# C0NSUMER GRIEVANCE REDRESSAL FORUM, AMRAVATI ZONE, AKOLA.

*" Vidyut Bhavan" Ratanlal Plots, Akola : 444001 Tel No 0724 .2434476*

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Dt.16/09/2015

**Complaint No.67 / 2009**

In the matter of grievance pertaining to incorrect energy bills on account ASC charges adjustments, etc.

**Quorum :**

Shri T.M.Mantri, Chairman
Shri D.M.Deshpande, Member
Shri. R.A. Ramteke ,Member-Secretary

M/s. Gujarat Ambuja Exports Ltd …… Complaint No.67/2009
Kanheri Gawali, Tq:Balapur …… Complainant
…..Vrs……
The Superintending Engineer, MSEDCL…… Respondent
O & M Circle, Akola

**Appearances :**

Complainant Representative : Shri Brijmohan Chitlange
Respondent Representative : Shri. Sunil Upadhyay, Dy.Law Officer

1. That the complainant has approached this Forum making grievance pertaining to incorrect bills issued by the N.A. for September 2009. In substance the case of the complainant is that it is running the Solvent Extraction Plant and Refinery at the given address and its initial supply was 225 KVA since June 2004. In view of requirement/ demand, additional load of 1775 KVA was made and sanctioned by the N.A. in June 2005, after entering into agreement on 26-12-2005. Thereafter, additional supply of 1775 KVA is provided for which HT-1-C Tariff has been made applicable.

According to the complainant, bills up to the August 2009 are paid. The grievance started on receipt of the bill for September 2009, it was for Rs.68,15,730/- inclusive of debit bill adjustment of Rs.51,94,693=87 towards adjustment of ASC charges without giving any details. No information has been provided about this alleged adjustment. On receipt of the said bill, the Complainant on 1-10-2009 pointed out the incorrectness therein, with further request for accepting the current bill of September 2009 which was for Rs.16,21,037=00 so also sent cheque for this amount on 3-10-2009 by Registered Post. It has been alleged by the complainant though it has approached the Chief Engineer (Commercial) in respect of the bench mark fixed for accepting the current bill but inspite thereof and without making any clarification or justification levying of Rs.51 Lacks and odd the N.A. has issued notice dated 6-10-2009 calling upon the complainant to make the entire payment by 20th October 2009, else supply will be dis-connected.

2. According to the complainant, upon apprehension of dis-connection, it approached the IGRC, Akola on 12-10-2009 and thereafter to this Forum on 14-10-2009. Reference has been made about passing of Interim Order by this Forum and reference has been made to the order of IGRC rejecting the application without granting any opportunity of hearing to the complainant. The complainant has alleged that none of the official of the N.A. was able to clarify the basis of ASC charges and though it was informed that after getting information from Mumbai Office it will be informed, but nothing was informed.

3. As per the complainant, the additional supply was granted by the N.A. after 20-12-2005 by increasing 2000 KVA i.e. about 8.8 times. Reference has

been made to the consumption of December 2005 as 66695 units and thereby after the period of 6 months of sanctioned load, the consumption could have been at 5,92,838 units in that ratio. It is alleged that in Nove.2006, the consumption of Electricity was 9,63,750 units i.e. more than the above 5,92,838 units. By making reference of order of APTEL in Appeal No.135/2007, it is alleged that the bench mark ought to have taken as 9,63750 units and ASC charges & could have been levied on that basis. However, the N.A. has wrongly and arbitrarily fixed bench mark of 168750 units i.e. consumption of July 2006, resulting in making incorrect calculation of payment in the bill of Sept. 2009. The complainant has sought relief of quashing of the said bill of September 2009 its non-liability for the calculation of alleged amount of adjustment of ASC charges. So also sought relief of preventing N.A. from dis-connection of electric supply, apart from the direction to the N.A. to not to claim DPC, Interest or any charges on the basis of alleged dues. The complainant has also sought for compensation of Rs.1,00,000/- together with cost and interest at the rate of 18%. The complainant has annexed certain documents in support of the claim.

4. After receipt of notice, the N.A. has submitted reply wherein the fact of increasing the load to 2000 KVA and applicability of HT-1-C tariff has been admitted with contention that the complainant is at express feeder. As per the N.A. additional supply charges (ASC) are made purely on the basis of actual consumption of electricity in a particular month and it varies from month to month. As per the order of APTEL in Appeal No.135/2007, the said charges have been levied on the basis of formula approved by the APTEL – the bench mark consumption has been considered in the bill of Sept.2009. It is the contention of the N.A. that 168750 units was consumption of July

2006 and that has been taken as Bench mark for calculation of ASC charges for the period of May 2007 to June 2008, consequently the complaint of the complainant needs to be rejected. The N.A. has filed certain documents alongwith the reply.

5. The matter was then decided by the Forum presided over by then Chairman etc. vide Order dated 1st February 2010. Against the said order the N.A. has approached the Hon. High Court in Writ Petition No.4057 / 2010. The Hon. High Court has passed the order in the said Writ Petition and the matter has been remanded to this Forum for a fresh adjudication. Consequently, after getting intimation about such remanding on 3-8-2015, this Forum has issued notices to both the parties. After receipt of notice both the parties have appeared through their Learned Representatives. Thereafter the N.A. has filed additional say stating that by exercising first option, the ASC charges were calculated for the period of May 2007 to June 2008. According to the N.A. the first part of the option occurs first, hence there is no chance for second option and in order to have uniformity in applying APTEL order, the first part of the modified criteria has been considered. In any case according to the N.A. it is the domain of billing authority to decide which part of the modified criteria is to be considered for billing and this Forum has no jurisdiction for giving direction in that regard. It is stated, otherwise it may result in multiplicity of the litigations. Then reference has been made to the part of the APTEL Order submitting that N.A. has rightly pointed out the practice and reference has been made to Review Petition No.5/2005 filed by APTEL and order therein and lastly pressed for dismissal of the complaint with cost.

6. Heard Shri Brijmohan Chitlange, President (Operations) Learned Representative of the complainant and Shri. Sunil Upadhyay, Dy.Law Officer, Learned Representative of the N.A. So also gone through the written notes of argument filed on record alongwith other material on record. As is clear from the record and submissions made, the dispute is pertaining to the bill of Sept.2009 from the N.A. wherein an amount of Rs.51,94693=87 has been included towards debit bill adjustment and it pertains to additional service charges for fixing of bench mark level. So in fact the aspects involved in the controversy is about fixing of bench mark level for the **reference period** of additional service charges. Admittedly the complainant's initial load supply was 225 KVA and in view of additional demand made it has been enhanced by adding 1775 KVA, thus totaling 2000 KVA. Additional supply load has been supplied after execution of agreement dated 26-12-2005 and the present controversy is about additional service charges for the period of May 2007 to June 2008.

7. Before proceeding further, it will be just and proper to mention here that MERC has introduced this Additional Service Charge (ASC), some time in October 2006 in the Tariff Order. The tariff Order dated 18-5-2007 deals with this aspect of ASC. More particularly Cause – 7.4(g) of the said order, specifying the bench mark consumption for the reference period. In view of the controversies the MERC has issued clarificationery orders such as : 24-8-2007, thereafter 11$^{th}$ Sept.2007 and dated 17-12-2007. Needless to mention here that one of the consumers M/s Eurotex Industries and Exports Ltd has approached the Commission and ultimately the matter went before the Appellate Tribunal of Electricity APTEL vide Appeal No.135 /2007, wherein after considering the rival submissions, Clause – 7.4 (g) has been modified by

order dated 12-5-2008. In order to understand clearly, it will be just and proper to make reference to the earlier Clause-7.4 (g) and also the amended Clause:…….

" Clause-7.4(g) : In case of Consumer whose sanctioned load / contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as billing period after six months of increase in sanctioned load / contract demand OR the billing period of the month in which consumer has utilized atleast 75% of the increased sanctioned load / contract demand after increasing the Contract Demand which ever is earlier."

After the modification made by APTEL in its Order dated 12-5-2008, the said clause -7.4(g) is as under:

"In case of Consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as billing period after six months of the increase and the sanctioned load/contract demand OR the billing period after six months in which the consumer has utilized atleast the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in the sanctioned load / contract demand"

8. In view of the defense and submissions made on behalf of the N.A., the recovery of additional service charges calculated in the impugned bill is in view of this modified order by APTEL vide order dated 12-5-2008. Firstly, it needs to be mentioned here that no details have been given from the side of the N.A. inspite of complainant's approach. It has not been explained the manner and the basis of showing such exorbitant charges in the bill. The contention of the complainant in the complaint in that respect has remained

unrebutted. From the record, it is clear that in that circumstances, the Complainant had approached the IGRC and thereafter this Forum. In view of the defense and submissions made on behalf of the N.A. 168750 units i.e. consumption of July 2006, has been considered as **bench mark** consumption and on that basis ASC charges have been calculated and the amount so arrived at, has been included as debit bill adjustment in the bill of Sept,2009. The complainant has strongly opposed the said action on the part of N.A. In that behalf, it has been tried to submit on behalf of the N.A. that it is the Higher Office which has made the same and the same is correct.

9. That Upon considering the rival submission, alongwith the available material on record, more particularly documents on record, neither any reason / explanation has been placed on record in any form during the course of argument nor any submission has been made on behalf the N.A. for such abnormal delay in levying the alleged charges in the bill of Sept.2009. Admittedly, the APTEL order dated 12-5-2008 and as per the submissions made on behalf of the N.A. on that basis, the charges have been included in the bill of Sept.2009. So practically after 15 months, the alleged recovery has been shown for the period from May 2007 to June 2008. That on considering the provisions of the Statute/ Regulation, more particularly Section 62.4 of the Electricity Act, 2003, it was necessary for the N.A. to clarify this position. Even if one considers Section-56 (2) of the Electricity Act, even for taking action of issuing of notice of disconnection it is necessary of showing of the amount recoverable as arrears of charges, unless it has been shown continuously as recoverable. Admittedly such action cannot be undertaken for the first time in the Bill of Sept.2009, the alleged amount has been shown as debit adjustment, that too, for the period of May 2007 to

June 2008. So apparently, the action on the part of N.A. of issuing notice dated 6-10-2009 etc cannot be said to be just and proper, in accordance with the provisions.

10. If one goes through deep in the matter, it is clear that after introduction of Additional Service Charges (ASC), the N.A. has earlier made applicable ASC on the basis of Option-II and Option-I was never applied. so all the while earlier the N.A. has made applicable of Option-II of Clause-7.4(g) of the Tariff Order. Whereas showing of the alleged recovery of ASC charges in the bill of Sept.2009, the contention of the N.A. is of applicability of Option-I. More particularly in additional say filed on behalf of the N.A. it has been for the first time tried to say that APTEL has given direction for calculating ASC by taking reference period as first part or Second option and further stated that has been clear in the said order of APTEL, since the stabilization period is taken as six months in both the parts. Further, it is stated:

" The first part will occur first and hence there is no need to go for the second " It has gone to the extent of stating that " Also second part may never happen"

So according to the N.A. on that basis first part of the modified order has been considered and applied. Now when admittedly on earlier occasions the N.A. has availed /applied Option No.II for considering **bench mark** and ASC charges, thus it was most necessary on its part to explain as to why it is now shifting on the first part for alleged arrears of recovery. The N.A. has not clarified the position In any case , whether it can justify its action taking into consideration the consumption of July 2006 i.e. 168750 units as bench mark of ASC charges ?

11. Here it needs to be mentioned that the Licensee-MSEDCL, being not satisfied by the order dated 12-5-2008 passed by the APTEL in Petition No.135/2007, has filed Review Petition No.5/2008 seeking review of the order dated 12-5-2008, raising various grounds including some of them raised in the present proceeding also. The Review Petition has been dismissed by the APTEL. During the course of submission, it has been submitted on behalf of the complainant that on rejection of the said Review Petition, N.A-MSEDCL has again filed Petition before Hon. Supreme Court of India, however, the said petition has also been rejected. Here it needs to be mentioned that this fact of filing of Review Petition by the NA (MSEDCL) as well as approach to Hon. Supreme Court of India has never been disclosed and as per the Order of High Court it appears that it was not disclosed there also. So in any case in the modified order of APTEL dated 12-5-2008- Vide modified Clause 7.4(g), ultimately decision was given about **bench mark**, consequently the ASC charges. Here it needs to be specifically mention that there was never any revision /changes pertaining to first part of the Option 7.4(g) and whatever orders clarifications have been issued are only with relation to second option of 7.4(g). Admittedly, the N.A.-MSEDCL even in the present matter had applied Second Option earlier and raised the bills time to time to the consumer. Those have been promptly paid the complainant. So when there was no change in the first Option 7.4(g), even in the order dated 12-5-2008 by APTEL and when the N.A. has all the time made applicable Second Option while raising the bills to the complainant earlier, what was the reason / necessity for making applicable Option-I, as alleged on behalf of the N.A. while claiming the alleged recovery in the bill of Sept.2009. The N.A. is opposing the present complaint for the reason of alleged recovery. As

already observed, the N.A. has approached the APTEL by filing Review Petition, which was ultimately rejected, turning down all the objections of the NA-MSEDCL against the order dated 12-5-2008. Apart from the explanation given in the order dt.12-5-2008 for fixing **bench mark**, the APTEL has again made further clarification in Para-13 of the order of Review Petition No.5/2008, which is reproduced hereunder:

Para-13 " *Before parting with the order we may clarify that the billing periods for bench marking of Reference Periods for ASC computation in both the alternatives of the modified clause 7.4(g) are to be identically same as there is no rationale for stabilization period to be different for the same system. It further specifies that the additional consumption in the increased sanctioned load/contract demand recorded during the Reference Period should, in percentage pro-rata basis, be equivalent to atleast the same ratio of energy consumption as percentage of contract demand that existed prior to the increase in sanctioned load or contract demand. Thus, the billing period after months of increase in sanctioned load will be treated as Reference Period for the purpose of ASC computation and even if, there expanded system has not recorded any consumption in the Reference Period, it will be deemed to have at least utilized the energy in the same ratio that existed prior to increase in sanction load or contract demand. The differentiation between two alternatives in original clause 7.4(g) being due to different time-periods for stabilization (one time period linked to achievement of 75% of contract demand) having been dispensed with in the order under review, both alternatives become equal in effect. The energy consumption in Reference period for increase inn the contract demand is deemed to be at least on pro-rata basis equal to*

*that existed prior to the increase in sanctioned load or contracted demand."*

12. As per the order of the APTEL for both the alternatives of modified 7.4(g) the billing period for bench mark are required to be identical and the same. The APTEL has gone to the extent of considering the case of even not recording of the consumption by expanded system in the Reference Period, then in that case it will be deemed to have atleast utilized energy in the same ratio that existed prior to increase in sanctioned load /contract demand. According to the APTEL, as there is no rationale for stabilization period to be different for the same system. So according to the plain reading thereof that certain period (billing periods) for bench marking as Reference Periods in both the alternatives is necessary for considering the stabilization and in principle considering ratio of energy consumption, prior to increase in the sanctioned load / contract demand needs to be in percentage pro-rata basis equivalent to increase therein. That on record energy consumption charge has been filed for all the relevant period, more particularly years of 2006, 2007 and 2008. During the course of submission, it has been submitted on behalf of the complainant that in July – August of each year, the receipt of raw material – Soyabean is in much less quantity being rainy reason and during that period it undertakes the work of repairs and maintenance. This has not been disputed in the argument reply of N.A. Even from the energy consumption chart filed on record, this is amply clear that only during this period in each year, the consumption of electricity (consumed units) are much less in comparison to the readings of other months. There appears to be substance in the statement made on behalf of the complainant that the peak season period is from September onwards.

The consumption of electricity during those relevant period clearly specifies this position. In the background of these circumstances, the action on the part of N.A. of taking into consideration 168750 units consumption in July 2006 as bench mark cannot be said to be just and proper. The N.A.has filed Statement giving the details of showing month-wise Consumption / Recorded MD in KVA and Ratio Unit /Recorded MD of the relevant period is as under :

| *Sr No.* | **Month** | **Units consumed** | **Recorded MD in KVA** | **Ratio units /recorded MD** |
|---|---|---|---|---|
| *1* | Dec.05 | 66695 | 299 | 223.06 |
| *2* | Jan.06 | 393465 | 1806 | 217.87 |
| *3* | Feb.06 | 633360 | 1778 | 356.22 |
| *4* | March-06 | 460320 | 1695 | 271.58 |
| *5* | April-06 | 427090 | 1549 | 269.26 |
| *6* | May 06 | 386430 | 1545 | 250.12 |
| *7* | June 06 | 184230 | 908 | 202.90 |
| *8* | July 06 | 168750 | 1280 | 131.84 |
| *9* | August 06 | 340200 | 1558 | 218.36 |
| *10* | Sept.06 | 494430 | 1552 | 318.59 |
| *11* | October 06 | 452340 | 1264 | 357.86 |
| *12* | November 06 | 963750 | 1788 | 539.01 |
| *13* | *December 06* | *849190* | *1757* | *482.75* |

13. Even from the chart filed by the N.A. its ratio of units / recorded M.D. of July 2006 is 131.84 and finalizing bench mark on that basis by N.A. is not commensurating with the principle laid down by the APTEL in the order. Admittedly In December 2005, the ratio-units / recorded MD is 223.06. By considering the ratio unit / recorded MD of 131.34 by the N.A. as **bench mark** by no stretch of imagination can be said to be in terms of the order of APTEL referred to above. It is not at all in proportion to the increased

sanctioned load. Initial load was 225 KVA and it has been increased to 2000 KVA admittedly. So practically it is about 8.8 times. So inspite increase of sanctioned load the N.A. has attempted to reduce the bench mark. In view the principle laid down by the Competent Authority the bench mark could not have been reduced. Such action the part of the N.A. without any supporting reasonable ground is incorrect.

14. From the defense submissions and chart of N.A. it is clear that ratio unit / recorded MD of Jan.2006 is 217.87, in view of the consumption of 393465 units which is near /equivalent ratio unit/ recorded MD of the period at the time of increase in the load / contract demand during the period of 6 months, after December 2005. So in pursuance to the guidelines / principles laid down by the order of APTEL dated 12-5-2008, the consumption unit of 393465 units in Jan.2006 can be said to be the basis for considering **bench mark** consumption for the period of calculation of additional service charges. On behalf of the complainant, it has been tried to content that the monthly consumption can be said to be 1693440 units, cannot be said to be just and proper. Taking into consideration the ratio unit / recorded MD of 217.87 as referred to above appears to be on pro-rata basis equal to the ratio unit recorded MD in December 2005 i.e. prior to increase in sanctioned load or contract demand. So in pursuance to the observations made by the APTEL in the order, this Forum thinks it just and proper to pass order accordingly.

15. Admittedly the complainant has paid all the electric bills promptly. The submission made by the Learned Representative of the Complainant in that behalf has been admitted by the N.As Representative. The letter of N.A. is also on record. The N.A. is levying DPC, Interest etc in the bills. The said

action of the N.A. cannot be said to be just and proper and realizing it the N.A. is asking the complainant to pay only current bills orally. The complainant's claim for cost and interest at 18% is exaggerated. However in the facts and circumstances, this Forum thinks it proper to pass just and appropriate order in that respect also. That the N.A. being Public Undertaking needs to take a reasonable approach towards the consumers and should make all sincere efforts to clarify the situations / position, instead of keeping silence /inaction. Whenever the consumer approaches for clarification/grievance, the same needs to be resolved appropriately at the earliest. The concerned Superior officials to give suitable instructions/guidance to all concerned, so as to avoid unnecessary litigations and wastage of valuable time of the responsible officers of the N.A. as well as the consumer. With such observations, the Forum proceeds to pass the following unanimous order:

## O R D E R

1. That the complaint No.67/2009 is hereby partly allowed.
2. The bill issued by the N.A. in Sept.2009 showing as debit bill adjustment for Rs.51,94693=87, is hereby set aside.
3. The N.A. is directed to take consumption of 393465 units (of Jan.2006) as **bench mark** consumption for ASC and the N.A. to refund/adjust excess payment made by the complainant together with interest @ 6% p.a. as per Section-62(6) of Electricity Act, in the forthcoming bills payable by the complainant.

4. Whatever payment the complainant has made during the intervening period, should be adjusted accordingly by taking into consideration the above **bench mark** consumption and to issue the correct bills by not levying Interest , DPC for the entire intervening period.
5. That the N.A. is also liable to pay Rs.10,000/- towards cost etc to the complainant.
6. That the compliance report to be submitted within the period of two months from the date of this order.

| Sd/- | Sd/- | Sd/- |
|---|---|---|
| (R.A.Ramteke) | (D.M.Deshpande) | (T.M.Mantri) |
| Member/ Secretary | Member | Chairman |

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No.CGRF / AMZ/ Akola/ Dt. /09/2015

To
The Superintending Engineer,
O & M Circle,
MSEDCL,
Akola

The order passed on 16-09-2015 in the Complaint No. 67/2015, is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Amravati Zone, Akola

**Copy to:**
M/s. Gujarat Ambuja Exports Ltd Kanheri Gawali, Tq:Balapur Dist : Akola for information.