

**Before the
MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION**

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Case No. 58 of 2009

**In the matter of
Approval of recovery of infrastructure charge on account of conversion of Low
Tension/ High Tension overhead distribution network to underground**

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

ORDER

December 22, 2009

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) submitted a Petition under revised affidavit before the Commission on 07.09.2009 seeking to invoke the provisions of Section 46 of the Electricity Act, 2003 ("EA 2003") and Regulations 3 and 24 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 ("Supply Code"), for approval of infrastructure charge on account of conversion of Low Tension/ High Tension overhead distribution network to Underground within the area of Navi Mumbai Municipal Corporation.

2. The following are the main prayers of the Petitioner:

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1. *Permit the Applicant Company to undertake the work of conversion of existing Low Tension Underground Distribution Network to Underground in 24 villages (as per the list annexed to this Application) situated within the jurisdiction of NMMC;*



2. *Permit the Applicant Company to recover the actual capital expenditure that would be incurred for executing the work from the beneficiary consumers situated within the said 24 villages at the rate of Rs. 170 per month per consumer (tentatively) over a period of five years by way of “Infrastructure Charge”,*
3. *Permit the Applicant Company to follow similar policy in other areas also wherever the Local Body and/ or the consumers request the Applicant Company for conversion of Low Tension/ High Tension Overhead Distribution Network into Underground.”*

3. The Petitioner, MSEDCL (i.e. Applicant Company), submits that due to historical reasons most of its distribution network is overhead except in few pockets in Metro Cities like suburban areas of Mumbai, Navi Mumbai, Nagpur, Aurangabad and Nasik etc. It has further been submitted that due to advantages of underground distribution network MSEDCL makes efforts to convert overhead lines into underground distribution network by proposing such projects into infrastructure development, APDRP Project etc.

4. It is averred in the Petition that the high cost of conversion of overhead lines into underground distribution network pose limitations on MSEDCL towards its planning and execution. It has also been submitted that MSEDCL is receiving requests from consumers/Local bodies (Municipal Corporations/Councils) for converting the existing LT overhead distribution network into underground network within the jurisdiction of such bodies. MSEDCL submits that it has received a similar request from Navi Mumbai Municipal Corporation (“NMMC”) for conversion of the entire overhead distribution network within the twenty four villages in and around Airoli situated within the jurisdiction of NMMC.

5. MSEDCL submits that if they undertake the conversion of LT overhead distribution network into underground network , they will have to examine the priority of such work depending upon the resources available as well as it will also have to be examine whether such expenditure satisfies the criterion of prudence check. It has been submitted that MSEDCL is not expected to show undue preference to a particular area within its jurisdiction and MSEDCL will require to evolve a policy of conversion of LT overhead distribution network into underground. MSEDCL further submits that such a policy decision if taken, would then be implemented throughout the State and works can be taken up depending upon availability of financial resources. MSEDCL submits that presently they have no such policy in place.

6. MSEDCL submits that the request of NMMC for conversion of LT distribution network into underground in the said twenty four villages cannot be considered on account of financial limitations. MSEDCL submits that in view of such a situation the NMMC has also made a proposal that the entire capital expenditure that would be incurred for conversion of LT overhead distribution network into underground in the said twenty four villages shall initially be provided by NMMC, subject to the condition that MSEDCL shall reimburse the same to NMMC by making adjustment in the energy bills. MSEDCL submits that in this arrangement they may not immediately be burdened with the expenditure but will have to reimburse the same at a later stage and will have to pass on such expenses to all consumers. MSEDCL therefore submits that such an arrangement would also amount to discriminatory treatment to the rest of the consumers who would not receive any benefits of such conversion of LT overhead distribution network into underground in the said twenty four villages situated within the jurisdiction of NMMC.

7. The Commission, vide its Notice dated October 1, 2009, scheduled a hearing in the matter on October 21, 2009, in the presence of the four authorised consumer representatives on a standing basis under Section 94(3) of the EA 2003 to represent the interest of the consumers in the proceedings before the Commission. The Commission also directed the Petitioner to serve copies of its Petition, along with its accompaniments, to the four consumer representatives.

8. During the hearing, Shri G.V. Rao, of Navi Mumbai Municipal Corporation (NMMC) submitted that the Notice of the hearing was received on October 20, 2009 from MSEDCL and therefore he could not study the matter in detail. Hence, NMMC requested the Commission to provide some time to study and understand the issues involved in the Petition.

9. The Petitioner submitted that the proposal contained in the Petition is related to the conversion of total overhead line network into underground line network for 24 villages around Airoli Node of NMMC, which covers commercial, industrial and residential consumers.

10. The Commission enquired whether the estimated cost of Rs. 49.74 Crore includes all the charges for road excavation and restoration charges (road digging and other charges). The Commission also enquired whether the said proposal of the estimated cost of Rs. 49.74 Crore was submitted by MSEDCL or the NMMC. The Petitioner clarified that the said estimated cost was prepared in the year of 2007 and included all the

excavation and restoration charges. The Petitioner also clarified that the proposal was submitted by it. The Petitioner requested the Commission to pass the said expenditure in the ARR. The Petitioner added that the area where such works are required to be carried out comprises of a mix of residential, commercial and industrial consumers. The Commission further enquired whether the recent infrastructure schemes executed by MSEDCL in these areas were earlier approved by the Commission as a part of in-principle approval of Capex Schemes. NMMC submitted that these would primarily be the assets of MSEDCL and hence it is MSEDCL who will have to invest capital in the development of such infrastructure.

11. During the hearing, it was submitted on behalf of Thane Belapur Industrial Association (“TBIA”), one of the authorised consumer representatives, that there were three authorities in Navi Mumbai area viz., (a) MIDC which levies service charges; (b) CIDCO (Vashi Circle) which levies development charges; (c) NMMC which levies property tax and cess. TBIA further submitted that different types of charges are recovered by the Municipal Corporation to earn revenues. TBIA raised an objection to the proposal of passing on the cost of development of infrastructure in MSEDCL’s ARR on the ground that consumers (residential/ locals) will have to pay double tax, i.e., once to the municipal corporations / bodies which they are paying in the form of development and other charges and thereafter to MSEDCL for development of infrastructure. TBIA also submitted that enough funds are available with the municipal authorities, which could be used for incurring expenses which have been estimated in MSEDCL’s proposal. In this regard, it was indicated that such expenses could be funded by the NMMC or from MIDC’s budget.

12. The Commission observed that CIDCO being the development authority for the development of infrastructure in Navi Mumbai, sufficient provisions would have been made for utilities. If that be the case, the Petitioner could not claim the amounts which have already been paid by the beneficiaries under different statutory provisions. In the circumstances, the Petitioner was directed to apprise the Commission regarding the various applicable provisions of the BPMC Act, MIDC Act, and CIDCO Act, and to explain whether it would be the case that consumers have already paid for the infrastructure as proposed to be now developed by MSEDCL. The Petitioner was also directed to implead Navi Mumbai Municipal Corporation, CIDCO, and MIDC as they were necessary parties who ought to be heard in view of the queries raised during the hearing. MSEDCL was further directed to serve copies of its Petition on the said bodies.

13. MSEDCL vide its letter no. SE/TRC/M-102/33594 dated 21.10.2009 informed that NMMC, CIDCO and MIDC have been impleaded as respondents and copies of Petition have been served on them.

14. The Commission vide its Notice dated October 23, 2009 scheduled a further hearing on November 9, 2009 in the presence of the four consumer representatives authorised on a standing basis under Section 94(3) of the EA 2003 to represent the interest of the consumers in the proceedings before the Commission.

15. MIDC, Respondent No. 3, vide its letter no. CE (HQ)/1928/ of 2009 dated 6th November 2009 informed the Commission that MIDC has not recovered any cost towards electrical infrastructure and they do not have any objection on the recovery of the up-gradation cost by MSEDCL directly from the consumers.

16. During the hearing held on 9th November 2009, MSEDCL submitted that MSEDCL will undertake the works according to their routine works unless NMMC funds the required works. NMMC submitted that they will fund 50% of cost without interest.

17. Having heard the parties, the Commission is of the view that the aspect whether the present petition is maintainable at all in the first place requires to be dealt with. The statutory provision under which the Petitioner has sought the recovery of infrastructure costs in the form of a separate 'infrastructure charge' on account of conversion of Low Tension/ High Tension overhead distribution network to Underground within the area of Navi Mumbai Municipal Corporation, are Section 46 of the EA 2003 and Regulations 3 and 24 of the Supply Code. The Commission is of the view that the aforesaid development is not within the scope of Section 46 for the reason that these are not expenses to be charged from persons requiring supply of electricity in pursuance of section 43 such as electric line or electrical plant used for the purpose of giving the supply, as the proposed expenses are for converting the existing Low Tension/ High Tension overhead distribution network to Underground. The Commission has already in the past approved the normative rates for 'Service Connection Charges for new Underground Connection' vide its Order dated 8-9-2006 in Case No. 70 of 2005 in the matter of 'Approval of MSEDCL Schedule of charges'. However, the distinction is that the said Schedule of charges relate to those charges which could be charged by MSEDCL for providing supply, whereas the present petition is for converting the "existing" Low Tension/ High Tension overhead distribution network to Underground. On this basis, the statutory provisions under which the Petitioner has sought to justify its Petition, is not applicable at all. On this ground, the present

Petition is liable to be dismissed, and is hereby dismissed. The Commission is also of the view that Regulation 24 (Power to Remove Difficulties) of the Supply Code cannot be applied to the present case because the statutory provisions which have been relied upon by the Petitioner itself do not apply.

In view of the above, the present case stands dismissed as not maintainable.

Sd/-
(V.L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC