

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in/ www.merc.gov.in**

CASE No. 151 of 2016

In the matter of

Petition of Maharashtra State Electricity Distribution Co. Ltd. for review of Order dated 16.05.2016 in Case No. 9 of 2016 regarding increase in the connected load limit for areas outside Municipal Corporations under the Standards of Performance Regulations, 2014

Coram

**Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

Appearance

For the Petitioner: Shri. Ashish Singh (Adv.)
.... Shri.S.N.Sherkar

For Authorized Consumer Representatives: Shri. PratapHogade,CMIA
.... Shri. Ashish Chandarana,VIA

ORDER

Dated: 26 July, 2017

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 7 November, 2016 for review of the Commission's Order dated 16 May, 2016 in Case No. 9 of 2016 with regard to enhancement of connected load outside Municipal Corporations. The Petition cites the MERC (Standards of Performance (SoP) of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 ('SoP Regulations'), Section 94 (1) (f) of the Electricity Act (EA), 2003 and Regulation 85 of the MERC (Conduct of Business) Regulations, 2004.

2. MSEDCL's prayers are as follows :

- a. *“Allow the present review Petition.*
- b. *Condone the delay in filing the present review Petition.*
- c. *Review of the Order dated 16.05.2016 passed by Commission.*
- d. *Allow MSEDCL to increase the limit of connected load from 107 HP (80 kW) to 201 HP (150 kW) in the areas other than Municipal Corporation wherever infrastructure is available and consumer demands...”*

3. The Petition states as follows:

(1) On 18 January, 2016, MSEDCL had filed a Petition (Case No 9 of 2016) under Regulation 15 of the SoP Regulations, inter alia for approval of extension of connected load from 107 HP (80 kW) to 201 HP (150 kW) in areas other than Municipal Corporations, wherever infrastructure is available and there is demand from consumers.

(2) Vide its impugned Order dated 16 May, 2016, the Commission ruled as below:

“6. Under Section 181 (3) of the EA, 2003, all regulations made by the Commission are subject to the condition of ‘previous publication’. The SoP Regulations, 2014 were notified accordingly on 20 May, 2014, only one and half years prior to the present Petition, after an extensive process which included public consultation. During this process, MSEDCL also gave its detailed views. In fact, MSEDCL had taken a diametrically opposite stand during this consultation process from what is now proposing. It had opposed any load enhancement as compared to the earlier SoP Regulations, 2005. Moreover, in Case No. 138 of 2014 (initiated in July, 2014) also, MSEDCL had sought review of the new load limits and proposed that the limits in the SoP Regulations, 2005 be restored. The Commission also notes that the SoP Regulations, 2014 are not Distribution Licensee-specific.

7. The Commission is of the view that MSEDCL's claim of difficulty in implementing the relevant provisions of Regulations has not been substantiated. MSEDCL has also not furnished details of the applications said to have been received from consumers, as directed in the Daily Order dated 29 March, 2016.

8. MSEDCL is fully aware of the logic and technical reasons behind the existing provision regarding release of different loads at certain specified voltages. In effect, MSEDCL would knowingly increase the technical losses in its distribution system, while it is already grappling with the issue of correct assessment of distribution losses.

9. In view of the foregoing, the Commission does not find any justification to invoke its powers to remove difficulties in the implementation of the SoP Regulations as sought by MSEDCL, or to initiate the process of amending them.”

(3) MSEDCL has submitted the following grounds for review:

(a) During the course of Case No. 9 of 2016, the Commission had directed MSEDCL to furnish details of applications received from consumers for supply above 80 kW on LT. However, these could not be furnished as the details were not available at that point in time. Now, MSEDCL has collated the details of such consumers.

b) The impugned Order was passed without taking into account the number of consumers that have applied to MSEDCL with such requests. Hence, the Commission may review its Order in the light of this new information.

c) The Commission in its impugned Order had observed that allowing the request of MSEDCL would increase the technical losses of its distribution system. However, it escaped the notice of the Commission that an increase in load, if allowed, would generate more revenue which would compensate for the minor technical losses caused, if any.

d) It also escaped the notice of the Commission that the technical losses in the past few years have been going down considerably and that MSEDCL is taking stringent steps to bring them down further.

e) The Commission inadvertently overlooked the fact that the request was only for areas where appropriate infrastructure was available and not for the entire State. It was submitted that higher load on the LT network would only be released if it was found technically feasible and not otherwise.

f) The relaxation proposed would benefit consumers by allowing higher loads on the LT network without incurring any cost towards HT installations, which would in turn help MSEDCL to generate more revenue.

g) In the larger interest of consumers and for furthering the ease of doing business, the Review Petition may be allowed.

(4) There is an inadvertent and unavoidable delay in filing the Petition, on account of difficulties in collecting the data of consumers who have requested release of more than 80 kW load on LT network. This delay is neither intentional nor deliberate.

4. Vidarbha Industries Association (VIA), an Authorised Consumer Representative, vide its submission dated 30 January, 2017, has stated that:

(1) It appears that MSEDCL has filed this Petition against the wishes of its officials as MSEDCL has misrepresented and concealed the facts behind the original and the Review Petition. The Review Petition demonstrates that MSEDCL wants to lose the

litigation deliberately and subsequently present before the consumers and the Government of Maharashtra (GoM) that it is the Commission which did not permit MSEDCL to facilitate small entrepreneurs to avail load up to 150 kW/187 KVA/201 HP at LT level as an initiative to improve ease of doing business as desired by the Government.

(2) In order to bring the entire facts on record which have been concealed by MSEDCL, it is necessary to bring on record many documents, circulars and undue hardship caused to industry and consumers due to the violation of provisions of the SoP Regulations by MSEDCL. Recently, in the matter of the Seafood Exporters Association, the Commission has also expressed its displeasure at the functioning of MSEDCL.

(3) It has been a long-standing demand of industry representatives that the LT limit of 150 kW/187 KVA/201 HP should be made applicable uniformly irrespective of location in Municipal Corporation or other areas. This is a matter of record, including during the process of public consultation on the draft SoP Regulations in which many representations were made. It is also a matter of record that MSEDCL opposed this demand at that time, which is also recorded by the Commission in the impugned Order. The change which took place between 2013 and 2015 is the change in Government and implementation of 'Make in India', 'Make in Maharashtra' and 'Ease of Doing Business' projects by the Central Govt. and GoM, respectively. Hence, VIA believes that it is the GoM which is intending to facilitate small entrepreneurs and, therefore, it is necessary to implead GoM in these proceedings.

(4) For improving the ease of doing business, GoM, after interaction with various industry representatives, has relaxed many procedural compliances to expedite industrial development. It is learnt from reliable sources that GoM was pursuing MSEDCL to approach the Commission for relaxing the LT limit for all areas, as in the case of Municipal Corporation areas. However, MSEDCL did not act promptly. After a long delay, when it was becoming hard to respond to GoM, MSEDCL came up with a Circular relaxing the LT limit up to 150 kW/187 KVA/201 HP for all other areas also, in violation of the SoP Regulations, 2014. The Circular No 250 dated 15 October, 2015 reads as follows:

"The Competent authority has accorded approval for modification of above provision as under:-

The classification of installation in AC system at 400/415 voltage level that can be installed is modified as "Not exceeding 150kW/187 KVA in all areas other than Municipal Corporation". The same modified table is reproduced herewith as under:..."

(5) Vide Daily Order dated 29 March, 2016 in Case No. 9 of 2016, certain compliances were sought from MSEDCL, and it is recorded that these directions were not complied with by MSEDCL. MSEDCL has not taken any action against its officers for their failure to comply with that Daily Order, which confirms the allegation of VIA. The

unwillingness of MSEDCL was also reflected during the consultation process on the draft SoP Regulations. However, reviewing the restriction on the LT limit up to 107 HP in all areas is necessary.

(6) Circular No 250 was issued long before even the filing of the Petition in Case No. 9 of 2016. After the Circular, many existing industries applied for load enhancement and new industries applied for new load up to 150 kW/201 HP. Upon receiving load sanctions, they made investments in civil works and/or Plant and Machinery. At some places, the load has even been released and the Units are functioning. VIA has submitted as an example in one case the sanction dated 27 November, 2015, demand note dated 1 December, 2015 and energy bill for December, 2016 confirming the date of release of connection as 25 April, 2016, i.e. when Case No 9 of 2016 was closed for Order.

(7) After according many such load sanctions, MSEDCL filed its Petition in Case No 9 of 2016 seeking approval for LT load limit up to 201 HP, suppressing the fact that it had already implemented it, violating SoP Regulations, by releasing Commercial Circular No 250 dated 15 October, 2015 and accorded many approvals. MSEDCL also failed to comply with the directives of the Commission to supply the list of applications received. Had these facts been brought on record along with the sanctions accorded, the Order of the Commission would have been different. Even in present Case, the data submitted by MSEDCL is not of consumers demanding LT load above 80kW but of the consumers to whom MSEDCL has accorded load sanction and not released the load, causing great hardship to them.

(8) MSEDCL also failed to explain that the tariff for LT consumers was Rs. 7.01 per unit whereas it was Rs. 6.33 per unit for HT at that time. Thus, the difference in rate per unit was sufficient to compensate for the revenue loss on account of technical loss due to metering on the LT side, which usually is around 2%.

(9) MSEDCL also failed to suggest the formula for billing which was in existence earlier, i.e. in the event of metering on the LT side, 2% additional units can be added to the billed unit to meet the technical losses. This would have helped MSEDCL to recover 2% units additionally in Municipal Corporation areas where the LT limit up to 150 kW is in force.

(10) On 16 May 2016, the Commission rightly rejected the Petition on the basis of available material and observing that there no consumer demand was shown by MSEDCL, and that the stand of MSEDCL was altogether different two years back.

(11) In pursuance of the impugned Order, MSEDCL issued a Circular on 7 June, 2016 directing its field officials not to release load up to 201 HP as follows:

“All field officers are therefore, directed to stop the release of load more than 80 kW/100 KVA in all areas other than municipal corporation and strictly adhere to the load sanction limits as specified in MERC SoP Regulations 2014.”

(12) These directives were also made applicable to all industries to whom sanctions were accorded and whose erection of infrastructure was completed. Many of them were just waiting for load release which was pending due to non-availability of meters. Entrepreneurs had spent lakhs of rupees on erection of Distribution Transformers and crores of rupees on civil work and plant and machinery after getting sanctions but were subsequently not in a position to get power at the LT level. Many of them restricted their contract demand. Had MSEDCL taken a pro consumer attitude, it could have dispensed guidelines to deal with already sanctioned connections and tried to accord them deemed approval for getting supply on the HT side.

(13) Despite itself creating a problem for industry owners, MSEDCL has not converted their sanctioned LT connections into HT wherever possible. Consumers who were sanctioned LT connections above 107 HP were directed to apply for refund of charges paid by them. Had the MSEDCL Head Office communicated the methodology to deal with sanctioned applications, such treatment to industry owners could have been avoided.

(14) Financial institutions will not sanction or disburse term loan to any project unless industry owners place on record the load sanction letter of MSEDCL. MSEDCL subsequently revoking the earlier sanction which resulted in sanction or disbursement of term loan leads to devaluation of the reputation of the State-owned enterprise. Many consumers are either waiting for positive news or have taken partial load and are running by exceeding contract demand or at lower capacity than installed.

(15) MSEDCL has fabricated evidence to mislead the Commission and produced the data of consumers demanding supply on LT side above 80 kW and up to 150 kW. The data furnished by MSEDCL is of load approved on LT level above 107 HP instead of consumers who have applied for such connections above 107 HP on LT level.

(16) Regulation 42 of the MERC (Conduct of Business) Regulations, 2004 states that,

“In accordance with section 193 of the Indian Penal Code, 1860, whoever intentionally gives false evidence in any of the proceedings of the Commission or fabricates false evidence for the purpose of being used in any of the proceedings shall be punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.”

(17) It is necessary to allow LT limit of 201 HP uniformly in all areas on the following grounds:

- (a) The basic objective behind setting different levels of LT supply for different areas was non-availability of space for development of infrastructure in 2005 [at the time of the first SoP Regulations]. Over time, the cost of land has substantially increased in all areas, and land in rural areas has also now become more costly, raising concerns for providing space for HT network.
- (b) Many industries previously connected on LT network are now willing to undertake technology upgradation for increasing production but do not have adequate space for internal LT to HT conversion as it requires about 1200 sq. feet for erecting cubicle metering room and installation of transformer and other arrangements including fencing.
- (c) The Commission has now implemented voltage-based tariff, and wheeling charges for LT and HT are different, thus having arrangements to protect the revenue interest of Distribution Licensees and also of their Annual Revenue Requirement.
- (d) Central and State Government are implementing 'Make in India' and 'Make in Maharashtra', and getting hassle-free electricity connections with less compliances and less monitoring agencies is the need of time to promote and accelerate the speed of industrial development and also for generation of employment in rural areas. Allowing LT supply up to 201 HP in all areas will help to promote this.

(18) In these circumstances, VIA requests the Commission to:

- (a) Direct MSEDCL to release the load of consumers to whom it has accorded sanctions earlier, as interim relief;
- (b) Implead GoM through its Energy Secretary for submitting its say;
- (c) Call for all the documents and office notes leading to Commercial Circular No. 250 and subsequent sanctions accorded and connections released;
- (d) Approve uniform limit for LT consumers in all areas up to 150 kW/187 KVA in line with Municipal Corporation areas by dispensing a methodology to adjust technical loss, if any, causing adverse impact on revenue of MSEDCL;
- (e) Initiate proceedings against officers responsible for violating SoP Regulations;

- (f) Initiate proceedings for knowingly making false affidavit before Commission and for concealing material facts in Case No 9 of 2016 and Case No 151 of 2016;
- (g) Provide any other relief as the Commission deem fit to improve the functioning of MSEDCL and for protecting consumers' interest.

5. At the hearing held on 31 January, 2017,

- (1) MSEDCL stated that the Commission, in its Daily Order dated 29 March, 2016 in Case No. 9 of 2016, had directed it to submit details of applications received from consumers for enhanced load on LT within a week. MSEDCL had been unable to furnish these details at that time. The Commission may review its impugned Order in the light of the new information as MSEDCL has now collated details of such consumers. The Commission observed that the data now furnished by MSEDCL indicates only the number of applications and not the other relevant details. MSEDCL stated that it would submit the further details.
- (2) Shri. Ashish Chandarana (for VIA) referred to its written submission dated 30 January, 2017, which also sets out the various actions taken by MSEDCL in certain cases. Notwithstanding these anomalies, he stated that, due to space constraints in converting existing LT consumers to HT, MSEDCL may be allowed to enhance the load limit from 80 kW to 150 kW in areas other than Municipal Corporations. He also suggested that, since the State Government is intending to facilitate small entrepreneurs, the GoM may also be impleaded.
- (3) Shri. Pratap Hogade, on behalf of Chamber of Marathwada Industries and Agriculture (CMIA, an Authorized Consumer Representative) stated that the figures of applications from consumers for enhanced load on LT furnished by MSEDCL are not correct, and that there are many more. MSEDCL may be allowed to enhance the load limit from 80 kW to 150 kW on LT in areas other than Municipal Corporations.
- (4) The Commission asked what the impact on revenue and losses of MSEDCL would be, and what would be the yardstick to decide the applicability of the proposed relaxation in specific areas. The Commission directed MSEDCL to file the details and replies within two weeks.

6. MSEDCL submitted its response on 20 February, 2017, and revised its submission on 13 June, 2017 stating that some of the applications were wrongly considered due to oversight, duplication, etc., and that the correct number of applications was 339 instead of 410. With regard to the other issues, MSEDCL stated as follows:

(1) Impact on MSEDCL revenue.

- (a) If these consumers were released supply on the LT side, MSEDCL would lose Rs. 38. 89 lakh per month. There is a possibility of losing

revenue considering opportunity cost. Some consumers might have restricted their load up to 107 HP instead of enhancing it up to 201 HP due to the infrastructure cost involved and space constraints (space required for HT Kiosk and Transformer unit and additional cost for material and installation), not availing additional average load of 47 HP, which could have generated additional revenue of Rs. 59,291 per consumer per month as per the prevailing tariff rate. Revenue of Rs. 1.16 crore per month on account of opportunity cost may be lost from these 339 consumers.

(b) However, if connection for the load between 107 HP to 201 HP on LT side is denied in rural areas, then MSEDCL would be differentiating them on geographical factors rather than on technical feasibility. If no geographical differentiation is made between urban and rural areas is made and the same criterion is applied in both areas, MSEDCL may lose revenue from the urban areas also.

(c) By releasing these connections, MSEDCL will be in a better position to utilize surplus available power rather than selling it in the Power Exchanges at lower rate or utilizing it for subsidized consumers.

(d) MSEDCL is a revenue neutral organization. Whatever the positive or negative impact, it will be distributed across all its consumers.

(2) Distribution Losses.

- (a) By releasing connection on LT side, an additional element of distribution transformer is included in the system. The technical losses of the distribution transformer are in the range of 5 to 7.5 % of the maximum total losses, as per Table 6 of Bureau of Indian Standards (BIS).
- (b) The revenue from these industrial consumers above the average cost of supply is much more than the loss in revenue due to technical losses of the Distribution Transformers. Earlier, MSEDCL was procuring BIS Level-1 rated Transformers, which are now discontinued by Ministry of Power by its notification dated 16 December, 2016 and BIS Level-2 is mandatory from January, 2017.
- (c) Numerically, HT consumers are less prone to avail free electricity as compared to the number of consumers in the rest of the categories in rural areas.

(3) Yardstick Criteria

The connections up to 201 HP will be released throughout the MSEDCL area subject to technical feasibility on the LT network depending on limits of percentage voltage regulation, loading of source transformer, source feeder and loading on existing Distribution Transformer.

- (4) A separate tariff category of 'LT Special' may be introduced covering all areas for consumers with Contract Demand between 107 to 201 HP across categories and tariff between HT and LT may be applied. Till decision on such new category is taken, the Commission may allow the existing LT tariff to these consumers.

Commission's Analysis and Ruling

7. Regulation 85(a) of the Commission's Conduct of Business Regulations, 2004 specifies as follows:

“Review of decisions, directions, and Orders:

85. (a) Any person aggrieved by a direction, decision or Order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or Order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such Order, within forty-five (45) days of the date of the direction, decision or Order, as the Case may be, to the Commission.”

- 8. MSEDCL has sought review of the impugned Order citing the discovery of new and important material. Subsequent to the impugned Order, MSEDCL has now collated details of consumers who have applied for load above 80 kW in areas other than Municipal Corporations, which had not been furnished in the earlier proceedings since its collection from across the State took considerable time. MSEDCL's failure to do so was also cited by the Commission in the impugned Order:**

“7. The Commission is of the view that MSEDCL's claim of difficulty in implementing the relevant provisions of Regulations has not been substantiated. MSEDCL has also not furnished details of the applications said to have been received from consumers, as directed in the Daily Order dated 29 March, 2016...”

MSEDCL has stated that it is also for this reason that it could not file the Review Petition in within 45 days as required. Considering these circumstances, the Commission condones this delay.

9. The SoP Regulations specify as follows:

“5.3 Except where otherwise previously approved by the Authority, the classification of installations shall be as follows:—

(a) AC system

...(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187 kV:...”

10. The Commission had rejected MSEDCL’s proposal to increase the existing connected load limit for areas outside Municipal Corporations from 107 HP (80 kW) to 201 HP (150 kW) and bring it on par with the limit for Corporation areas, in the absence of required details and for the reasons quoted at para. 3(2) above. MSEDCL has now furnished the relevant details, further justification and the impact of its proposal as summarized below:

- (i) As regards power losses, only an additional element of distribution transformer is included in the system, with technical losses in the range of 5 to 7.5 % of the total losses as per IS 1180 Part-1, 2014 of Bureau of Indian Standards.**
- (ii) As regards revenue losses, the revenue realized from Industrial consumers after releasing supply to them on the LT level is over and above the average cost of supply, and will be much more than the revenue loss due to technical losses of the distribution transformer.**
- (iii) While there would now be no differentiation in the norms applicable to Municipal Corporation and other areas, the actual sanction and release of load in areas outside the Corporations would be subject to technical feasibility on the LT network depending on limits of percentage voltage regulation, loading of source transformer, source feeder and loading on the existing distribution transformer.**
- (iv) As regards the financial impact, there would be a loss of around Rs. 39 lakh/ month to MSEDCL if the connections are released on the LT side. However, considering the opportunity cost, i.e. had the applicants’ loads been restricted up to 80 kW, MSEDCL would be deprived of around Rs. 1.17 crore/ month.**

11. The Commission has noted the arguments by MSEDCL as well as CMIA and VIA (both Authorized Consumer Representatives) in support of the original proposal and the Review Petition and, in particular, the limitations on the affected industries by increasing space constraints and difficulties in land availability and its cost for upgradation even outside Municipal Corporation areas. The Commission observes that, due to rapid urbanization and other factors, areas around the Municipal

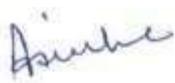
Corporations and other urban and semi-urban areas in particular are increasingly facing space constraints in the development of electrical infrastructure similar to those in the Corporation areas. Therefore, it is necessary to revisit the existing limits for release of connections with connected load above 80 kW on LT line in such areas along the lines of the limits for Municipal Corporations, subject to technical feasibility in each case. For this purpose, the Commission will undertake a process of public consultation for appropriately amending the SoP Regulations.

12. It goes without saying that MSEDCL had no authority to release any connections above 80 kW connected load at the LT level in areas outside Municipal Corporations without any dispensation of the Commission. However, considering the difficulties of these consumers cited by MSEDCL, the sanction of applications cited in these proceedings is being condoned under Regulation 15 for the removal of difficulties. MSEDCL is directed not to release any further such connections for the time being except to those who have already paid for them on or before 1 July, 2017.

The Review Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No.151 of 2016 stands disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary

