connected Load of these consumers and there is no mention of Contract Demand in the said agreements. Therefore, assessing Contract Demand without providing Notice is breach of the directives of Commission.

d. **Metering:**

The installation of suitable MD meters is one of the pre-conditions for implementation of MD based tariff. It has been recorded that 100% metering was done on July 25, 2008. In reality, such meters were installed in Jalgaon on September 27, 2008 and the copies of report on related meter replacement have been placed before the Commission during the hearing. MSEDCL has contravened the directions of the Commission.

e. **Present Billing:**

MSEDCL is still recovering M.D. based Tariff and power factor penalty from the consumers. During the hearing, this has been clearly accepted/admitted by MSEDCL.

f. **Power factor penalty:**

The Commission has clarified in its Order in Case No.44 of 2008 dated September 12, 2008 that the power factor penalty is applicable only if MD based Tariff is being applied. In accordance with the cited Order, MSEDCL has issued a Circular No.88 dated September 26, 2008. Given this background, it is strange and contradictory that MSEDCL has relied upon the Orders passed by the Commission in Case No.80 of 2004.

g. **MD based Tariff:**

MRVGS does not oppose MD based tariff, and this petition is not filed for rejecting the MD based tariff. MRVGS is keen that MSEDCL should fully comply with the conditions precedent laid down by the Commission for implementation of MD based tariff. The consumer associations are doing this work at their respective levels but that is not sufficient. MRVGS strongly opposes and objects to the arbitrary conduct and attitude of MSEDCL to implement the tariff without complying with the conditions precedent for implementation of MD based tariff. MRVGS is keen that the objectives of the EA 2003 be achieved and interest of the consumers is protected.

18. MSEDCL filed its written submission dated July 20, 2009, as directed by the Commission, and submitted as under:

- a. Traditionally, the recording of electricity consumption and the billing for the said consumption for industrial consumers was done by using electromechanical kWh meters. This consumption was billed over and above fixed charge, which was as per Tariff Order of the Commission based on the Sanctioned/Connected Horse Power of the consumer.
- b. To achieve equitable distribution of electricity in light of acute shortages of power in the State of Maharashtra and considering various other factors, the Commission laid down the Principles and Protocols to be followed for Load shedding in the MSEDCL Licence area. In spite of the best efforts by MSEDCL on all fronts, load shedding is required to be carried out for periods ranging from 2 to 12 hours a day. Thus, as necessity, all possible steps were required to be taken for flattening the load curve (reduce the peak demand/loads wherever possible and reduce the load shedding to that extent). One of the methods for achieving this was by levy of Time of Day (ToD) tariff for consumption, which incorporates higher tariff during peak hours, which would deter excessive consumption during peak hours leading to reduction in load on the system thereby reducing load shedding to that extent by giving

disincentive for consumption in peak hours and encouraging the consumers to shift their loads to off peak hours. This step was to particularly help in matching the demand and supply of electricity. Further, a rebate in the tariff is also given for consumption during off peak hours of the day.

- c. The most appropriate method of billing is MD based ToD billing, which is already implemented for HT consumers. Due to difference in the manner of consumption of electricity and in the situation of wide gap between demand and supply of electricity, the Commission felt a need to make differentiation in the manner and type of billing in respect of different types of consumers. In line with this concept, in the Tariff Order in Case No.54 of 2005 dated October 20, 2006, the Commission decided to bill the low tension LT-Industrial consumers based on the Maximum Demand and Time of Day (ToD) basis since it takes into account the Maximum Demand (load) that the consumer availed from the system and Time of Day during which the load is on the system/network and the consumption has taken place.

The Commission has laid down the following conditions in the tariff covering

- i) Installation of Appropriate tri-vector meters capable of recording Maximum load for all consumers in this category within a period of three months.
 - ii) To initiate an immediate awareness programme wherein LT-Industry consumers would be required to declare/register their Contract Demand within two months of the issue of this Order.
- d. Thus, the Commission's original Order on this issue covered
 - i. Installation of proper meters for all consumers,
 - ii. Increasing awareness of the consumers,
 - iii. Declaration/registration of loads by the consumers.

To comply with the Tariff Order, MSEDCL had taken up the consumers' awareness programme in hand. The message to consumers to declare their Contract Demand was printed on the energy bills of November 2006 and December 2006.

- e. Due to large quantum of work involved in replacement of meters, 100% MD meter installation could not be completed in the time frame specified by the Commission. In this time period, several consumer organisations approached the Commission and filed Petitions as regards non applicability of MD based tariff along with other miscellaneous issues. In response to this, in Case Nos.50, 55 and 56 of 2006, the Commission ruled on March 3, 2007 that the tariff in existence prior to October 2006 for LT-V Industrial category would

continue to be in force from October 1, 2006 to March 31, 2007 as 100% installation of MD meters is not complete.

- f. In the intervening period, in the Tariff Order for FY 2007-08 in Case No.65 of 2006, the Commission categorised LT-V Industrial billing in two parts, i.e., for consumers from 0-20 kW (upto and including 27 HP) and consumers above 20 kW (above 27 HP). For consumers upto 20 kW, fixed charges of Rs.150 per connection were levied and MD based billing was optional. For consumers above 20 kW, MD billing on kVA basis was allowed only after installation of MD meters. Till then, HP based fixed charge was allowed. Even in the subsequent Tariff Order, i.e., Case No.72 of 2007 dated June 20, 2008, the Commission has adopted the same procedure and for consumers above 20 kW, MD based fixed charge billing along with ToD feature was allowed only after installation of MD meters for all consumers in this category. For consumers upto 20 kW, the ToD Tariff was optionally available. ToD Tariff for industrial consumers above 20 kW was not allowed by Commission at this stage even after 97% work of MD meter installation was completed against the stipulated condition of 100% completion.
- g. MSEDCL has a consumer base of 1.5 Crore. All out efforts were made by MSEDCL to ensure 100% proper metering of LT-V consumers along with utmost care to ensure that the same is confirmed by the concerned field officers and the billing is started only after due diligence to the extent possible. Thus, the lapse on part of an individual officer as regards MD meter installation cannot reflect on MSEDCL and law will take its own course against such individual lapses. The complete metering cannot be jeopardised on account of such lapses.
- h. As per Tariff Order dated June 20, 2008 in Case No.72 of 2007, LT-V consumers having load more than 20 kW/27 HP, were billed as per HP based fixed charge upto July 2008 as the work of MD meter installation was in progress.
- i. After installation of MD meters for all Industrial consumers above 20 kW in July 2008, the Commission was informed about this. MD based fixed charge billing was started with effect from August 2008 as per the provisions of Tariff Order as the pre-conditions to levy MD based billing i.e.,
 - i) Installation of MD meters for all Industrial consumers above 20 kW (27 HP),
 - ii) Consumer Awareness,
 - iii) Declaration/registration of Contract Demand, had been complied with.

- j. The Tariff Order of the Commission has been implemented w.e.f. August 2008 after compliance of the conditions. MRVGS has filed the Petition under the provisions of Section 62(6) of EA 2003, which is based on wrong information, conception and interpretation of the Tariff Order. MSEDCL never recovered a price or charge exceeding the tariff determined by the Commission from any consumer.
- k. For those consumers who have not declared their Contract Demand for billing purpose, the demand was considered on derived demand basis as per the directives of the Commission.
- l. The Contract Demand itself indicates the awareness of industrial consumers in the process of declaration of Contract Demand, for which sufficient efforts were already taken by the Respondent. The Respondent already possesses data on the Sanctioned Load in HP for all industrial consumers. However, to give an additional opportunity for re-declaration with reference to Tariff Order, the awareness has been created by printed message on bill. This opportunity was given by the Commission to the consumers so as to enable them to declare/restate their Contract Demand as the billing will now be based on this value.
- m. After application of ToD tariff w.e.f. August 2008, there were objections from various consumer organisations including the Petitioner as regards LT-V incentives and disincentives and non fulfilment of pre-condition for the applicability of ToD Tariff on the grounds that demand based Tariff should be made applicable only after undertaking fresh awareness program.
- n. Hence, to give one more chance (though legally same was not required) to all the consumers for whom the LT M.D./ToD tariff is effective and to give additional opportunity to declare their load it was decided by MSEDCL:
- (i) Not to charge kVA MD penalty for February 2009 and March 2009.
 - (ii) To inform the Consumer once again by printing a message on the electricity bill of February 2009 and implement the MD penalty after one month, i.e., from April 2009.
 - (iii) The decision of refund of MD penalty collected was taken and the MD penalty collected in the period from commencement of demand based billing upto January 2009 was refunded in the billing month of February 2009 and March 2009.
- o. Power factor penalty or incentive was not considered by MSEDCL for refund, as the charging was in line with the Commission's Order dated December 15, 2005 and in Case No.44 of 2008 dated September 12, 2008. Further, MSEDCL implemented kVA MD penalty again w.e.f. April 2009.

- p. Hence, the Petitioner's contentions as regards non-fulfilment of the Commission's directives prior to levy of MD based billing is false, baseless and should not be considered. The Petitioner's behaviour in challenging MD based billing immediately after its applicability in 2006 and 2009 is opportunistic and not related to the norms and policies mandated by the Commission but only to safeguard interest of group of consumers who do not want to follow the directives of the Commission and want their bill amount reduced. As there is no instance of non compliance or discrepancy on part of MSEDCL, the question of reversal from kVA MD based fixed charge billing to HP based fixed charge billing, subsequent refund due to it and imposition of penalty on MSEDCL does not arise.
- q. In fact, every consumer organisation could work in a manner to benefit its members within the framework of law. The proper logic in such cases should be that every consumer should pay for that what he uses. In view of this, the billing of LT Industrial consumers above 20 kW/27 HP is correct, and lower fixed charge by reverting back to HP based fixed charges will be against the Tariff Philosophy and Tariff Order.
- r. Also, the Petitioner has incorrectly tried to invoke the provisions of Section 142 of EA 2003, which is totally uncalled for and unwarranted and the Petition needs to be dismissed with costs.

19. Having heard the Parties and after considering the materials placed on record, the Commission is of the view as under.

20. The issues for the consideration of the Commission are:

- a) What are the Conditions Precedent for MSEDCL to start levying MD based tariff and related Power Factor incentive/penalties, etc. for LT V industrial category?
- b) Did MSEDCL comply with the above Conditions Precedent before starting to levy MD based tariff and related Power Factor incentive/penalties, etc. for LT V industrial category?
- c) In case MSEDCL has not complied with the above Conditions Precedent before starting to levy MD based tariff and related Power Factor incentive/penalties for LT V industrial category, then what should be the appropriate action that should be taken against MSEDCL and its officers? Should any penal action be taken in this regard?

- d) Does MSEDCL have to refund the revenue earned through levy of MD based tariff and related components vis-a-vis revenue that would have been earned had HP based tariffs been levied? If yes, methodology and time-frame for the same?

21. The Commission has given its ruling on each of these issues in the following paragraphs:

22. As regards the Conditions Precedent, based on a cohesive reading of the observations and directions given by the Commission in the context of MD based tariff for LT V industrial category through subsequent Tariff Orders dated October 20, 2006, May 18, 2007, and June 20, 2008, in Case No. 54 of 2005, Case No. 65 of 2006, and Case No. 72 of 2007, respectively, read with Review Order dated March 3, 2007 in Case No.s 50, 55 and 56 of 2006, and Clarificatory Order dated September 12, 2008 in Case No.44 of 2008, the Conditions Precedent for implementation of MD based tariff for LT V industrial category are as under:

- a) Initiation of awareness programme
- b) Registration of the Contract Demand (CD) by the consumers.
- c) Installation of appropriate tri-vector meters capable of recording Maximum Demand (MD)

MSEDCL, in its written submission, has also admitted that the above three Conditions are Conditions Precedent for implementation of MD based tariff for LT V industrial category.

23. The second issue before the Commission is whether MSEDCL complied with the above Conditions Precedent before starting to levy MD based tariff and related Power Factor incentive/penalties, etc. for the LT V industrial category. Each of the Conditions Precedent will have to be studied separately.

24. As regards the awareness programme, MSEDCL has not submitted any evidence to show that it had initiated any awareness programme, apart from the fact that MSEDCL had communicated to the consumers through the electricity bills requesting the consumers to register their Contract Demand. The Petitioner and MSEDCL have both agreed that MSEDCL had communicated to the consumers through the electricity bills requesting the consumers to register their Contract Demand, however, the Petitioner has submitted that such a one-line intimation through the electricity bill

is not sufficient, and MSEDCL should have undertaken a proper awareness campaign to educate the consumers regarding the concept of Contract Demand, to facilitate the consumers to register the appropriate Contract Demand. In this regard, the Commission is of the view that MSEDCL should have implemented the Commission's directions in letter and in spirit and taken more efforts through discussions with local industrial associations and could have guided them regarding the change in billing methodology, the method of assessing the Contract Demand, implications of registering a higher or lower Contract Demand with MSEDCL, procedure for changing the Contract Demand registered with MSEDCL, frequency of the same, etc. At the same time, there was no specific direction/advice from the Commission regarding the nature and extent of the awareness campaign, and to that extent, it would be difficult to fault MSEDCL for its actions.

25. As regards registration of the Contract Demand by the consumers with MSEDCL, from the material presented before the Commission, it appears that many of the consumers whose billing has been changed from HP based tariff to MD based tariff may not have registered their Contract Demand with MSEDCL, despite MSEDCL's communication through the electricity bills requesting the consumers to register their Contract Demand. In the absence of registered Contract Demand, MSEDCL has equated the Contract Demand to 50% of the Sanctioned Load and billed accordingly.

26. MSEDCL has not submitted any evidence to the effect that the consumers have come forward to register their Contract Demand, and has stated that for those consumers who have not declared their Contract Demand for billing purposes, the demand was considered on the basis of derived demand, in accordance with the Commission's directives in this regard. On the other hand, the Petitioner has submitted that the definition of Contract Demand in the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, requires that the Contract Demand has to be mutually agreed between the Distribution Licensee and the consumer as entered into in the Agreement or through other written communication. The Petitioner has contended that even till date, MSEDCL does not have any written communication from the LT V industrial consumers regarding the Contract Demand that they would like to register. However, this process of registering the Contract Demand cannot be allowed for an indefinite period, and the fact that the consumers have not registered their Contract Demand cannot vitiate the assumption of MSEDCL to equate the Contract Demand to 50% of the sanctioned load, in the absence of registered Contract

Demand, in accordance with the alternative provided in the Commission's Order. Further, in this regard, the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, specifies as under:

"6.8 The Distribution Licensee shall increase or reduce the contract demand/sanctioned load of the consumer upon receipt of an application for the same from the consumer:

Provided that where such increase or reduction in contract demand / sanctioned load entails any works, the Distribution Licensee may recover expenses relating thereto in accordance with the principles specified in Regulation 3.3, based on the rates contained in the schedule of charges approved by the Commission under Regulation 18:..."

27. Hence, in case the affected consumers are of the opinion that the derived demand assumed by MSEDCL is inappropriate, then they always have the option to approach MSEDCL with an application to modify their Contract Demand, which will have to be implemented by MSEDCL in accordance with the Regulations, as reproduced above.

28. As regards installation of appropriate tri-vector meters capable of recording Maximum Demand (MD) before starting to levy MD based tariff and related Power Factor incentive/penalties, etc., for the LT V industrial category, the Petitioner has contended that MD meters were installed in Jalgaon on September 27, 2008, as evidenced by the copies of the Meter Replacement Reports submitted to the Commission during the hearing, though MSEDCL levied MD based tariff from August 2008. On the other hand, MSEDCL has submitted that MD based tariff was implemented after installation of MD meters for all LT industrial consumers with sanctioned load above 20 kW. MSEDCL has also submitted that MSEDCL has a consumer base of 1.5 crore, and all efforts have been made by MSEDCL to ensure 100% proper metering of LT V consumers with care that the same is also confirmed by the concerned field officer, and the billing is started only after due diligence to the extent possible. MSEDCL has added that any lapse on the part of an individual officer as regards MD meter installation cannot reflect on MSEDCL and law will take its own course against such individual lapses. Further, the complete metering cannot be jeopardised on account of such lapses.

29. The Commission is of the view that the overall objective of the Commission while giving this directive as well as practical considerations have to be kept in mind. Levy of MD based demand charges was introduced by the Commission with a view to improve the demand management of the system and to enable MSEDCL to assess the demand in a better manner. The consumers will also benefit as they will pay only for the demand actually imposed on the system. However, it cannot be ignored that the total number of LT V industrial category consumers for whom the desired MD metering was to be done was around 2.5 lakh consumers, and non-installation of MD meters for around 50 to 100 consumers, even if proved, cannot be interpreted to mean that MD metering is not 100% complete and hence, the MD tariff cannot be implemented in the entire State. The Commission cannot ignore the stark realities on ground on one hand, and on the other hand if this interpretation were to be accepted, the same can also be stretched to mean that even if the MD meter is not installed for 1 (one) consumer, then the MD tariff cannot be implemented. Such an interpretation would be absurd, as it was never the intention of the Commission to deal with this issue in such a fastidious manner while giving the direction that MD tariff can be implemented only after 100% MD metering is complete. Further, MSEDCL has implemented the MD tariff only after receiving confirmation from its field offices that the MD metering was complete in their respective areas. Hence, the Commission rules that the levy of MD based tariff on MSEDCL's consumers with effect from August 1, 2008 is in accordance with the Commission's directions in this regard. However, it is clarified that the MD tariff can be implemented for any consumer only after installation of the appropriate tri-vector meter for that consumer, and hence, for all such individual cases where the MD meter was not installed before August 1, 2008, the MSEDCL will refund the amount collected through MD charges for the period from August 2008 till such time as the MD meters were installed for that respective consumer, and charge these consumers on the basis of the earlier approved HP based tariff. The refund should be given to the respective consumers along with the first monthly bill after issue of this Order.

30. As regards the levy of Power Factor incentive/penalties, the Clarificatory Order dated September 12, 2008 in Case No.44 of 2008 provides as under:

*“The Commission clarifies that the power factor penalty and incentive shall be applicable to **only those consumers who have MD based tariff and are provided with meters to measure their power factor.**”*

31. Similarly, the penalty for exceeding Contract Demand can be levied only after the MD meters are installed. Hence, the Commission rules that in all such cases, where penalty for exceeding Contract Demand and power factor penalty/incentive have been levied despite MD meters not having been installed, MSEDCL will cause refund of such billed amounts, if not already done, for the period till the MD meters were installed.

In view of the above findings and ruling, the Commission feels that penal action against MSEDCL and its officers is not warranted. Also, the refund is specific to only those consumers where the MD based tariff and demand penalty/power factor penalty, etc., have been imposed before installation of the MD meters, and the Commission does not rule in favour of any general and blanket refund. Therefore, there is no need to separately stipulate any methodology or time-frame for the same.

Accordingly, the Petition filed by MRVGS in Case No.26 of 2009 stands disposed of. No order as to costs.

(S. B. Kulkarni)
Member

(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC