

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case Nos. 90 of 2008, 91 of 2008, 98 of 2008 and 99 of 2008

In the matter of
Petition for initiating action under Sections 142 and 146 of the EA 2003 against
MSEDCL for non-compliance of the Order dated 23.04.2007 and Order dated
28.05.2007

And

Petition for initiating action under Sections 142 and 146 of the EA 2003 against
MSEDCL for Non-compliance of the Order with respect to the Principles and
Protocols of Load Shedding and for imposing additional load shedding on the
industrial and agricultural consumers.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Case No. 90 of 2008

Maharashtra Rajya Irrigation Federation
Plot No. B/S-5, Prabhakar Plaza, 2nd Floor,
Hutatma Kisan Ahir Sahakari Sakhar Karkhana
Dabholkar Corner, Station Road
Kolhapur

...Complainant

Case No. 91 of 2008

Maharashtra Rajya Veej Grahak Sanghatana
12/388, M. Phule Road,
Ichalkaranji – 416 115

...Complainant

Case No. 98 of 2008

Kolhapur Engineering Association
1243/46-47, E Ward,
Madhaorao Karajgar Road,



Shivaji Udhyamnagar,
Kolhapur 416 008

...Complainant

Case 99 of 2008

Krishna Valley Chamber of Industries & Commerce
Plot No. P- 33, 34, 35, MIDC Kupwad,
Sangli 416 436

...Complainant

Vs.

Maharashtra State Electricity Distribution Co. Ltd
Prakashgad, Bandra (E),
Mumbai 400051

.. Opponent

ORDER

Dated: May 27, 2009

The Maharashtra Rajya Irrigation Federation, Kolhapur have submitted a Petition under affidavit, before the Commission on 29.09.2008, under Section 146 of the Electricity Act, 2003 (EA 2003), against the Maharashtra State Electricity Distribution Co. Ltd (MSEDCL), alleging non-compliance of the Commission's Tariff Order for MSEDCL dated 18.05.2007, passed in Case No. 65 of 2006, with respect to the continuous supply of power for 16 hours to Lift Irrigation Schemes and 12 hours to the agricultural consumers.

The Maharashtra Rajya Irrigation Federation (MRIF), in its Petition (Case No. 90 of 2008), prayed as under:

“सबब विनंती की, वरील चूक दुरुस्त करुन सहकारी पाणीपुरवठा संस्थांना सलग १६ तास व इतर शेती पंपधारकांना १२ तास सलग पूर्ण दाबाने सप्लाय मिळावा व कलम १४६ अन्वये योग्य ती कायदेशीर कारवाई व्हावी व याबाबतची सुनावणी व्हावी ही विनंती. ”

(It is prayed that the above error should be rectified and continuous supply of 16 hours and 12 hours at appropriate voltage should be given to Lift Irrigation Schemes and agriculture consumers, respectively, and action should be taken under Section 146 and other appropriate Sections of the EA 2003, and hearing in the matter may be held).



2. The Maharashtra Rajya Veej Grahak Sangathana (MRVGS), Ichhalkaranji, Kolhapur has submitted a similar Petition under affidavit, before the Commission, on October 22, 2008, praying for action under Sections 142 and 146 of the EA 2003 against the concerned officials of MSEDCL alleging non-compliance of the Commission's Order on the Principles and Protocols of Load Shedding and for imposing additional load shedding on the industrial and agricultural consumers.

MRVGS in its Petition (Case No. 91 of 2008), prayed as under

“

१. दि. २ सप्टेंबर २००८ पासून मा. आयोगाच्या आदेशाचा भंग करून वीजग्राहकांवर अतिरेकी भारनियमन लादण्यास जबाबदार असलेल्या संबंधित अधिकाऱ्यांची नावे व त्यांच्या जबाबदाऱ्या निश्चित करण्यात याव्यात.

(To fix the names and responsibilities of the concerned officers of the Respondent, who have contravened the Commission's Order from 02.09.2008 and imposed additional load shedding on the electricity consumers).

२. आदेशभंग करणाऱ्या सर्व संबंधित अधिकाऱ्यांवर वीज कायदा २००३ अंतर्गत अधिनियम १४२ अन्वये कठोर दंडात्मक कारवाई करणेत यावी व अधिनियम १४६ अन्वये कठोर शिक्षा करणेत यावी.

(Penalty may be imposed under Section 142 and punishment may be given under Section 146 of the EA 2003 against all the concerned officers for non-compliance of the Commission's Order.)

3. M/s Kolhapur Engineering Association (KEA) and M/s Krishna Valley Chamber of Industries & Commerce (KVIC) also filed similar Petitions under affidavit, on November 10, 2008 and November 14, 2008, respectively, before the Commission with identical prayers as those made under Case No. 91 of 2008, which have been numbered as Case No. 98 of 2008 and Case No. 99 of 2008, respectively.

4. MRIF, in its Petition in Case No. 90 of 2008, submitted as under:

- a. The Commission, in its Order dated May 18, 2007 in Case No. 65 of 2006 directed MSEDCL to provide continuous supply of power for 16 hours to the Co-operative Lift Irrigation Scheme (LIS) and 12 hrs to the agricultural pump sets. Accordingly, MSEDCL issued Circular dated July 9, 2007 to provide 16 hrs of continuous supply to LIS connected on express feeders.
- b. However, other LIS who are on mixed feeders are not getting continuous supply for 16 hours. The supply ranges between 7 hours to 11 hrs. However, supply also gets disrupted 3 to 4 times in a day, causing severe damage to the agricultural crops. Thousands of farmers have come together and established irrigation federations. They have hypothecated their land to the banks to erect water pumps, jack-well and sump-well as well as to get water line connection of 10 to 12 km from the river, and the instalments and interest is increasing on these loans. Due to increase in load shedding hours, crops are getting lesser



water, which results in severe damages to crops, thereby causing losses worth several crores of rupees.

- c. In this regard, MSEDCL is unable to reduce the distribution losses and to release new electricity connections. Such intentional negligence by MSEDCL should not increase the burden on the agricultural pump set consumers.

5. MRVGS, KEA and KVIC in their Petitions, submitted as under:

- a. As per Order dated June 20, 2008 passed by the Commission in Case No. 72 of 2007, to address a shortfall of 4500 MW, it was necessary to impose load shedding ranging from 2.75 hours to 6.50 hours in other areas and from 10 hours to 12 hours in agricultural dominated regions.
- b. Similarly, as per Order dated January 10, 2006 in Case No. 35 of 2005, in which the principles and protocol for load shedding were revised by the Commission, to address the shortfall of 4500 MW, it was necessary to impose a weekly load shedding (staggering day) of 16 hours in MIDC and industrial areas. Further, the Order stated that there shall be no revision to the protocol [As per Para 15.1, Page 23].
- c. Further, the aforesaid Order dated January 10, 2006, also stipulated that necessary proceedings under Sections 142 and Section 146 would be initiated against the officials in case of violation of the Protocol. (As per Para 18 (xx)).
- d. However, MSEDCL has been periodically declaring that the supply shortfall has increased, and issued Circular No. 20 dated August 30, 2008 with effect from September 2, 2008, which stated that load shedding shall be undertaken in the following manner throughout the State:

- Other Areas – ‘A’ group to ‘F’ group - 5.75 hours to 8.50 hours
- Agricultural areas - 14 hours
- Agricultural areas - 17 hours
(single phasing and independent feeders)
- M.I.D.C, Industrial areas - 34 hours (weekly)
- Non continuous process industries - 24 hours (weekly)
on express feeders
- Continuous process industries on express feeders - 10% reduction

Further changes/amendments were issued under Circular No. 21 and 22 dated 18/09/2008 with effect from 22/09/2008, which were as follows:

- M.I.D.C. Industrial areas - weekly continuous 32 hours
- Non continuous process industries on express feeders - 10% reduction

All the above load shedding Circulars are much higher than the load shedding ceiling fixed by the Commission, to meet the shortfall of 4500 MW.

- e. The actual shortfall of electricity in the State of Maharashtra within MSEDCL Licence area, excluding the areas within the jurisdiction of BEST and Reliance has been obtained from the official website of the Maharashtra State Load Dispatch Centre (MSLDC) (mahaslDC.in). A chart indicating the shortfall for a



period of 40 days from 2/09/2008 to 12/10/2008 has been annexed (Annexure "B"). As per the figures declared by MSLDC during the morning peak from 11.00 a.m., the minimum shortfall was 179 MW and the maximum shortfall was 4108 MW. For most of the days, the shortfall is within 1000 to 2000 MW and the average shortfall for the 40 days is 1800 MW. During these 40 days, the minimum shortfall for the evening peak hours from 8.00 p.m. was 800 MW and a maximum shortfall was 4420 MW. For most of the days, the shortfall was 2200 to 3500 MW and the average of the 40 days was 2600 MW. Even if the averages are ignored, it can clearly be seen that the maximum shortfall for the 40 days was 4420 MW.

- f. This clearly indicates that since the maximum shortfall was within 4500 MW, the load shedding prescribed by the Commission was required to be implemented. However, in reality, additional load shedding was enforced. As per the Petition filed by the MSEDCL before the Commission, the load shedding appears to be 120 MU per day, which amounts to 6250 MW on the basis of 0.80 flat load factor. Assuming that the flat load factor is 0.75, the shortfall amounts to 6666 MW. It appears that the load shedding has been enforced on the basis of a minimum shortfall of 6250 MW or more. This is a blatant violation of the Order of the Commission. Therefore, this Petition has been filed for non-compliance of the Orders of the Commission.
- g. Several electricity consumers are suffering due to the additional load shedding. This loss caused to women, students and ordinary residential consumers cannot be ascertained, however, mostly the small scale industries, agriculture and industrial sector has been hit tremendously. If the industrial machinery in and around the city of Ichalkaranji is stopped for 1 hour, it affects manufacturing worth Rs.1 crore. If the city of Pune does not get electricity for one day, a minimum loss of Rs.150 crore is caused to the industrial sector. Taking the State into consideration, a loss of Rs.50 crore or more per hour is caused to the industrialists. In the rural areas, electricity is hardly available for 7 hours. Further, in some places, electricity is available only during 4 pm to 11 pm and in some places from 2 am to 9 am, and in some places from 11 pm to 6 am. Therefore, the crops do not get sufficient water supply causing financial loss to the agriculturist.
- h. On enquiry, the Petitioners were informed that where additional load shedding was implemented when the shortfall was less, the load shedding was stopped or scrapped on many occasions in many places. However, the load shedding has not been reduced by even 1 minute in the industrial areas and rural areas. The load shedding has been reduced in cities and other areas falling in Groups A and B. MSEDCL will make a profit on account of reduced load shedding for the commercial city users (rate 750 paise/unit), builders (rate 1200 paise/unit) and advertisers (rate 1400 paise/unit). Therefore, the Petitioners believe that MSEDCL has taken away the electricity available to the industrial and agricultural user to sell it to the consumers of the city at a higher price only for the purposes of making a profit, by violating the Orders/directions of the Commission. The Commission will get a clearer picture if the Commission



calls for the actual data as to which part of the State, the load shedding applicable with effect from September 2, 2008 has been reduced and scrapped.

- i. The Petitioners believe that the following officials of MSEDCL are responsible for violating the orders of the Commission:
 - a. Managing Director – All day to day affairs of the MSEDCL are conducted under his supervision and control.
 - b. Director (Operations) – is responsible for the day to day electricity distribution functions and is therefore personally responsible.
 - c. Director (Finance) – is not concerned personally, however, he has filed various affidavits on affidavit before the Commission and is hence, responsible.
 - d. Chief Engineer (Load Management) – is responsible for load management and determining the load shedding protocol on the basis of the actual shortfall and is hence, personally responsible.
 - e. Superintendent Engineer (Tariff Regulatory Cell) – is responsible to give effect to the Orders/directions of the Commission and is hence, personally responsible.

6. MRVGS, KEA and KVIC added that the Petitions had not been filed for imposing penalties on MSEDCL, since in the past, whenever penal action has been taken by the Commission against MSEDCL, there has been no impact on the concerned and responsible officers. Moreover, if the penalty is imposed on MSEDCL, then there is no individual impact on the concerned officers, and in fact, they become more irresponsible. Further, the penalties levied on the MSEDCL are recovered from the consumers. This leads to a peculiar and unfair situation where the Petitions are filed by the consumers, mistakes made by the concerned officers, and penalties are recovered from the consumers. Hence, the Commission should identify the concerned and responsible officers and take penal action against the responsible officers only under Sections 142 and 146 of the EA 2003.

7. Further, under the EA 2003 and the Judgment of the Honourable Supreme Court, dated May 12, 2005, the Commission has all the powers to take action under Section 142 and 146 of the EA 2003.

8. The Commission, vide its Notices dated November 5, 2008 and November 18, 2008, scheduled a combined hearing in the matters on November 19, 2008, in respect of the above four Cases as the issues under the Petitions were similar, and directed the Petitioners to serve a copy of their Petitions along with accompaniments to the Opponent, viz., MSEDCL, and the four authorised Consumer Representatives.

9. During the combined hearing of four cases held on November 19, 2008, Shri Pratap Hogade, President, MRVGS, Shri Ashok Patil Kinikar, Executive President, MRIF, and Shri Shrikant Dudhane, Vice Chairman, KEA, appeared on behalf of the Petitioners. Shri Ravi Prakash, Advocate, appeared for MSEDCL.



10. During the hearing, Shri Pratap Hogade submitted that the Petition in Case 90 of 2008 had been submitted under Section 146 of the EA 2003 against MSEDCL for violation of the Orders passed by the Commission in respect of load shedding and other related issues. MSEDCL provides 11 kV HT/LT supply to Loknete Balasaheb Desai Co-operative Factory Limited, and other co-operative water irrigation societies sponsored by Daultanagar or otherwise. Many societies have not paid the arrears for setting up of a separate feeder. The aforesaid societies are getting only 8 hours of electricity supply, resulting in loss of the crops. As per the Commission's Order, the said societies are entitled to receive continuous supply of electricity for 16 hours. MSEDCL should provide an explanation within 15 days and provide continuous supply of electricity for 16 hours. He, therefore, prayed that the names of all the concerned co-operative water irrigation societies may be noted and the MSEDCL be directed to provide continuous supply of electricity for 16 hours to them.

11. Shri Shrikant Dudhane submitted that the Petitions in Case No. 91, 98, and 99 of 2008 had been filed on behalf of the small scale industrial consumers and rural agricultural consumers of the M.I.D.C and industrial areas of the State of Maharashtra. The load shedding applied by MSEDCL with effect from September 2, 2008, is for a shortfall of 6250 MW or more. As per the actual figures declared by the MSLDC, the actual demand-supply shortfall during that period was 1000 to 3800 MW. Under these circumstances, it was necessary to enforce the limited load shedding applicable for demand-supply gap upto 4500 MW. Since this has not been followed, it amounts to violation of the principles and protocol for load shedding and has consequently resulted in financial loss to the industrialists and agriculturists of the State. This Petition has therefore, been filed *inter alia* praying for determining and ascertaining the names of the various officers/officials responsible for the aforesaid violation and initiating action under Section 142 of the EA 2003 and taking strict penal action against them.

12. Shri Ravi Prakash, advocate for MSEDCL stated that certain suggestions given by the Consumer Representatives will be taken in the right spirit. He stated that the very concept of load shedding is extremely dynamic, and cannot be put into a rigid formula. Therefore, there cannot be Orders passed in respect of load shedding. When MSEDCL moved the Hon'ble Supreme Court against the decision of Nagpur Bench of the High Court, the Hon'ble Supreme Court thought it fit to rule that MSEDCL should undertake the load shedding in consultation with the Commission.

13. During the hearing, the Commission directed MSEDCL to submit clarification on the following aspects:

- i. Data regarding demand, availability, and shortfall and the Central Sector share and receipt for the period from September 2008 to November 2008
- ii. The reasons for implementing higher load shedding when the demand supply gap was below 4500 MW.
- iii. Non-compliance of the Order with respect to the Principles and Protocols of load shedding from 02.09.08 and for imposing additional load shedding on the industrial and agricultural consumers.



- iv. Continuous supply of electricity for 16 hours to co-operative Lift Irrigation Schemes on mixed feeders and 12 hours supply to agricultural pumps in rural areas.
14. In its reply dated December 4, 2008, MSEDCL submitted as under:
- i. On the issue of Load Shedding, there are a number of Writ Petitions pending before Hon'ble High Court of Bombay, Nagpur Bench being Petition No. 2097/2005, 2098/2005, 2099/2005, 2237/2005, 6395/2005 and 3731/2008. In Writ Petition No. 3731, the answering respondent has filed a reply. The relevant portion of the said reply is reproduced as under:

“Considering the powers of Regulatory Commission to give dispensation in emergency situation for maintaining efficient supply, securing the equitable distribution of electricity under section 23 of Electricity Act and the orders of Hon'ble Supreme Court in a matter which was carried from Nagpur High Court only on issue of Load Shedding the protocol for Load Shedding containing the directions of the State Commission as to how Load Shedding is to be administered across the state is being decided and formulated by Maharashtra Electricity Regulatory Commission. As admittedly from the day of inception i.e. 5th of June 2005, the Distribution Licensee is reeling under shortage of electricity. It is the earnest endeavor of the Answering Respondent to follow Load Shedding protocol device by the Commission, however due to a dynamic nature of demand and supply in the State which can suddenly increase or decrease on account of various reasons, the Licensee is to manage emergency situation as per its wisdom and that is why Hon'ble Supreme Court has stated that issue of Load Shedding is to be decided in consultation with MERC and not in concurrence with MERC.

Section 27 and Section 31 envisages establishments of Regional Load Despatch Centre and State Load Despatch Centre. Their functions have been noted respectively under Section 28 and 32 of the Electricity Act 2003.

The actual directions given by RLDC and SLDC during the months of July and August 2008 for grid security and safety are being marked and attached as Annexure I.

To explain the point in issue pertaining to dealing with emergency situation, which at times is not consistent with the Load Shedding protocol issued by the State Commission, following example may be noted.

Suppose while considering the various sources from which MSEDCL would procure energy for the purposes of distribution, MERC has come to a conclusion that 10,000MW of Electricity is available for distribution against the requirement of 14,000MW of electricity to satisfy the entire consumer base of the State of Maharashtra failing than the Licensee Area of the present Licensee, in those circumstances after considering the genuineness of claim of MSEDCL and after complying with the procedure provided



under the Act, MERC would provide for a Load Shedding protocol or say 4,000MW for the whole of State of Maharashtra. Now, say out of the 10,000 which MSEDCL had for distribution, 2,000MW was to come from RGPPL. Today, if RGPPL fails to give 2,000MW say on account of turbine failure or some technical snag then 2,000MW which was to come would not come. So although the availability of electricity at the hands of MSEDCL was 10,000MW, suddenly it gets reduced to 8,000MW for which MSEDCL will have to take some measures to tackle the emergency situation failures occurred on second and minute basis. Now as a consequence of this entire episode the system or i.e. the grid gets overload because it has now to carry an additional burden of 2,000MW which was not scheduled, in such circumstances State Load Despatch Centre and Regional Load Despatch Centre in exercise of their statutory powers and whose directions are binding on the Licensee direct the Licensee to bring down their load to the extent of overload which in this case would be 2,000MW. In these circumstances, the shedding of extra load so as to maintain grid security and safety is commonly understood as Extra-High Voltage Openings or Distress Load Shedding.”

- ii. In the same Writ Petition, the Commission also filed a reply, relevant portion of which is reproduced as under:

“Thereafter, in case of Maharashtra State Electricity Board And Vs Anil and others in civil appeal no. 11437-11438 of 2005, the Hon’ble Supreme Court had directed that the Maharashtra State Electricity Board (Distribution functions of whom has been vested in MSEDCL) should undertake / carry out load shedding in consultation with the Commission. The direction came to be passed in the order dt. May 13, 2005 in the said Civil Appeal no. 11437-11438 of 2005. The Hon. Supreme Court held that:

“In terms of order dt. 06.05.2005, the High Court, considering the difficulties of the petitioner in rescheduling the power supply as per interim order dt. 04.05.2005, has directed that it would do so in consultation with the Maharashtra State Electricity Regulatory Commission. The further direction that there should be no discrimination amongst consumers irrespective of geographically allocation is modified for time being and the matter is left to be determined by the Petitioner in consultation with the Regulatory Commission.”

In view of the aforesaid order dt. May 13.05.2005, passed by the Hon. Supreme Court, the specific mandate given to the Commission is to conduct a consultative role when it comes to the carrying out of load shedding by MSEDCL.

It is the respectful submission of the Commission that apart from the role being conducted by the Commission on matters pertaining to load shedding it will not be practicable for the Commission to delve any more into the said



operational aspect of the distribution licensee that pertaining to load shedding. It is respectfully submitted herein that during the hearing the Commission would like to rely on certain judgments passed by the Hon'ble Appellate Tribunal for Electricity wherein the Commission has been asked not to meddle or interfere with the internal / indoor / operational aspects of the distribution licensees such as MSEDCL. It is the understanding of the Commission that load shedding can be mitigated by various measures such as inter alia (i) generation of electricity; (ii) procurement of electricity; (iii) energy conservation; (iv) arresting T&D Losses.

- iii. Accordingly, it can be seen that even the Commission has acknowledged its consultative role and the requirement of taking emergency decisions so as to deal with the dynamic and ever changing grid situation, implicitly accepting the prerogative of the Utility to deal with the field situation. It is respectfully submitted that the allegation of violation is to be seen in the light of above-mentioned developments.
- iv. In response to the first issue raised during the hearing, MSEDCL submitted that the hourly data of Demand, Availability, shortfall and Central Sector share, receipt and overdrawal for the period from September 2008 to November 2008 shows that shortfall of above 4500 MW has existed for 24 days and there were 127 hourly instances of shortfall higher than 4500 MW.
- v. In response to the second issue raised during hearing, MSEDCL submitted that the total average load has a dynamic characteristic and the quantum given in the load shedding plan depends upon the average load of the feeder. The following issues should be taken into consideration:
 - a. Load Shedding is carried out on 11/22 kV feeders (Approx 7000 numbers)
 - b. Load Shedding Programme is implemented on rotational basis. The actual load shedding quantum at particular time interval is decided by considering the load on the feeder when it was in working condition
 - c. Load relief obtained in rainy season is lesser than in summer/winter seasons. In rainy season, there is almost 50% of load on agricultural feeders and about 90% of load on urban feeders. Hence, for the same load shedding hours, the relief in rainy season is about 3000 MW , which would be 4500 MW in summer/winter season.
 - d. If the required shortfall is less than that anticipated under the load shedding plan, then the load shedding is withdrawn in a phased manner. After increase in availability, MSEDCL has reduced the load shedding hours of agricultural dominated regions by one hour and increased the 3 phase availability in respect of agricultural schemes by one hour with effect from 24.10.2008. Again, after increase in availability of power, the load shedding hours in 'other regions' was reduced by one hour with effect from 8.11.2008.



- e. From 01.12.2008, MSEDCL has implemented load shedding protocol as per MERC Order dated 28.11.2008 in Case No. 77 and 78 of 2008.
- vi. In response to the third issue, MSEDCL submitted that the Commission in its Order dated 23.04.2007 observed:

“MSEDCL appears to want to favour industrial consumers by not imposing a second staggering day of load shedding, at the expense of the remaining consumers in the state, which is not equitable. When the demand-supply gap in the State has reached such crisis proportions, all categories and regions have to contribute their bit towards sharing the burden.”

In the month of July/Aug 2008, load shedding hours of agricultural dominated regions were increased upto 14 hours and the load shedding of ‘other regions’ was increased upto 9.5 hours. Hence, to have equitable load shedding to all the categories, staggering day to the Industries has been imposed. From 1.12.2008 onwards, the industrial staggering hours have been reduced from 32 hours per week to 24 hours per week.

Due to uncertainty of generation available from MSPGCL thermal, Central Sector and RGPPL, the availability of generation is variable, and hence, the load shedding protocol has to be designed considering the maximum shortfall.

- vii. In response to the fourth issue, MSEDCL submitted that due to critical supply conditions from the month of July 2008 and to avoid EHV opening, load shedding hours had been increased as a temporary measure. Due to change in Demand Supply situation, MSEDCL had to revise the load shedding protocol on 12 occasions during the period from July to August 2008.
- viii. MSEDCL further stated that presently, continuous electricity supply for 16 hours, is given to LIS connected on express feeders only. If continuous electricity supply of 16 hours is given to LIS on mixed feeders also, then the consumers of all the categories connected on the mixed feeder will get 16 hours of continuous supply, which may increase the burden on the system and there will be discrimination in load shedding. So in the present situation, continuous 16 hrs supply can be given to LIS connected on express feeders only.

15. The Petitioners, MRIF, MRVGS, KEA and KVIC submitted the rejoinders for their respective cases as under:



i. Load shedding in consultation with the Commission and not in concurrence with the Commission:

MSEDCL has taken a categorical stand on this issue as above in various petitions. The detailed stand, the explanations and the examples given are all with respect to emergency situations. The Commission and/or any Consumer Association have not blamed MSEDCL in any such emergency situation or in case of sudden failure in generating stations. EHV opening or distress load shedding is not the issue in the Petition. Hence, the stand and argument of MSEDCL is null and void with reference to the Petitions.

MSEDCL have enclosed directions given by RLDC and SLDC as Annexure I. These directions have been given on 25/06/08, 17/07/08 and 23/07/08, whereas the period of non-compliance as per the Petitions starts from September 2, 2008 to November 3, 2008. Hence, it is clear that these directions of RLDC or SLDC are not at all applicable and are irrelevant with reference to the Petitions.

ii. Commission not to interfere with internal and/or operational aspects

The basic issue in this case is the non-compliance of directions given by the Commission regarding Load shedding protocol from 02.09.2008 upto 03.11.2008, and the loss and injustice to the industrial as well as agricultural consumers due to this non-compliance.

The Commission has every right to issue necessary directions to the licensees under Section 23 of the EA 2003, for securing the equitable distribution of electricity. The Hon'ble Supreme Court has also issued clear orders regarding load shedding on 13.05.2005. The Commission has always taken a role of equitable distribution of electricity while deciding the load shedding protocol and never interfered with the operational aspects.

iii. Reply to Point No.1:

MSEDCL has enclosed the hourly data of Demand, Availability, etc., for the period from September 2008 to November 2008 as Annexure A and B, and claimed that there are 127 instances of shortfall higher than 4500 MW during this period. However, this claim and argument are false. The Petitioners' requested the Commission to observe that

- The period as per the Petitions is from 02.09.2008 upto 03.11.2008.
- Not a single instance of shortfall more than 4500 MW has been witnessed in September 2008.
- Only 24 hourly instances in October 2008 and 1 hourly instance upto November 3, 2008. Hence, total 25 hours in 2 months, i.e. 720 hours, which amounts to less than 3.5% of the total hours in question.



iv. Reply to Point No.2

MSEDCL have given various reasons for implementing higher load shedding protocol though the gap is below 4500 MW. The Commission has observed and discussed in detail on the above issues in its latest Order in Case No. 77 and 78 of 2008 dated 28.11.2008. The Petitioners rely on and agree with the observations in the above said Order dated 28.11./2008.

MSEDCL has made false arguments in this reply, which are being brought to the notice of the Commission as under:

- MSEDCL has reduced load shedding by 1 hour and increased 3 phase availability for agricultural Schemes from 24.10.2008 – **Totally False, no such Circular or Advertisement has been issued, and no such implementation has taken place.**
- Again reduced load shedding by 1 hour from 8/11/2008 – First time after September 2, 2008, MSEDCL reduced load shedding by 1 hour from 08.11.2008. This was done due to notice of hearing by the Commission and not due to increased availability. **Hence, this is irrelevant.**
- Again reduced load shedding from 01.12.2008 as per the Commission's Order dated 28.11.2008 – This reference and clarification is again irrelevant and for the period, which is not in question. The Petitioners requested the Commission to please note that this Circular No. 23, operational from 01.12.2008 is also not as per the Commission's Order. The Commission has ordered for Option IV, but MSEDCL has opted for Option V for implementation.
- The hourly data given by MSEDCL for September 2008 and October 2008, shows regular and continuous under-drawal from Central Sector during this period.

v. Reply to Point No.3

Regarding non-compliance from 02.09.2008 onwards and imposing additional load shedding for industrial & agricultural consumers, MSEDCL has not replied for the period from 02.09.2008 upto 03.11.2008, and hence, the total reply and argument is false and irrelevant, and also confirms that the Petitioners' statements regarding excess load shedding are correct.

vi. Reply to Point No.4

As regards supply to Lift Irrigation Schemes and agricultural pumps in rural areas, MSEDCL has repeated its replies. The Commission has analysed all 12 Circulars issued by MSEDCL bearing nos. 11 to 22 and has given its observations and rulings in the Order dated 28.11.2008.



Considering all the above details and the Commission's Order dated 28.11.2008, the Petitioners' reiterated that MSEDCL has violated the Load Shedding protocol from 02.09.2008 and hence, the concerned errant officials need to be punished under S.142 and S.146 of the EA 2003.

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

17. The Petitions have been filed for taking action against concerned officers of MSEDCL responsible for the increase in load shedding hours over the period from September 2, 2008 to November 3, 2008, for agricultural and industrial consumer categories as compared to the load shedding hours approved by the Commission in its relevant Orders, and for directing MSEDCL to ensure continuous supply of 16 hours and 12 hours for LIS and agricultural consumers, respectively.

18. In this regard, for initiating penal action under the provisions of Section 142 and 146 of the EA 2003, *mens rea* or wilful non-compliance by the MSEDCL and/or its concerned officers has to be established. However, in this particular case, the Commission has issued a separate Order dated November 28, 2008, on Petitions filed by MSEDCL in Case No. 77 of 2008 and Case No. 78 of 2008, wherein the issue of appropriateness of load shedding undertaken by MSEDCL over the period from April 2008 to September 15, 2008 has been analysed, and the load shedding protocol to be followed in future have been detailed. MSEDCL has modified the load shedding protocol subsequent to the issue of the Commission's Order in Case Nos. 77 and 78 of 2008, with effect from December 1, 2008. It should also be noted that the MSEDCL has filed an Appeal (numbered as Appeal No. 173 of 2008) before the Honourable Appellate Tribunal for Electricity (ATE), and the ATE has given an Order of status-quo in the matter, and the matter is currently pending before the ATE. Though the period under consideration in Case No. 77 and 78 of 2008 and the present Petitions overlap only to the extent of 15 days in September 2008, the Commission is of the view that the issues raised in the present Petitions are wholly intertwined with the issues discussed and ruled upon by the Commission in Case No. 77 and 78 of 2008, which is currently pending before the ATE. This position has also been accepted by the Petitioners in their additional submissions, who have submitted that they concur with the observations made by the Commission in the Order in Case No. 77 and 78 of 2008. Hence, the Commission is not in a position to address these prayers at this moment in time. However, the Petitioners are free to approach the Commission for necessary relief, depending on the Judgment of the ATE on the Appeal filed by MSEDCL in Appeal No. 173 of 2007.

19. MSEDCL should ensure that the extant Orders of the Commission and ATE in this regard are implemented in letter and in spirit. As regards continuous supply of electricity for 16 hours to LIS who are not connected on express feeders, the Commission understands the technical constraints stated in MSEDCL's contention in this regard that the same is possible only in cases where the LIS are connected through express feeders, else all the consumers of other categories, who are connected through the same mixed feeder will also receive continuous supply of electricity for 16 hours, which may not be consistent with the Load Shedding Protocol issued by the



Commission, apart from placing higher demand on the grid, which may possibly lead to higher average load shedding requirement.

Accordingly, the Petitions filed in Case Nos. 90 of 2008, 91 of 2008, 98 of 2008 and 99 of 2008 stand disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC