

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 26 of 2010

In the matter of
Clarification of Order dated May 24, 2010 in Case No. 89 of 2009 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. Vijay L. Sonavane, Member

CLARIFICATORY ORDER

Dated: November 15, 2010

The Maharashtra Electricity Regulatory Commission (hereinafter referred to as Commission), issued an Order dated May 24, 2010 in Case No. 89 of 2009 determining the additional cost as Reliability Charge for withdrawal of Load Shedding in the Thane II Urban Region including Kalwa sub-division. The Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) filed a Clarificatory Petition on June 15, 2010, seeking clarification on implementation of the above said Order.

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

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- a. *To clarify the correct position in the matter of levy of Reliability Charge to all the beneficiary consumers situated in Thane Revenue Division including Kalwa Sub Division with effect from 1st July 2010;*



b. *To permit MSEDCL to levy & recover, as an interim arrangement till such time appropriate clarification is issued by the Hon'ble Commission, Reliability Charge at the rate of 41 paise per unit from all the beneficiary consumers situated in Thane Revenue Division including Kalwa Sub Division with effect from 1st July 2010”*

3. MSEDCL in its Petition submitted as under:

- a. The Commission issued an Order dated November 30, 2009 in Case No. 31 of 2009 in the matter of determination of Additional Supply Charge/Reliability Charge for withdrawal of Load Shedding in the Headquarters of Revenue Divisions in MSEDCL License area viz., Amravati, Nagpur, Aurangabad, Thane, Pune and Vashi except Nasik. The Commission in its Order dated November 30, 2009 approved the Reliability Charge of 28 paise/unit for Revenue Division of Thane.
- b. MSEDCL re-categorised the jurisdiction in the Thane Revenue Division that resulted in addition of Kalwa sub-division effective from September 2009, and hence could not be included in the Petition of Case No. 31 of 2009. Therefore, MSEDCL submitted a Petition in Case No. 89 of 2009 requesting for inclusion of Kalwa sub-division under the Thane Revenue Division for the purpose of Zero Load Shedding (ZLS).
- c. The Commission admitted the Petition and after conducting a Public Hearing issued an Order dated May 24, 2010. In the said Petition, MSEDCL projected an increase of 13 paise/kWh in the Reliability Charge payable by the consumers in the Thane Region, on account of the inclusion of Kalwa sub-division.
- d. However, in the Order, the Commission observed that MSEDCL has computed the Reliability Charge of 41 paise/kWh after inclusion of Kalwa sub-division by considering Scenario IV of Principle and Protocol of Load Shedding (PPLS), and compared the same with the Reliability Charge of 28 paise/kWh approved by the Commission in the Order dated November 30, 2009 in Case No. 31 of 2009 considering Scenario II of PPLS.



- e. Further, the Commission observed that MSEDCL has not considered Scenario II and power purchase rate as in Case No.31 of 2009, while assessment of impact of levy of Reliability Charge after inclusion of Kalwa sub-division in Thane Urban Region.
- f. Thereby, the Commission concluded that for Scenario IV of PPLS, the Reliability Charge for Thane Revenue Division excluding Kalwa sub-division works out to 38 paise/kWh whereas the Reliability Charge for Thane Revenue Division including Kalwa sub-division works out to 41 paise/kWh.
- g. The Commission in the Order dated May 24, 2010 in Case No. 89 of 2009 concluded that 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 13 paise/kWh in respect of consumers in Thane Revenue Division including the Kalwa sub-division.
- h. The Commission in the above mentioned Order has already verified that the Reliability Charge as applicable to the beneficiary consumers situated in Thane Revenue Division without Kalwa sub-division as per PPLS Scenario IV works out to 38 paise/kWh and further permitted to recover the additional Reliability Charge of 3 paise/kWh from the beneficiary consumers including Kalwa sub-division.
- i. Accordingly, MSEDCL has decided that with effect from July 1, 2010, the said Order in Case No. 89 of 2009 shall be implemented including the Kalwa sub-division and all the beneficiary consumers situated in the Thane Revenue Division (including Kalwa sub-division) shall be charged the Reliability Charge at the rate of 41 paise/kWh to ensure that the said Reliability Charge commensurate with the PPLS Scenario IV.
- j. In the above elucidated paragraphs, MSEDCL requested the Commission to clarify the correct position in the matter of levy of Reliability Charge to all the beneficiary consumers situated in Thane Revenue Division including Kalwa sub-division with effect from July 1, 2010.
- k. However, MSEDCL decided to levy Reliability Charge of 41 paise/kWh to all the beneficiary consumers situated in Thane Revenue Division including Kalwa sub-division from July 1, 2010.



4. MSEDCL further submitted a miscellaneous application in the same matter on June 29, 2010 reiterating the same views as mentioned in its earlier submission, which are as under:

- a. The levy of 41 paise/kWh Reliability Charge would mean a hike of 13 paise/kWh without any confirmation from the Commission would become a public concern issue and a public outcry may arise due to the increase in the Reliability Charge.
- b. Therefore, MSEDCL approached the Commission with a request of postpone the implementation of Case No. 89 of 2009 in the matter of including Kalwa sub-division in the Thane II Urban region for ZLS.
- c. The MSEDCL requested for the following:
 - i. Permit MSEDCL to defer the implementation of ZLS in Kalwa sub-division till an appropriate clarification is given by the Commission in Case No. 89 of 2009.
 - ii. Consider the proposal for favourable dispensation

5. The Commission vide its Notice dated July 20, 2010 scheduled a hearing in the matter on August 4, 2010 at 11.00 hrs in the presence of four Consumer Representatives authorised under Section 94(3) of the Electricity Act, 2003 (herein after referred to as EA 2003). The Petitioner was directed to serve a copy of the Petition including the miscellaneous submissions to the authorised Consumer Representatives.

6. During the hearing, Shri S.V Bapat, Supdt Engineer (TRC) was present on behalf of the Petitioner/MSEDCL. The Commission enquired about the rate at which MSEDCL had purchased additional power for implementation of ZLS at various Divisional Headquarters. Shri. Bapat replied that at present the data is not available with him. The Commission directed MSEDCL to submit the Division-wise data for implementation of ZLS on affidavit including the rate at which MSEDCL had purchased additional power for the period from December 1, 2009 to July 31, 2010 latest by August 5, 2010. The Commission further fixed the matter for next hearing on August 6, 2010.

7. Shri. N. Ponrathnam, as Intervener submitted an application on July 29, 2010 stating that the Appellate Tribunal for Electricity (ATE) has in the Judgment dated December 14, 2009 in Case No. 135 of 2009 ruled that MSEDCL should not levy the Reliability Charge on



the consumers and should refund the same. MSEDCL has filed a Civil Appeal 8413 of 2010 before the Hon'ble Supreme Court, wherein Supreme Court has put a stay on the ATE's Judgment.

8. The Commission vide its Notice dated August 4, 2010 scheduled a hearing in the matter on August 6, 2010 at 11.00 hrs in the presence of the authorised Consumer Representatives and the intervener.

9. During hearing the Consumer Representatives and Respondent MSEDCL were present. A consumer representative submitted that rate and quantum of power purchased by MSEDCL has not been furnished to the Commission.

10. The Commission issued a Notice dated August 9, 2010 stating the next scheduled date of the hearing in the matter on August 16, 2010 at 11.00 hrs.

11. Meanwhile, submissions from various associations were received in the above matter. The summary of the submissions are as follows:

- a. Shri. N. Ponrathnam, intervenor, submitted that levying of additional Surcharge/Reliability Charges for the expensive power purchase cost in the bill is illegal and a violation of Section 64 of EA 2003. Further, he submitted that the long term and short term power purchase arrangement with fuel cost variation formula as required by MERC (Terms and Conditions of Tariff) Regulations, 2005 is not done by MSEDCL. Shri. Ponrathnam requested the Commission to take a firm confirmation from MSEDCL in the matter of eliminating Load Shedding.
- b. Shri. S.L. Patil from Thane Belapur Industries Association requested the Commission to direct MSEDCL to submit the following data :
 - i. The current status of generation of electricity particularly by the new ones which have become operative and actual generation available for the Distribution.
 - ii. Power purchase made for Zero Load Shedding (ZLS) areas and its quantum and rates since, July 1, 2010.



iii. The current status of Demand-Supply gap since July 1, 2010.

12. On August 16, 2010, no specific comments were received by any representative in the Case No. 26 of 2010. Hence, the Commission vide its Notice dated August 20, 2010 scheduled a hearing of Case No. 26 of 2010 on September 13, 2010 at 12.00 hrs, which was later postponed to October 11, 2010 at 12.00 hrs.

13. MSEDCL vide its letter dated October 7, 2010 received by the Commission on Friday, October 8, 2010 informed the Commission that due to some serious administrative difficulties and unavoidable circumstances, neither of the concerned officers of MSEDCL would be able to remain present before the Commission. MSEDCL requested the Commission to postpone the hearing. The Commission did not accept MSEDCL's request and the hearing was conducted on the schedule date. Shri. Ashok Pendse authorised Consumer Representative and Shri. N. Ponrathnam, Intervener were present for the hearing. The officials of MSEDCL were not present for the hearing. During the hearing, as directed by the Commission the following information was required to be obtained from MSEDCL.

- i) The Reliability Charge levied in each of the Divisional Head Quarters with reference to the Commission's Order dated November 30, 2009 in Case No. 31 of 2009.
- ii) Clarification for non-compliance of the Commission's Order dated May 24, 2010 in Case No. 89 of 2009.
- iii) Details pertaining to the source of procurement, Quantum and the cost of the additional power purchased for implementing Zero Load Shedding in the Divisional Head Quarters for last six months.

Accordingly, the Commission vide its letter dated October 14, 2010 directed MSEDCL to furnish the above mentioned information by October 19, 2010.

The Commission fixed the hearing in the Case at 15.30 hrs on Thursday, 21st October, 2010.

14. Shri. N. Ponrathnam, Intervener vide his letter dated October 10, 2010 informed that he could not attend the hearing and enclosed a copy of the intervention application filed by him before the Hon'ble Supreme Court in the Civil Appeal No. 8413 of 2009 in the matter of appeal against Orders of statutory bodies – Tribunals. Shri. Ponrathnam's submissions are as follows:



- i) The consumers of Maharashtra are deprived of continuous quality power supply and therefore concept of Reliability Charge came in to effect, which is not supported by Section 62(3) of EA 2003. Consumers including him have objected the levy of Reliability Charge in the Public Hearings conducted for the relevant Cases. Therefore, the Commission will have to review its previous Orders of ZLS/ levy of Reliability Charge.
- ii) Protocol of Load shedding is one of methods of giving frequently interrupted power supply with the permission of the Commission wherein MSEDCL will escape penalty for failure to provide uninterrupted power supply as per the provision of EA 2003.
- iii) There are no provisions in the MERC Regulations for levy of Reliability Charge in the bills of the consumers. The concept of Reliability Charge enriches the power traders and permits the Distribution Licensees to purchase power at high cost to the prejudice of the consumer.
- iv) Shri. Ponrathnam prayed for an interim relief that the extension of levy of Reliability Charge shall be stayed till the final disposal of the Civil Appeal before the Supreme Court.

15. MSEDCL vide its letter dated October 15, 2010 furnished the required information related to the month wise Power Purchase made for implementing ZLS Schemes in MSEDCL area at Pune, Thane, Vashi, Amravati, Nagpur and Aurangabad regions.

16. During the hearing conducted on October 21, 2010, Shri. A. L. Wani, EE (Commercial), MSEDCL stated that they had provided the month wise data on power purchase made for implementing ZLS to the Commission. Shri. Wani stated that the levy of Reliability Charge is done as per the Commission's Order in Case No. 31 of 2009.

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

MSEDCL data vide letter ref. no. 9358, received on March 31, 2010 in Case No. 89 of 2009 is reproduced as under:

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

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The Commission approved the Reliability Charge of 28 paise/kWh based on Scenario II of PPLS in Case No. 31 of 2009 for the Thane Division. In this Order, Kalwa was not included in the Thane Division. Later on, MSEDCL filed another Petition requesting to include Kalwa sub-division in the Thane Division in Case No. 89 of 2009. MSEDCL computed the Reliability Charge of 41 paise/kWh after inclusion of Kalwa sub-division by considering Scenario IV of PPLS, and compared the same with the prevailing Reliability Charge of 28 paise/kWh considering Scenario II of PPLS and hence the difference worked out to 13 paise/kWh.

18. However, the Commission in its Order dated May 24, 2010 in Case No. 89 of 2009 has verified the computation of Reliability Charge and made it clear that for Scenario IV of PPLS, the Reliability Charge for Thane Revenue Division excluding Kalwa sub-division works out to 38 paise/kWh whereas the Reliability Charge for Thane Revenue Division including Kalwa sub-division works out to 41 paise/kWh. The Commission in its Order dated November 30, 2009 in Case No. 31 of 2009 has calculated the levy of Reliability Charge as per the Scenario II of PPLS in which the Reliability Charge excluding the Kalwa sub-division from Thane region is 28 paise/kWh. The same will increase to 31 paise/kWh after inclusion of Kalwa sub-division by considering PPLS of Scenario II. Thus, the impact of Reliability Charge on all consumers of Thane Revenue Division on account of inclusion of Kalwa sub-division works out to only 3 paise/kWh.

19. The Commission observes that MSEDCL is comparing Scenario II of PPLS for the Reliability Charge of Thane Region excluding Kalwa sub-division with the Reliability Charge of Scenario IV of PPLS for Thane region including Kalwa Sub-division. The



Commission is of the view that the method of comparing two elements by applying diverse considerations is incorrect.

Further, the Commission directs MSEDCL to comply with the directions that ZLS be implemented with immediate effect in the Thane Revenue Division including Kalwa sub-division with the levy of Reliability Charge of 31 paise/kWh.

With the above clarifications, the present Petition in Case No. 26 of 2010 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman



(K.N. Khawarey)
Secretary, MERC