

Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 75 of 2007

In the matter of

**Petition filed by M/s Mahratta Chamber of Commerce, Industries and Agriculture
with regard to supply on single point to commercial building/industrial
complexes for mixed load**

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

ORDER

Dated: June 01, 2010

M/s. Mahratta Chamber of Commerce, Industries and Agriculture (MCCIA) submitted a Petition under affidavit before the Commission on November 28, 2007 seeking clarification from the Commission's Order dated October 3, 2006 in Case Nos. 25 of 2005 and 53 of 2005 in the matter of ARR Petition of M/s Reliance Energy Ltd. for FY 2005-06 and ARR & Tariff for FY 2006-07, regarding Single Point Supply to Commercial Building/Industrial complexes for mixed load.

2. MCCIA, under its Petition, prayed as under:

- “A. i) *Whether a common transformer for all or a separate transformer for each HT consumer within same premises need to be provided,*
- ii) *Whether each transmission OA consumer need a separate line running up to Transmission System or a common line for a group of Transmission OA consumers in the same premises can be planned,*
- iii) *Can NON – OA consumers / persons get their supply through / on OA transmission connection planned by the owner of the premises for his requirement in following cases,*

- a) *Distribution Licensee has not laid distribution back-bone,*
- b) *Unable to supply required power,*
- c) *Unable to supply required power in allowed time under the Act,*

iv) In case Standby DG sets for ensuring un-interrupted power is planned by the owner of the above premises for all the tenants / leave – licensees whether the complex in its capacity as generator can have single point supply.

B. *To allow open access to all consumers in Commercial Building / Industrial Complexes with mixed load on single point supply if required, in case Licensee does not permit Franchisee route. Alternately and otherwise owner / manager of the premises i.e. commercial building / industrial complex having mixed load be treated as limited trader for supply to members on his premises.”*

3. MCCIA, under its Petition, submitted as under:

- a) The Commission, under its various Orders determining the Annual Revenue Requirement (ARR) for FY 2005-06 and Tariff for FY 2006-07 for the distribution licensees in the State, directed that *“any HT Industrial and Commercial category consumers, undertaking sub-distribution to mixed loads, shall continue to be under the same category for a transition period of six months from the date of such Orders keeping in view the metering constraints and identification of consumers. Thereafter, the consumers belonging to this category requiring a single point supply will have to either operate through a franchise route or take individual connections under relevant category.”*
- b) The aforesaid transition period of six months as allowed by the Commission having gone by, the distribution licensees in the State have not enabled the HT Industrial and Commercial category consumers to either operate through a franchise route or take individual connections under relevant category.

4. MCCIA, under its Petition, sought clarifications on several implementation issues that would perhaps further the objective of the aforesaid directions. The Commission, vide its Notice dated December 5, 2007, scheduled a hearing in the matter on December 20, 2007. MCCIA was directed to serve a copy of their Petition, along with its accompaniments to all the Distribution Licensees, Managing Director, MSETCL and the four authorized Consumer Representatives.

5. At the hearing held in the matter on December 20, 2007, Shri. Abhay Nevagi, Advocate for MCCIA, submitted that clarification may be issued by the Commission as to whether in case of HT consumers located in one commercial building supply should be through separate transformers or through one common transformer. The Commission observed that MCCIA should have taken up these issues with the concerned distribution licensee. Further, it was observed that if there was a requirement for any modification to be made to the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (“Supply Code Regulations”), then the Commission should be apprised of the same. It should be clarified as to whether any industrial consumer or any distribution licensee is facing any difficulty in the implementation of the Supply Code Regulations in light of the issues raised.

6. Shri. Jayant Deo, MCCIA, submitted that after the passing of the Order dated October 3, 2006 in Case Nos. 25 and 53 of 2005, distribution licensees have not been adopting a uniform system to supply to HT consumers in a commercial building. It was submitted that BEST and TPC have adopted a mechanism to provide supply to such consumers through single point. REL, in the alternative, has maintained a stand that supply in case of such HT consumers may be possible through single point only under the limited distribution franchisee model. So far as MSEDCL is concerned, the system that is adopted in this regard is not consistent, and is varying circle-wise. Representing the case of IT companies, which are desirous of commencing/expanding their businesses in the area of supply of REL and seeking HT industrial tariff, Shri. Deo submitted that there is no clarity on how single point supply may be provided. It was submitted that though the Supply Code Regulations require distribution licensees to issue Conditions of Supply, REL has not made its Conditions of Supply available for public view on its website.

7. On an enquiry made by the Commission, Shri. Jayant Deo submitted that the existing Conditions of Supply of distribution licensees are silent on the issue of whether supply to HT consumers located in a commercial building shall be through separate transformers or on a single point. On further enquiry made by the Commission, Shri. R.G. Sonawane, S.E., MSEDCL, submitted that in cases where supply is being provided to two HT consumers through one transformer, MSEDCL has required the execution of a tri-partite agreement.

8. The Commission observed that the provision of separate transformer for each HT industrial consumer located in one commercial building may not be technically feasible. Inadequacy of space is the main difficulty in this regard. It was observed that however, separate metering is essential for issues connected with the application of tariff.

9. Shri. A.G. Patil, BEST, submitted that at present, in the BEST area of supply, HT consumers are allowed to avail supply through separate transformer. Considering a situation where various consumers (HT and LT) are located in a commercial building, there is no need for supply through separate transformers. BEST is in the process of finalizing draft franchisee agreement to be executed by the owner of the building (as the franchisee for the individual consumers) and BEST. It was submitted that at the present juncture, a proper system has not been put in place on whether such HT consumers shall be supplied through individual transformer or through a common transformer.

10. Responding to the submissions of Shri. A.G. Patil, Shri. Jayant Deo submitted that a proper system must be promptly put in place. The number of IT companies whom MCCIA is representing desire to commence their operations very soon. It was submitted that the technical design that is required to be prepared by the distribution licensee shall have bearing on the building plans, so far as supply to HT consumers in new buildings are concerned. Shri. Jayant Deo further submitted that as per CEA Regulations, meters should be installed conspicuously for consumers to control consumption. The Commission observed that licensees would be in a position to install meters at a conspicuous location in the consumer's premises in the case of new establishments. In the case of old buildings, the distribution licensees should take appropriate steps to reinstall meters.

11. Shri. Kapil Sharma, REL, submitted that as meter is to be provided on HT side of transformer, it cannot be shared by the consumers. MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (SoP Regulations) mandate HT supply above certain load limits and as per definition of point of supply in Supply Code. As point of supply is at HT side, meter is to be provided on HT side. Therefore, it necessitates separate transformer for individual HT consumer. Shri. Jayant Deo submitted that as per the definition of point of supply, metering at LV side for HT consumers is permitted as per the definition of point of supply. REL submitted that in this case, separate switchgear is required to be installed by each consumer, but this does not overcome difficulty of space constraint. Shri. Pandya, REL, submitted that a consumer can opt for LT supply in this case. Shri. Jayant Deo submitted that for such cases LT Tariff would be applicable, which is costlier as compared to HT Tariff.

12. The Commission observed that considering the necessity of supplying HT consumers on single point (Common HT transformer) to ensure the applicability of HT tariff, the existing Regulations may need to be accordingly modified if so required. Various issues need to be considered as a whole. The availability of space is of paramount concern. The Commission directed all distribution licensees to form a Working Group constituted by one representative per distribution licensee, and each member licensee to submit within one month, suggestions in writing on how HT consumers in a commercial building can be supplied through a common transformer without disturbing the requirements necessary in the applicability of HT tariff, vis-à-vis meeting stipulated performance standards on voltage level and contract demand. The Working Group was directed to collate all the suggestions and submit a draft to the Commission for approval, which would be done after inviting public opinion.

13. Shri. Abhay Nevagi sought an order of status quo in view of a case as reported in the Times of India (Pune Edition) and *the Sakal* on December 20, 2007 (copies filed and served upon MSEDCL). It was submitted that in the said case, the owner of a building, being an HT industrial consumer, has been accused of illegally supplying and arbitrarily billing 16 tenants, without the installation of separate meters. The Commission directed MCCIA to file appropriate proceedings seeking reliefs in the said matter, and directed MSEDCL to submit in writing within two days, as to whether MSEDCL has sought for any clarification before the Commission on the said case and what steps it has taken to prevent such illegalities. Shri. Abhay Nevagi undertook to institute separate proceedings in this regard.

14. Shri. Deo submitted that prayers under relief clause A (ii), (iii) and (iv) should also be granted by the Commission. The Commission observed that Regulations on open access are already in place and operational issues in the implementation of the said Regulations may be addressed before concerned licensees.

15. In the meanwhile, MCCIA filed an application before the Commission on March 19, 2008 seeking urgent reliefs stating therein that, though the present proceedings were pending before the Commission, MSEDCL has gone ahead and issued a provisional order of assessment and bill dated December 31, 2007 for an amount of Rs. 1,30,07,016/- under Section 126 of the Electricity Act, 2003 (EA 2003) on one of its members called M/s. Nalage Subhash Tippana / Sai Erectors of Sai Capital, 11th Floor, S.B. Road, Pune 411016. The basis of issuing the said provisional assessment bill dated December 31, 2007 was that the concerned consumer without informing MSEDCL had installed sub-meters to give

supply to different individuals and for recovering charges, and therefore, the concerned consumer was indulging in unauthorised use of electricity. The Superintending Engineer, MSEDCL (Ganeshkhind Urban Circle, Pune), the Assessing Officer, has passed his final order of assessment under Section 126(3) of EA 2003 by Order dated February 28, 2008.

16. The said application filed by MCCIA on March 19, 2008 was heard on March 26, 2008. During the hearing, essentially the following issues were raised by MSEDCL, viz., (i) since M/s. Nalage Subhash Tippana / Sai Erectors had not filed the present application, the Petitioners herein would not have the locus standi to press for the reliefs claimed on behalf of M/s. Nalage Subhash Tippana / Sai Erectors; (ii) M/s. Nalage Subhash Tippana / Sai Erectors has an alternate forum to seek redressal of its grievance, if any; and that (iii) MSEDCL were entitled under Section 126 of EA 2003 to provisionally assess the unauthorised use of electricity and raise the bill accordingly. MSEDCL contended that the Petitioners herein are being used by the errant consumer by inclusion of prayers (f) to (k) of the application filed while in prayers (a) to (e) 'policy' issues that were raised in the original Petition, have been retained. MCCIA submitted that there are various such similarly placed HT Industrial and Commercial category consumers who have installed sub-meters to give supply to different individuals and are recovering charges, who need to be brought under the regulatory ambit of the aforesaid direction contained in various of Commission's Orders determining the ARR for FY 2005-06 and Tariff for FY 2006-07 for the distribution licensees. This responsibility lies with the distribution licensees (MSEDCL in this case). Therefore, it would not be proper to single out one of such consumers who had installed sub-meters to give supply to different individuals, while at the same time neglecting such other consumers who continue to indulge in such practices, essentially due to inaction by the distribution licensees.

17. MSEDCL admitted that there are various such similarly placed HT Industrial and Commercial category consumers who have installed sub-meters to give supply to different individuals, who need to be brought under the regulatory ambit of the aforesaid direction of the Commission. However, no action has yet been taken under Section 126 of EA 2003 or any other appropriate legal provision, as has been done in the case of M/s. Nalage Subhash Tippana/ Sai Erectors.

18. The Commission, vide its Interim Order dated March 26, 2008, restrained all distribution licensees from disconnecting power supply in such cases, until further orders.

19. Subsequently, S.E., Ganeshkhind Urban Circle, MSEDCL filed an affidavit on June 16, 2008 stating therein that the connection sought to be drawn by MCCIA between the order dated February 28, 2008 passed under Section 126 of EA 2003 and the Record of Proceedings of the hearing held in the matter (Case No. 75 of 2007) on December 20, 2007 are misconceived as both the matters are separate, independent and totally unconnected with each other. MCCIA, under these proceedings, is challenging the order dated February 28, 2008 passed by the Assessing Officer under Section 126 of EA 2003, and the Commission has no jurisdiction to look into the matter as the same is not connected with Case No. 75 of 2007 as alleged. The Commission may take up the issue as preliminary issue and a decision thereon may first be given before proceeding with the case on merits, and hence, the proceedings as filed deserve to be rejected.

20. In the meanwhile, a Working Group headed by BEST and comprising representatives nominated by BEST, REL, TPC and MSEDCL submitted the draft report/suggestions of the Working Group to the Commission vide its letter dated March 28, 2008.

21. The Commission, vide its Public Notice dated June 19, 2008, invited comments/suggestions from all the stakeholders/Consumer Representatives and public on the aforementioned draft report submitted by the Working Group to enable the Commission to take appropriate decision and issue orders in the matter.

22. MSEDCL, vide its letter dated July 22, 2008, referred to the aforesaid draft report submitted to the Commission by BEST, and brought to the notice of the Commission that BEST had not taken cognizance of suggestions made by MSEDCL through its letter dated March 1, 2008 addressed to BEST.

23. On or about July 18, 2008, Shri Jude G. Tandon, Shri N. Ponrathnam, and Shri Rakshpal Abrol representing consumer interest in general, and MCCIA submitted their comments/suggestions on the said draft report.

24. Subsequently in the month of March 2010, the Commission received certain intervention applications from M/s K. Raheja Corp Pvt.Ltd., Shopping Centres Association of India, and Shri N.Ponrathnam providing their comments in the present case. As the present matter concerns issues of public importance, the Commission has allowed the intervention applications.

25. The Commission held a hearing on March 12, 2010. Considering the submissions made in the hearing, the Commission directed MSEDCL to submit its views and comments in writing. No such submission has yet been received.

26. At the hearing held in the matter on March 12, 2010, Shri. Abhay Nevagi, Advocate appearing for MCCIA submitted that MSEDCL has not yet formulated the Franchisee Agreement for providing power supply to commercial building through franchisee route, in the absence of which the Commission's directives of providing power supply to mixed load in a commercial building at single point through franchisee route cannot be implemented. He further stated that providing individual connections to each consumer in a commercial building is an impracticable solution.

27. Shri. N. Ponrathnam submitted that the recommendations made by the Working Group are beneficial only for distribution licensees.

28. Shri. Ankit Virmani, Advocate for Raheja Corporation and Shopping Centers Association submitted that User Association of a building / shopping center should be supplied at single point whereas internal distribution of electricity will be made by User Association. Since, individual consumers of commercial building / shopping mall may not be eligible for availing Open Access as individual demand may be less than 1 MW, Shri. Virmani requested that User Association should be treated as applicant for Open Access as the cumulative demand of all users may exceed 1 MW.

29. Having heard all concerned and after considering the materials placed on record, the Commission noted that various complexes and multi storey buildings are coming up with number of consumers and common facilities within a complex or a building. In such cases, it may be difficult and/or impracticable for Distribution Licensee to give supply to every consumer individually, especially if they are required to be connected at HT level. The Commission has addressed this issue in its order dated May 24, 2010 in the matter of MSEDCL's Petition for In-principle approval of MoU route for selection of Distribution Franchisee (Case No.62 of 2009) and is of the view that the same dispensation as set out in Para 7 of the Commission order dated May 24, 2010 in the Case No. 62 of 2009 may also be applied in toto in all such cases.

30. With this dispensation, the Commission directs that within one year from the date of this order, all distribution licensees in the State should enter into Franchise agreement with willing single point consumers either through MoU or Competitive bidding basis.

31. The Commission is also of the view that the above directive does not dilute the rights of individual owners or occupiers of the premises in terms of the Electricity Act, 2003 to avail electricity supply from distribution licensee. The individual owners or occupiers located in a commercial building/premises may apply to the distribution licensee for electricity supply as per the provisions of the Electricity Act, 2003 and the Regulations made there under. This means that even if the franchisee model is adopted for single point supply to a premise, then also an independent connection may be given to a owner or occupier of a unit in the said premises.

32. As regards the clarifications sought by the Petitioner in its Petition, the views of the Commission are as under:

A-i) Whether a common transformer for all or a separate transformer for each HT consumer within same premises need to be provided?

The Commission is of the view that providing power supply to individual HT consumers located in a single building through separate transformer is not practicable due to space constraint and hence, directs distribution licensees to, provide power supply to such entities at single point through franchise route.

However, in case HT consumers located in a building apply for individual power supply then the space requirement of transformer for providing such power supply shall be governed by the Regulation 5.5 and 5.6 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation 2005 which reads as under:

“ 5.5 Where, in the opinion of the Distribution Licensee, the provision of supply requires installation of a distribution transformer within the applicant’s premises, the applicant shall make available to the Distribution Licensee, by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer:

Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the Distribution Licensee and the applicant having regard to prevailing market rates:

.....
.....

5.6 Notwithstanding anything contained in Regulation 5.5, where the provision of land or room is required under the Development Control Rules of the local authority or by any appropriate authority of the State Government, the terms and conditions for use of such land or room by the Distribution Licensee shall be as determined under the said Rules or by the said authority.”

A-ii) Whether each transmission OA consumer need a separate line running up to Transmission System or a common line for a group of Transmission OA consumers in the same premises can be planned?

Regulation 4.2 of MERC (Transmission Open Access) Regulations 2005, and Regulation 3 & 15 of MERC (Distribution Open Access) Regulations 2005 specifies the modality for seeking open access to the transmission and distribution systems of the licensees.

As per the views and suggestions received from the Working Group, subject to fulfilment of the eligibility to seek open access under the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005, it is technically feasible to give one OA line for many consumers in the same plot/area and hence, no duplication of network is needed as long as sharing of wire network is considered for the OA purpose. As it is obligatory for distribution licensee to give non-discriminatory access to OA consumers, OA consumers has to pay only the charges as decided by the Commission for utilising distribution system for the OA purpose.

A-iii) Can NON – OA consumers / persons get their supply through / on OA transmission connection planned by the owner of the premises for his requirement in following cases:-

- a) Distribution Licensee has not laid distribution back-bone,***
- b) Unable to supply required power,***
- c) Unable to supply required power in allowed time under the Act?***

The Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 specifies the eligibility to seek open access and accordingly so far as eligibility criterion is satisfied a consumer of a Distribution Licensee shall be eligible for open access to the distribution system of such Distribution Licensee for

obtaining supply of electricity from a Generating Company or from a Licensee other than such Distribution Licensee. Accordingly, at the present Contract Demand of a consumer must be not less than 1 MVA to seek open access. Thus, in principle, the clarification raised by the Petitioner is answered in the negative because to allow NON – OA consumers / persons to get their supply through / on OA transmission connection planned by the owner of the premises would be to violate the Distribution Open Access Regulations mentioned above.

A-iv) In case Standby DG sets for ensuring un-interrupted power is planned by the owner of the above premises for all the tenants / leave – licensees whether the complex in its capacity as generator can have single point supply?

Yes, provided they are covered by a franchisee agreement common to all the beneficiaries.

B. To allow open access to all consumers in Commercial Building / Industrial Complexes with mixed load on single point supply if required, in case Licensee does not permit Franchisee route. Alternately and otherwise owner / manager of the premises i.e. commercial building / industrial complex having mixed load be treated as limited trader for supply to members on his premises.

In view of the dispensations given in this order and the Commission order dated May 24, 2010 in the matter of MSEDCL's Petition for In-principle approval of MoU route for selection of Distribution Franchisee (Case No.62 of 2009) the licensee cannot refuse to appoint / enter into franchisee agreement.

Accordingly, with the above observations and necessary directions, the Commission disposes of the Petition in Case No. 75 of 2007.

Sd/-
(V.L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman

(K. N. Khawarey)
Secretary, MERC