

No. P- Com/126/

No 06929

Date: 11 MAR 2019

**Commercial Circular No. 316**

Sub: Guidelines in respect of finalizing the Cases under sections 126 the Electricity Act, 2003.  
Ref: Commercial Circular No. 288 dated 12.05.2017

**Preamble:**

1. MSEDCL has issued Circulars from time to time to tackle the cases U/s 126 of Electricity Act 2003. These circulars have been modified with change in Law, Rules and Regulations. Recently, in number of cases before Appellate Authority U/s 127 of Electricity Act 2003, as well as before Hon'ble High Court, it is observed that due to Non adherence to the procedure prescribed or unintentional misinterpretation of the provisions in respect of unauthorized use of electricity, resulted in overturning of decisions of Assessing Officer in appeal. In many cases Hon'ble High Court also, while granting interim stays, directed refund of mandatorily deposited amount as prerequisite for filing appeal U/s 127 of Electricity Act, 2003.

2. Considering the aforesaid and for the purpose of economy of effort, saving of precious time and to reduce wasteful litigation expenses, the Assessing Officers whilst dealing Unauthorized use of electricity cases are directed to henceforth adhere to the following guidelines.

2.1 This Circular shall modify and supersede all the earlier circulars issued in so far as procedure u/s 126 of Electricity Act, 2003 from time to time is concerned. It is however made clear that the earlier Circulars referring to Procedure u/s 135 of EA, 2003 shall remain unchanged. It is further stated that the provisions of Electricity Act, 2003, Rules and Regulations there under shall prevail in case of any conflict with this Circular.

3. The Provision of Section 126, Electricity Act, 2003 as amended by Act 26 of 2007 w. e. f. 15.06.2007 reads as follows:

*"Section 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 upon him: of EA,
- (5) If the assessing officer reaches to the conclusion that unauthorised 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 unauthorised 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 rates applicable for the relevant category of services specified in sub-section (5).

Explanation- For the purposes of this section,-

(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 authorised 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 authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."

**A. Authority to assessing officer:**

The Government of Maharashtra vide Gazette Notification No. MISC. 2018/CR 126(1)/Energy-5 dated 23<sup>rd</sup> January 2019 has authorized following MSEDCL Officers to exercise authority and all powers under section 126 of EA 2003 on its behalf. These officers have been nominated as the 'Assessing Officers' to deal with all aspects connected with section 126 of Electricity Act, 2003.

Sr. No	Officers	Category of electricity consumers
1	(a) Deputy Executive Engineer, Additional Executive Engineer and Executive Engineer from (O&M) office of concerned area. (b) Additional Executive Engineer (Flying Squad) and Executive Engineer (Enforcement) from Security and Enforcement Wing.	Low Tension Consumers
1	(C) Superintending Engineer (O&M) and Chief Engineer (O&M) of concerned area.	High Tension Consumers



#### **B. Powers of Assessing Officers:**

For the purpose of investigation & enforcement and in order to determine & establish occurrence and incidence of 'Unauthorized use of electricity' as per the provisions U/s 126 of Electricity Act 2003, the above mentioned Assessing Officers of MSEDCL have been entrusted to exercise following powers on behalf of the Government of Maharashtra.

1. Enter, inspect, search any place or premises in which he has reason to believe that the electricity has been or is being unauthorised use.
2. Enter and inspect the equipments, gadgets, machines, devices found connected or used for unauthorized use of electricity.
3. Inspect records maintained by a person alleged in unauthorized use of electricity.
4. Upon such an inspection as prescribed above, only the Assessing officer has the powers to draw a conclusion whether a person is indulging in unauthorized use of electricity or not.
5. Authorized officer under section 126 exercising power of inspection may only report details of inspection i.e. facts without his opinion.
6. Only the Assessing officer, on such a conclusion of unauthorized use of electricity by a person, shall and has the powers to provisionally asses to the best of his judgment the electricity charges payable by such person or by any other person benefited by such unauthorized use.
7. Assessing officer has the powers to and shall afford a reasonable opportunity of hearing to a person involved in unauthorized use of electricity if he has any objections against the provisional assessment served upon him.

#### **C. Basis of Assessment :**

The assessing officer may come to a final conclusion regarding unauthorized use of electricity by;

1. Inspection of the premises of the consumer OR/and
2. Inspection of the equipment, gadgets, machine and devices found connected to the system or used OR/and
3. Inspection of the records maintained by the consumer or by any other person OR/and
4. May rely on records of inspection conducted by any other authorized person OR/and
5. Finding that there is change in purpose for which usage of electricity was authorized (change of purpose co-related with the change of tariff category); OR/and
6. Finding that there is unauthorized extension of supply for the premises or areas other than those for which the supply of electricity was authorized.

#### **D. Inspection Report :**

1. The inspection Report must be clear, accurate & shall cover all the factual aspect with technical specifications like applicable tariff category, sanctioned load, connected load, unauthorized load, if any, unauthorized extension, in case of mix load, predominant load, *modus operandi* for such misuse/ malpractices culminating in unauthorized use of electricity. (Format Enclosed)
2. The report shall be prepared in duplicate on the day of inspection itself & duly signed by the Inspection Team in presence of consumer or his representative and signature of said consumer or his representative, occupant or authorized person on his behalf shall be obtained on such report with name and designation.
3. A copy of the Inspection Report shall be provided to the concerned consumer, his representative or the occupant on his behalf and acknowledgement to that effect shall be obtained.
4. In case of refusal by concerned consumer, his representative or the occupant to sign inspection report then, there should be a clear mention of the same in the inspection report.
5. Further, in case of refusal by the consumer or his/her (mentioning the names of such person) representative to either accept or give a receipt, a copy of inspection report shall be pasted at a conspicuous place in/outside the premises and photographed.
6. Simultaneously, the report shall be sent to the consumer under Registered Post/Speed post on the day or the next day of the inspection.
7. The scanned copy of the inspection report shall be uploaded online in the system.

#### **E. Procedure to be Followed and Actions by Various Authorities:**

1. The Distribution licensee shall publish the list of Assessing Officers as per the approval of the GoM, prominently in all the Offices.
2. An Assessing Officer/Authorized Officer, suo motu or on receipt of reliable information regarding unauthorised use of electricity shall promptly conduct inspection of such premises. The assessing officer shall maintain log-book of all such visits as per the provisions in condition of supply.
3. The inspection team of the licensee, headed by such Assessing Officer/Authorized Officer shall carry along with them Photo Identity Cards and should reveal their identity to the consumer before entering the premises.
4. If for any reason, the necessary evidence is required to be ascertained by inspection of documents not available on site at the time of inspection, then a specific note is to be made in the inspection report under remarks column stating, "Case kept under observation". A detail correspondence be then initiated by the assessing officer with all concerned to collect documentary evidences in the matter and only then draw conclusion as to whether unauthorized use has taken place or not before issuing the provisional assessment.



5. The report shall clearly indicate whether sufficient evidence substantiating the fact that unauthorised use of electricity was found or not. The details of such evidence should be recorded in the report and the material utilised for the purpose shall be kept as a proof.

**F. Provisional Assessment :**

1. If for any reason the Assessing Officer cannot conclude about the occurrence of 'Unauthorized Use of electricity,' a proper noting shall be made on the file. The communications by the Assessing Officer to arrive at the conclusion in respect of unauthorized use shall be part of the Record.
2. The assessing officer shall make provisional assessment at a rate equal to twice the tariff applicable for relevant category of service based on inspection report and records.
3. The assessing Officer shall record reasons leading to provisional assessment. It shall include period of assessment, cause of assessment, units assessed, unauthorized load, amount of assessment, applicable tariff, category and rate, etc on case to case basis.
4. Expert Assistance: The Assessing Officer may seek the assistance of the expert on the exceptional issues like- finance, legal, IT etc.
5. The order of provisional assessment shall be issued by the assessing officer under his hand and seal. The Calculation Sheet, Inspection Reports, other relevant documents shall form part of assessment order. (Format enclosed, format is indicative only and may suitably be modified, if needed)
6. The period of assessment shall be for the entire period for which unauthorized use can clearly be established or for twelve months if the period cannot be ascertained.
7. It shall be mentioned in the order of provisional assessment that the consumer may accept and deposit the amount of provisionally assessed bill, within seven days of receipt of the provisional assessed bill.
8. It shall be mentioned in order of provisional assessment that consumer is entitled to file objection if any to the provisional assessment within 7 (Seven) days.
9. It shall be mentioned in the order of provisional assessment that final assessment order will be passed within 30 days from the date of receipt of provisional assessment.
10. Service : The Order of Provisional/ Final 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 like –
  - i) by Registered Post with Acknowledgement (RPAD );
  - ii) by hand delivery to concerned consumer /person in his behalf;  
(Additional service can also be effected through e-mail registered with MSEDCL by said consumer /person in his behalf).
11. The order of provisional assessment served to the consumer shall be uploaded online in the system.

#### **G. Final Assessment:**

The assessing officer shall afford to the consumer an opportunity of being heard, if the consumer files an objection against the provisional assessment order.

The final assessment order must be passed within 30 days of provisional assessment. This is statutory requirement.

1. The hearing shall be scheduled and completed within the statutory period of thirty days from the date of service of provisional assessment order.
2. The oral/written statement/documents submitted by the consumer or his authorised representative or witness during the hearing shall be duly recorded.
3. The final order shall be a speaking and reasoned containing the brief of inspection report, record, submission made by the consumer, occupant or person in his written reply and oral submission during personal hearing and reasons for acceptance or rejection of the same.
4. The final order shall contain information regarding right of appeal as contemplated U/s 127 of Electricity Act, 2003 and address of appellate authority.
5. The list of re-constituted Appellate Authorities U/s 127 of Electricity Act, 2003 as per Government Notification vide No. EA-2015/CR-345/NRG-2, dated 11.06.2015, is annexed herewith.
6. If the final order is issued based on the consent of the consumer, the matter shall be recorded in the final order and no appeal shall lie to the appellate authority in such cases as per section 127(5).
7. The final order of assessment shall also indicate the due date for payment of assessed amount, which is thirty days from the date of final order. (Format enclosed, Format is indicative only and may suitably be modified, if needed).
8. The order of final assessment served shall be uploaded online in the system.
9. After completion of above process, in case of failure to pay the assessed amount by the consumer within due date, such amount shall be shown as arrears and the supply may be disconnected after serving a fifteen clear days notice as per section 56(1) of Electricity Act, 2003.

#### **4. Unwarranted Cases U/s 126 of Electricity Act, 2003 :**

It should be noted that as long as the consumption is being fully recorded by the metering arrangement/ meter and used in the authorized premises for the authorized purpose and the consumer is not availing any wrongful gain at the cost of licensee or supplier, there cannot be a case of unauthorized use of energy U/s 126 of the Electricity Act, 2003 against the consumer.

##### **(i) Common Instances of Unwarranted Cases U/s 126 :**

- The usage of electricity by any artificial means like looping of meter, changing or incorporating any components inside the meter, using remotely operated circuit etc or by means not authorized by MSEDCL like looping, tapping, bypassing meter usually falls U/s 135 of the Electricity Act, 2003 as a case of theft of energy.




- Consumer paying higher tariff due to predominant load and using electricity for lower tariff category, not causing any loss to the company shall not be taken as case under Section 126.
- Whenever the change of purpose occurs purely due to change in tariff by MERC, the case falls under plain tariff difference like e.g. as per the MPR Order No. 195/2017, 1) tariff of laundry is changed from Commercial to Industrial, 2) Ordinance/Ammunition Factories classified as industrial, 3) small business operated from residence (if consumption is less than 3600 units per financial year) shall be billed as Residential, etc.
- In case of Domestic Consumers no action for additional load is required to be taken for load enhancement in domestic premises as the tariff takes into account the load (tariff order 48/2016) on the basis of monthly consumption. (If total connected load in a domestic connection is detected beyond 7.5 kW at single phase, the consumer may be insisted to switch over to 3 phase LT supply as per the provisions).
- In cases of demand based tariff consumers, the penalty for drawl of power in excess of contract demand is already determined. In all such cases, as long as the entire supply is metered and used in the authorized premises for authorized purpose under the authorized tariff slab along with excess demand penalty then there shall be no unauthorized use. The consumer be advised to apply for additional load, in case of more than three such instances of excess demand observed in a calendar year.

(ii) **Common Instances of cases U/s 126 :**

- Consumer paying lower tariff and using electricity for higher tariff category, which is predominant load. e. g. 1) consumer has taken connection for Agriculture and using power for Farm House, Dhabas, Residential etc., 2) commercial/residential consumer using electricity for Hordings/Advertisement etc., 3) Residential consumer using electricity for commercial purpose, shop, complex etc.
- Redistribution of electricity to unauthorized users using sub-meter without following due process i.e. franchise/multi partite agreement etc.
- If consumer uses/extends the electricity for the premises or areas other than those for which the supply of electricity was authorized. The Assessing Officer is to carefully examine the premises that are mentioned in the consumer's application (A-1 form, application etc).
- If any consumer has extended power supply to a premise/s which is/are disconnected (Permanently/Temporarily) due to arrears, the Section 126 is applicable on the consumer who has extended power supply. Further, the PD/TD consumer who has been benefitted due to extended power supply (Got his disconnected power supply reconnected unauthorizely) can be also booked under Section 138 of the Act.

The above guidelines are issued for immediate compliance with a view to avoid procedural lacunae, avoid misinterpretation of law, achieve higher success rate and avoid wasteful legal expenses. Henceforth, all the "Assessing Officer" are directed to exercise due care and adhere to all the involved legal procedures while dealing with cases U/s 126 of Electricity Act, 2003.

  
**Chief Engineer (Commercial)**

Copy to: All as per mailing list.

**ORDER OF PROVISIONAL ASSESSMENT U/S 126 (2) OF Electricity Act, 2003**  
(Through RPAD)

To,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Sub** : Order to serve Provisional Assessment U/s 126 (2) of Electricity Act, 2003.

**Ref** : Inspection Report No. \_\_\_\_\_ dated \_\_\_\_\_.

Dear Sir/ Madam,

The inspection team of this office visited and carried out thorough inspection of the premises under your occupation on dated \_\_\_\_\_. The electricity meter connection is in the name of \_\_\_\_\_. Detail spot inspection report was prepared and copy of the report was served upon you / Name of occupant / authorized person (namely \_\_\_\_\_) who duly signed receipt of the same. (Copy enclosed) / The spot inspection report was refused to be accepted by you/your representative.

Further the inspection team received / obtained copies of (details of document) from \_\_\_\_\_.

On further deliberation I have reason to believe that unauthorized use of electricity has been occurring at above premises since \_\_\_\_\_. This unauthorized use of electricity is being carried out through (Cause \_\_\_\_\_) and you have utilized \_\_\_\_\_ units through unauthorized load of \_\_\_\_\_ KW/HP.

Therefore I have to issue this order of provisional assessment U/s 126 (2) of Electricity Act, 2003 to the tune of Rs. \_\_\_\_\_ (words \_\_\_\_\_) by applying (tariff)/ (category) for the period from \_\_\_\_\_ to \_\_\_\_\_.

You may accept this provisional order of assessment and deposit the amount to the tune of Rs. \_\_\_\_\_ (Words \_\_\_\_\_) within 7 (seven) days of the receipt of the assessed bill (copy enclosed).

You, the assessee are entitled to file objection, if any, to the above provisional assessment orally or in writing to the undersigned within 7 (seven) days failing which final assessment order based on provisional assessment will be issued within 30 days from the date of provisional assessment and will be binding upon you.

You the assessee, may appear for personal hearing and submission of your oral / documentary objection / evidence to register your disagreement with the above provisional assessment order on \_\_\_\_\_ and time \_\_\_\_\_ at the office of undersigned.

You, the assessee, may note that the undersigned will pass final order of assessment within 30 days from the date of receipt of order of provisional assessment.

**Encl:** 1) Inspection report  
2) Bill of provisional assessment  
3) Additional documents, if any

Yours faithfully,

(Name \_\_\_\_\_)  
(Assessing officer)  
(Designation)  
(Address of office)



**Format for appearance for personal hearing**  
(Through RPAD)

To,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Sub** : Appearance for personal hearing on dated -----.

**Ref** : 1) Inspection of your premises on dated \_\_\_\_\_.

2) Provisional Assessment Order U/s 126 (2) of Electricity Act, 2003 dated \_\_\_\_\_.

3) Your letter dated \_\_\_\_\_.

Dear Sir/ Madam,

The inspection team of this office visited and carried out the inspection of the said premises under your occupation on dated \_\_\_\_\_. During the inspection it was found that unauthorized use of electricity has been occurring at the above premises since \_\_\_\_\_. Accordingly, the undersigned has issued Provisional Assessment Order under Section 126 of Electricity Act 2003 vide letter under ref (2).

Further vide letter under ref (3), you have preferred personal hearing to submit the evidence to register your disagreement with the said Provisional Assessment Order.

In view of this, you are hereby informed to remain present for personal hearing in above matter on ..... at time ..... at the office of the undersigned.

You are requested to acknowledge the receipt of this letter.

Yours faithfully,

(Name \_\_\_\_\_)

(Assessing officer)

(Designation)

(Address of office)

**ORDER OF FINAL ASSESSMENT U/S 126 (3) OF Electricity Act, 2003**  
(Through RPAD)

To,  
\_\_\_\_\_(Consumer Name and address)\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

**Sub :-** Order to Final Assessment U/s 126 (3) of Electricity Act, 2003.

**Ref :-** 1) Order of provisional assessment No. -----dt-----  
2) Oral / Written submission dt. -----

Dear Sir/ Madam,

1. Pursuant to the inspection of your premises on dated \_\_\_\_\_ at \_\_\_\_\_ hrs an order of Provisional Assessment was served on you vide ref. No.1. Thereafter an opportunity of submission of oral /written objection and hearing was afforded to you on dated \_\_\_\_\_ at \_\_\_\_\_ hrs at the office of the undersigned. You have submitted following,
  - 1) Statement of objection (if any)
  - 2) Documents in support of objection (if any)
  - 3) Other statement (if any)
2. I have perused the order of provisional assessment at ref. no. 1 and your submission at 1, 2, 3 etc. above.
3. You have stated that \_\_\_\_\_.
4. After considering your submission 1, 2, 3 etc., I state that \_\_\_\_\_  
\_\_\_\_\_  
(Reason for acceptance/rejection/partial acceptance/rejection).
5. Therefore, I, the assessing officer, have come to conclusion that there was unauthorized use of electricity within the meaning of section 126 of Electricity Act, 2003 from \_\_\_\_\_ to \_\_\_\_\_. Accordingly, the Final Assessment order is hereby served upon you. The detail of working of the final assessment is enclosed herewith.
6. You are requested to pay the final assessment to the tune of Rs. \_\_\_\_\_ (words \_\_\_\_\_) on or before date \_\_\_\_\_ (30 days from the order).
7. You are entitled to file appeal against this order of final assessment U/s 127 of Electricity Act, 2003 before Appellate Authority i.e. \_\_\_\_\_ (Designation and Address).

**Encl :** As above.

Yours faithfully,

(Name \_\_\_\_\_)  
(Assessing officer)  
(Designation)  
(Address of office)



**ORDER OF FINAL ASSESSMENT U/S 126 (3) OF Electricity Act, 2003**

(If passed on consent U/s 127 (5))

(Through RPAD)

To,

\_\_\_\_(Consumer Name and address)\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

**Sub :-** Order to Final Assessment U/s 126 (3) of Electricity Act, 2003.

**Ref :-** 1) Order of provisional assessment No. -----dt-----

2) Oral / Written submission dt. -----

Dear Sir/ Madam,

1. Pursuant to the inspection of your premises on dated\_\_\_\_\_ at\_\_\_\_\_ hrs an order of Provisional Assessment was served on you vide ref. No.1. Thereafter an opportunity of submission of oral /written objection and hearing was afforded to you on dated\_\_\_\_\_ at\_\_\_\_\_ hrs at the office of the undersigned. You have submitted following,
  - 1) Statement of objection (if any)
  - 2) Documents in support of objection (if any)
  - 3) Other statement (if any)
2. I have perused the order of provisional assessment at ref. no. 1 and your submission at 1, 2, 3 etc. above.
3. You have stated that \_\_\_\_\_.
4. After considering your submission and written consent submitted by you on dated\_\_\_\_\_ at\_\_\_\_\_ hrs bearing signature of (name\_\_\_\_\_ (copy enclosed), I the assessing officer state that your consent is acceptable to my judicious mind.
5. Therefore, I, the assessing officer, serve upon you Final Assessment Order which is passed after considering/accepting your aforesaid consent. The detail of working of the final assessment is enclosed herewith.
6. You are requested to pay the final assessment to the tune of Rs.\_\_\_\_\_ (words\_\_\_\_\_ ) on or before date\_\_\_\_\_ (30 days from the order).

**Encl:** As above.

Yours faithfully,

(Name\_\_\_\_\_)

(Assessing officer)

(Designation)

(Address of office)