

**Maharashtra State Electricity Distribution Co. Ltd.**

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No. PR-3/COS/ **No 27533**

Date:

**24 AUG 2009**

**COMMERCIAL CIRCULAR No. 99**

**Sub:** Assessment u/s 126 and / or Offences u/s 135 of the Electricity Act 2003.

- Ref:**
- 1) Electricity Act 2003.
  - 2) Government Circular dated 06.04.2006.
  - 3) Circular No. 2731 dated 29.06.2004 (V&S).
  - 4) Commercial Circular No. 17 dated 18.10.2005.
  - 5) Commercial Circular No. 46 dated 16.10.2006.
  - 6) Commercial Circular No. 49 dated 21.12.2006.
  - 7) Corrigendum to Circular No. 49 dated 12.07.2007

**1) BACKGROUND:**

The Electricity Act 2003 u/s 152 has empowered the Government and the authorized officers to use discretion to compound offences u/s 135 (Theft of Energy) of the Electricity Act 2003. MSEDCL after considering all the aspects of the Electricity Act 2003 and in order to serve as a strong deterrent against the theft of electricity issued above mentioned circulars by way of guidelines. Following instructions are issued pertaining to the provisions of Section 126, Section 135 & Section 152 of Electricity Act 2003.

**2) Provisions of Section 126 of the Electricity Act 2003 is as under:**

.....126 Assessment:

- (1) *If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*
- (2) *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
- (3) *The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

- (4) *Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upto him.*
- (5) *If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*
- (6) *The assessment under this section shall be made at a rate equal to (twice) the tariff applicable for the relevant category of services specified in sub-section (5).*
  - (a) *“assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government.*
  - (b) *“unauthorised use of electricity” means the usage of electricity*
    - (i) *by any artificial means; or*
    - (ii) *by a means not authorized by the concerned person or authority or licensee; or*
    - (iii) *through a tampered meter; or*
    - (iv) *for the purpose other than for which the usage of electricity was authorized; or*
    - (v) *for the premises or areas other than those for which the supply of electricity was authorized.....*

This Section 126 is covered under part XII and under caption “Investigation and Enforcement”.

Section 126 is for initiating action against the person indulging in unauthorized use of electricity. The assessing officer can take action on coming to the conclusion that a particular person is indulging in un-authorised use of electricity. The Action can be taken against the person who indulges in such act. Action can also be taken against the person who is benefited by such un-authorised use.

When the assessing officer comes to the conclusion of un-authorised use, he can make provisional assessment of such use of energy. For such provisional assessment the rate applicable will be the tariff applicable to relevant category that the consumer actually would have been levied. The relevant category means the category for which the supply is used.

Once the provisional assessment bill is served, the person can accept the same and deposit the amount within the period of 7 (seven) days. The person on whom the provisional bill is served is also entitled to file his objection. In case such objection is filed hearing is required to be given to such person and thereafter the final order of assessment is required to be passed within 30 (thirty) days from the date of service of the provisional assessment order.

So far as the period of assessment under sub section (5) is concerned it should be for the entire period of un-authorised use. However, when the period can not be determined then the period shall be limited to 12 Months immediately proceeding the date of inspection and at twice the rate.



The order of assessment is appealable under section 127 of the Act. The period of appeal is 30 days. The above said procedure has to be followed in all the cases whenever action is contemplated and taken under section 126.

The amount of final assessment found due under Section-126 or 127, as the case may be, must be claimed by demand through a bill. In case, it is not paid on or before due date, action under Section-56(1) for recovery of the same should be taken.

3) **Provisions of Section 135 to 140: Part XIV of the Act :**

.....*OFFENCES AND PENALTIES*

135. (1) *Whoever, dishonestly, --*

- (a) *taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee, or supplier, as the case may be; or*
- (b) *tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*
- (c) *damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, or*
- (d) *uses electricity through a tampered meter; or*
- (e) *uses electricity for the purpose other than for which the usage of electricity was authorized,*

*so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.*

*Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –*

- (i) *does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;*
- (ii) *exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity;*

*Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period*

which shall not be less than three months but may extend to two years and shall also be debarred from getting supply or electricity for that period from any other source or generating station:

*Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.*

- (1A) *without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity;*

*Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case maybe, of the rank higher than the rank so authorized shall disconnect the supply line of electricity;*

*Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection.*

*Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty eight hours of such deposit or payment.*

- (2) *Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may –*

- (a) *enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;*
  - (b) *search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorized use of electricity;*
  - (c) *examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.*
- (3) *The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:*



*Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.*

- (4) *The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.....*

Section 135 to Section 140 are covered in part XIV of the Electricity Act 2003 under caption "Offences and Penalties". Section 135 is regarding theft of electricity. The theft of electricity is defined in sub-section 1 of section 135.

**Section 135** Theft of Electricity – whoever "**Dishonestly**" (emphasis added):

Sub Section 1A is added by amendment and has come in to force w.e.f. 15.06.2007. It is laid down in this section that without prejudice to other action as contemplated against the person committing theft of electricity. The licensee can immediately disconnect the supply of electricity. In case of such disconnection of supply the licensee or a such officer is bound to lodge report within the period of 24 hours from the time of disconnection. In case such person deposits the payment of assessed charges the supply is required to be restored within 48 hours of such deposit or payment. Section 135 has laid down the procedure for taking action.

- 8.6: *"Provided further that the assessment shall be made at a rate equal to one-and-half times the tariff applicable to the category of services so assessed".*

The MERC Regulations had laid down that the assessment of theft can be made at the rate of 1 ½ time of the tariff. The Regulations are still applicable. (There should not be any confusion regarding the rate of tariff applicable in case the unauthorized use under section 126 and theft of electricity under section 135).

4) **Provisions of Section 135 vis-à-vis Section 126:**

There are certain provisions under sections 135 and 126 which appear to be overlapping. Section 135 sub-section 1 d & e are as follows:

- (d) *uses electricity through a tampered meter; or*
- (e) *uses electricity for the purpose other than for which the usage of electricity was authorized.*

*The provision of sub-section 126 explanation-b (iii - iv) are as follows:*

- (iii) *through a tampered meter; or*
- (iv) *for the purpose other than for which the usage of electricity was authorized;*

***The distinction between above said 2 sections is that under section 126 a person is using the electricity un-authorisedly. While under section 135 the use of electricity or the abstraction is done dishonestly.***

Whenever, it is found that the electricity is used through a tampered meter, it will have to be seen whether it is a dishonest abstraction or whether it is a un-authorized use simply through tampered meter.

(In case it is found that it is difficult to make out the case of theft, then only it will be appropriate to take action under section 126 of the Act).

Here it is to be pointed out that section 135 (1) (b) specifically provides that **whosoever dishonestly** (emphasis added) tampers meters, installs or uses a tampered meter is punishable under this section for theft of electricity. The whole of section 135 is for dishonest abstraction of electricity. Therefore while considering the cases of use of electricity through tampered meter sub section (1) (b) provides and takes care of dishonest abstraction of electricity by tampering meter.

The Clause (d) of Sub Section-1 of Section-135 provides that even the use of electricity through tampered meter amount to theft. Therefore, whenever there are instances as given in Clause (b) or Clause (d) of Sub Section-1, the action has to be taken under Section-135.

**[ In case it is found on the basis of convincing and exceptional circumstances that the use of electricity through tampered meter was not done with dishonest intention to abstract the same illegally , then alone action under Section-126 of the Act is contemplated ]**

**As regards the use of the electricity for the purpose other than for which use was authorized, action under Section-135 as well as Section-126 of the Act can be taken. When there is change of purpose and there are convincing circumstances to show that it has been done with dishonest intention to abstract electricity to avoid to pay the charges through legitimate tariff, action can be taken under Section-135 of the Act. In the event no such exceptional circumstances are available action should invariably be taken under Section-126 of the Act.**

5) **Provision of Section 152:**

Section 152 of the Act provides for compounding of offence under section 135 of the electricity. This section says that no other offence under the act is compoundable. The offence under section 135 is compoundable only once. For compounding of the offences there should be offer from the accused to pay the assessed Civil Liabilities and compounding charges. In case he is ready to pay above said charges and get the matter compounded the officer authorized in that behalf can use discretion to compound the offence. Compounding of the offence will give effect of acquittal within meaning of section 300 of Code of Criminal Procedure. For the purpose of administrative convenience and uniform policy of compounding of offence we have issued a Commercial Circular No. 49 dated 29.12.2006 and No. 76 dated 30.01.2008. Presently the authorized officers are guided to exercise their discretion only when the assessment of civil liability on account of theft is to the extent of Rs.5 lakhs. The Circulars here by stands modified **and the authorized officers are allowed to compound the offences above Rs. 5 lakhs also.**



So far as compounding of offence under section 152 is concerned the provision of Criminal Procedure Code (Section 320) are not applicable. If the offence is compounded, it should be informed to the Police Station so that note of the fact can be taken by the investigation officer.

The offence can be compounded even when the matter is pending before the Court. In the cases pending before the Court, after compounding of the offence this fact must be brought to the notice of the Court and the Investigating Officer by the authorized officer so that the proceeding can be dropped with the proper order.

**6) Offence u/s 135 - Lodging of FIR (Mandatory):**

As per Section 135 it is mandatory to lodge FIR within 24 hours of disconnection of supply, for the alleged offence of theft. Even if there is no disconnection of supply, FIR is required to be lodged as offence under sec-135 is cognizable and non-bailable. All instructions issued earlier contrary to above instructions stand superseded.

These instructions are to be followed with immediate effect.

  
**Director (Operations)**  
**MSEDCL**

**Copy s. w. r. to:**

- The Secretary, Maharashtra Electricity Regulatory Commission, 13<sup>th</sup> Floor, Cuff Pared Colaba, Mumbai.

**Copy s. w. r. to:**

- The Managing Director, MSEB, Holding Company Ltd.
- The Managing Director, M.S.E.D. Company Ltd.
- The Managing Director, M.S.E.T. Company Ltd.
- The Managing Director, M.S.E.P.G. Company Ltd.
- The Director, (Finance), M.S.E.D. Company Ltd.
- The Director, (Operations), M.S.E.D. Company Ltd.
- The Director (V & S), MSEDCL Ltd, Mumbai.

**Copy to:**

- The Executive Director / (Corporate Planning)/(Project)/(H.R.), MSEDCL, Mumbai,
- The Regional Executive Director - I, MSEDCL, Kalyan,
- The Regional Executive Director - II, MSEDCL, Pune,
- The Regional Executive Director - III, MSEDCL, Nagpur.

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- 1) The Chief Engineers of All O & M Zones, MSEDCL.
- 2) The Superintending Engineers of All O & M Circles, MSEDCL.
- 3) The Executive Engineers of All O & M Divisions, MSEDCL.
- 4) The Dy. Executive Engineers of All O & M Sub-Divisions, MSEDCL.
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