

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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Case No. 80 of 2006

In the matter of

Petition filed by M/s. Torrent Power Limited seeking exemption from imposition of additional load shedding on Bhiwandi circle and reclassification of the said circle under the load shedding protocol of MSEDCL.

Dr. Pramod Deo, Chairman

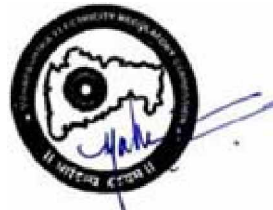
Shri. A. Velayutham, Member

Shri. S. B. Kulkarni, Member

ORDER

Dated: May 14, 2007

M/s. Torrent Power Limited, (“the Petitioners”) filed a Petition on February 12, 2007 seeking exemption from imposition of additional load shedding as suggested by the Maharashtra State Distribution Company Limited (“MSEDCL”) under its Petition filed before the Commission on February 9, 2007 for increasing the hours of load shedding in the State of Maharashtra. The Petitioners have also sought reclassification of Bhiwandi Distribution circle under the load shedding protocol of MSEDCL. The Petitioners state that the subject matter relates to Sections 23, 42(1), 43 and other relevant provisions of the Electricity Act, 2003 (“EA 2003”) and Regulations notified by the Commission thereunder. The Petitioners state that they are a distribution franchisee of MSEDCL within the meaning of Section 2(27) read with the seventh proviso to Section 14 of the EA, 2003 to undertake distribution of electricity in Bhiwandi, on behalf of MSEDCL. The Petitioners have submitted that such an arrangement has been entered into pursuant to execution of a Distribution Franchisee Agreement dated December 20, 2006 between MSEDCL and the Petitioners. The Petitioners started functioning as a distribution franchisee with effect from January 26, 2007. The Petitioners have essentially prayed that the Bhiwandi area should be exempted from the operation of the Order dated February 20, 2007 passed in Case No. 78 of 2006 as the Petition filed by MSEDCL on February 9, 2007 (as referred to by the Petitioners in its Petition) has culminated into the aforesaid Order. This is because apart from six hours of mandatory load shedding, two hours of distress load shedding and the additional weekly staggering day on every Tuesday, consumers at Bhiwandi are being subjected to under frequency based load shedding, power cuts on account of frequent trippings of 100kV / 22kV lines, and disruption of



supply due to high transformer failure. The Petitioners contend that if the current situation continues, it will severely hamper the successful implementation of the franchisee model besides leading to severe consumer hardship and unrest in Bhiwandi. The Petitioners have contended that the Bhiwandi area should be declassified from “Other region – Group D” and reclassified as “Urban & Industrial Conglomeration – Group B”. The Petitioners have furnished a two-fold justification for the same. Firstly, as the Petitioners have contended that, (i) the Bhiwandi circle includes the Bhiwandi Nizampura Municipal Corporation and has a population of about 10 lakhs as per the Census for the year 2001; (ii) Bhiwandi is a major textile hub wherein one-third of India’s powerloom factories are located; (iii) 87% of the power consumption in Bhiwandi is undertaken by HT and LT industrial consumers; (iv) Bhiwandi is an indistinguishable part of Greater Mumbai; (v) areas like Gandhibaug, Kalwa, Mulund, Nerul, Parvati, etc., whose geographical area and contribution to industrial growth is lesser than that of Bhiwandi, have been categorised as under “Urban & Industrial Conglomeration”; (vi) the rate of ASC charged on industrial consumers of Bhiwandi is similar to the rate charged on industrial consumers located in the areas categorised under “Urban & Industrial Conglomeration”. Secondly, the weighted average of LT T&D losses in the Bhiwandi area is presently below 50%. The Petitioners have further prayed that consumers located at Bhiwandi should be exempted from distress load shedding and additional weekly staggering day on every Tuesday. Further, under frequency based load shedding on feeders supplying power to Bhiwandi should be as per the level provided to feeders supplying power in other parts of Maharashtra. In support of their prayers, the Petitioners have submitted that it would be justified to seek reduction in the load shedding on the basis of improvement of distribution loss and collection efficiency that has been achieved by the Petitioners as franchisee.

2. MSEDCL filed an affidavit-in-reply on April 16, 2007 on the aspect of maintainability of the present Petition. Vide the said affidavit, MSEDCL have contended that the Petitioners have sought modification of various orders passed by the Commission on the issue of load shedding. The principles and protocol of load shedding applicable on the consumers of MSEDCL have been determined over a considerable period of time providing the general public and stakeholders adequate opportunity of being heard. MSEDCL have entered into a Distribution Franchisee Agreement with the Petitioners on December 20, 2006. The Petitioners are merely an agent of MSEDCL and the Petitioners have limited authority to carry on all works and acts relating to distribution of electricity within the Bhiwandi area, on behalf of MSEDCL. The Petitioners have failed to be bound within the parameters of their contractual obligation in not maintaining required communication with MSEDCL. The Petitioners should be bound by the planned load shedding hours formulated by MSEDCL pursuant to the directions of the Commission. The Petitioners have refrained to give prior information to MSEDCL with regard to the filing of the present petition, which is in violation of their contractual obligation. As such, the Petitioners have no *locus standi* in filing the present Petition.

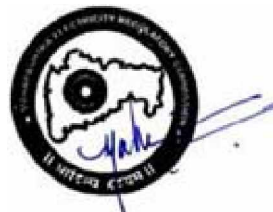


3. At the hearing in the matter held on April 17, 2007, Shri. Murli Ranganathan, Director was present on behalf of the Petitioners. Smt. Deepa Chawan, Counsel, was present on behalf of MSEDCL. Smt. Deepa Chawan submitted that a distribution franchisee in terms of Section 2(27) the EA 2003, is like an agent of the distribution licensee and is required under law to resolve disputes within the contractual framework provided in the distribution franchisee agreement. Shri. Murli Ranganathan submitted on behalf of the Petitioners that the Petitioners had approached MSEDCL thrice, via written communications, to resolve the disputes being raised in the present Petition, through amicable settlement. However, the said attempts were of no avail. Smt. Chawan further submitted that in so far as the prayers for reclassification of the Bhiwandi distribution circle is concerned, the Petitioners, who are a distribution franchisee, have no locus standi to initiate proceedings that concern the distribution business of the distribution licensee. The scope of performance of a distribution franchisee is required to be solely measured in terms of contractual obligations. Counsel further submitted that the Hon'ble Supreme Court's order dated May 13, 2005 in Special Leave to Appeal (Civil) No.(s) 11437-11438 / 2005 [Maharashtra State Electricity Board & Ors. Vs. Anil & Ors.], provides that *"the further direction that there should be no discrimination amongst consumers irrespective of geographical allocation is modified for the time being and the matter is left to be determined by the petitioner in consultation with the Regulatory Commission"*. Thus, the responsibility to approach the Commission for any modification of load shedding protocol, or matters connected therewith, lie on MSEDCL and not on the Petitioners, which is a distribution franchisee. Moreover, the Petitioners as a distribution franchisee are precluded from disputing the instructions of MSEDCL with regard to various issues arising from the agreement entered into between MSEDCL and the Petitioners. Counsel also contended that undertaking distribution of electricity on behalf of MSEDCL does not entitle the Petitioners to claim that the contracted specified area is its own area so as to initiate the present proceedings to seek exemption from load shedding and reclassification. The Petitioners, as a distribution franchisee of MSEDCL, are strictly bound to adhere to the planned load shedding schedule of MSEDCL as approved by the Commission.

4. The Commission has passed an Order dated February 20, 2007 in Case No. 78 of 2006 in the matter of MSEDCL's proposal to increase the hours of planned Load Shedding across the State as a temporary emergency measure. At paragraph 11 of the said Order it is provided as under:

"11.

(xviii) As regards the region specific claims like Bhiwandi and other regions which sought a reduction in the load shedding on the basis of improvement of distribution loss and collection efficiency, MSEDCL is directed to consider the same, and if there is any improvement or deterioration in performance of any region in a quarter, then the same should be given effect in the load shedding protocol over the next quarter. MSEDCL should undertake this performance monitoring on a quarterly basis and give effect to the same accordingly."



Having considered the material placed on record and the submissions advanced by the parties, the Commission is of the view that it is between MSEDCL on one hand and the Petitioners on the other, to decide whether the claim for reduction in the load shedding on the basis of improvement of distribution loss and collection efficiency consequent to declassification of the franchisee area and other factors, should be allowed, based on performance monitoring as directed in the aforesaid Order dated February 20, 2007. The Commission is of the view that the present matter reflects an intra-party concern, which should be resolved in accordance with the provisions of the distribution franchisee agreement, as aforesaid. Relaxation in load shedding protocol and/or reclassification of geographical area category cannot be granted at the instance of a franchisee seeking such relaxation or reclassification as under the seventh proviso to Section 14 of EA 2003 a franchisee distributes electricity in a specified area on behalf of a distribution licensee who in turn is responsible for distribution of electricity in that area of supply. In fact, a franchisee would have no *locus standi* to initiate proceedings before the Commission on such matters, as aforesaid. The provisions of EA, 2003 as sought to be relied upon by the Petitioners, viz., Sections 23, 42(1), 43 of EA 2003, operate in a different manner and are of no gain in the present matter.

With the aforesaid observations, the Commission rejects the Petition filed by M/s. Torrent Power Limited, as not maintainable. However, there shall be a direction to MSEDCL in terms of the above-quoted paragraph 11 of the Order dated February 20, 2007 in Case No. 78 of 2006.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman



(Smt. Malini Shankar)
Secretary, MERC