



Consumer Grievance Redressal Forum, Kalyan Zone

Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
Ph- 2210707, Fax – 2210707, E-mail : cgrfkalyan@mahadiscom.in

No.EE/CGRF/Kalyan Zone/

Date of Grievance : 07/06/2016

Date of Order : 04/10/2016

Total days : 121

**IN THE MATTER CASE OF GRIEVANCE NO. K/E/1045/1257 of 2016-17 IN RESPECT OF PRAXAIR INDIA PVT. LTD. , PLOT NO. A-3, MIDC IND. AREA, MURBAD, DIST. THANE PINT CODE 421 401 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING CHANGE IN TARIFF FROM HT-IC TO HT-IN.**

Praxiar India Pvt. Ltd.,  
Plot no. A-3, MIDC Ind. Area,  
Murbad, ,  
Dist. Thane. Pin Code 421 401.  
(Consumer No. 018019053600)

... (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited  
through its MSEDCL, Addl. Ex. Engineer,  
Kalyan Circle-II,

... (Hereinafter referred as Licensee)

Appearance : -For Consumer : Shri Shah & Agrawal-Consumer's representative.  
For Licensee :- Shri Palange-Executive Engineer (Adm), KC-II,  
Mrs.Deepa Chavan-Legal Department.

( Per Anant M.Garde – Chairperson )

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance

Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. Hereinafter referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Consumer is filed this grievance for change of tariff category from continuous to non-continuous for HT Industry connected on 100 KV express/dedicated feeder. The consumer further contended that they are the consumer of MSEDCL having contract demand of 12,000 KVA and availing power supply at 100 KV express / dedicated feeder line emerging from Murbad Sub station of 220 KV and also availing partial open access for part of their requirement i.e. 6 MW out of total contract demand of 12.0 MVA.

3] On 16/12/2015 the consumer applied for change of tariff category from continuous to non-continuous tariff. In spite of repeated reminders by consumer to the Licensee, but in last five months, the Licensee has not changed their tariff category.

4] In support of the grievance, the consumer contended that the Hon’ble MERC passed the tariff order dated 26/6/2015 in case No.121/2014 vide section 7.24.6 , provision has been made for change of tariff category

and clarifies that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply “anytime” during the financial year but only once in the financial year with one month prior to notice. In the same tariff order, the Hon’ble Commission has approved category wise energy tariff rate and cross subsidy for HT industries as below:

Energy rate for HT Industry : Rs.7.21/unit for continuous category

Rs.6.71/unit for non-continuous category

Cross subsidy surcharge for HT Ind.Rs.1.49/unit for continuous category

Rs.1.09/unit for non-continuous category.

5] On 11/8/15, the MSEDCL has also commercial circular No.246 for change of tariff category has been formalized. As per the said circular, the SE MSEDCL of concerned circle Office is empowered to allow change of tariff category on submission of application and necessary undertaking as stipulated in the said circular. It is further mentioned that the change will be effected in next billing cycle after expiry of one month notice period. The Commercial Circular M/224 dated 5/7/2014 in its Standards of Performance for Distribution Licensees has issued a time line of one month (second billing cycle) as the time duration for such approval at Page 22 Appendix A point 8- Other service (ii) failing which there is compensation of Rs.100/- per week payable to the consumer.

6] As per MERC’s tariff order and commercial Circular No.246, the consume has submitted application for change of category pm 16/12/15 along with undertaking as per format provided by MSEDCL that this their

first application in the financial year 2016 and as per the circular, tariff change was to be implemented wef 1/2/2016.

7] The MSEDCL has approved for change of tariff category vide letter No. SE/KC-II/Tech/0139 dtd 11/1/16 and forwarded proposal to CE Commercial for 2<sup>nd</sup> approval, since the consumer is availing partial open access, hence the approval of Head Office is required.

8] The CR contended that CE comm. even after lapse of 09 months has not given any decision, though the concerned Circle Office has been entrusted with full power by Head office for change of tariff category, still the proposal of consumer was forwarded by SE to CE Commercial for approval. The Circle has delayed the decision of tariff plan by 04 months which was resulted in financial loss to consumer.

9] As per tariff order of MERC in case No.121/2014 also covers open access tariff for cross Subsidy Surcharge for both the category of consumers i.e. continuous and non-continuous. In the same order, it is mentioned that tariff category is permitted once during any time of financial year irrespective whether consumer is availing open access or not. As per above provision, the consumer deprived from its right to get change of tariff from continuous to non-continuous industrial HT tariff implemented. The consumer has anticipated this decision vide MSEDCL's Commercial Circular No.246 by the end of January 2016. The consumer has priced their product considering energy cost at non continuous tariff with effect from 01.02.16. The consumer further contended that since the tariff change has not been implemented by MSEDCL, it continuing to incur losses in the business due to billing of tariff under continuous category by MSEDCL.

10] The consumer prayed that to allow change of tariff category to non-continuous industry with immediate effect as per section 3 of Commercial Circular No.246 dtd 11/8/15 and implemented the same in the electricity bill with effect from 1/2/16. The consumer prayed to pay the different between continuous and non continuous tariff for energy rate, FAC & cross subsidy surcharge after 1/2/16. The consumer demanded the interest as per section 62(2) of Electricity Act ,2003, for delayed period as per Bank Rate. The consumer also demanded the compensation @ 199 week (Rs.1,700/- for delay of 17 weeks) as per commercial Circular No.224 dtd 5/7/14 in its Standard of Performance for Distribution Licensees till the week on which the tariff plan is changed by MSEDCL. Lastly the consumer prayed for compensation of Rs.50,000/- for man hours for follow up, travelling expenses etc.

11] On 10/6/16, the Licensee filed the reply and contended that consumer has filed application for change of tariff category from HT-I continuous to HT-I Non continuous vide letter dtd 10/12/15 the HT consumer is connected on 100 kV Express feeder emanating from 100/22 kV Murbad Sub-station. The Licensee has contended that as per Commercial Circular No.246 the Competent Authorities has re-delegated the powers to respective Superintending Engineer to permit consumer to switchover from HTY-I continuous tariff to HT-I non continuous tariff. Accordingly Office note dated 23/12/15 was processed and same is approved by this Office. As the said HT consumer is taking power through partial open access and therefore said matter is referred to the concerned Office for further approval by this office vide Ref. No.5.

12] The Licensee has further contended that they follow up with consumer by mail dated 17/2/16, 1/3/16,14/3/16 & 31/3/16. They discussed the matter with SE. Comm-I & II regularly and appraised the issue. The change of tariff was under process and asked to generate the open access bills from February 2016 to May 2016 with HT-I continuous tariff. After approval from the Competent Authorities, the tariff of said HT consumer can be changed from HT-I continuous to HT-I non continuous with retrospective effect from the bill of February 2016. The said approval is still awaited. Lastly the Licensee prayed to approve the change of tariff category from HT-I continuous to HT-I non continuous w.e.f the bill of February 2016 in respect of the present consumer.

13] CR filed additional say, and denied to receive the say from the MSEDCL. CR further contended that Hon'ble MERC has passed the order in case No.121/2014, dtd. 26.6.15 (Section 7.24.6) change of tariff category made by consumer is based upon the same order of Hon'ble MERC and set up procedure vide Commercial Circular No.246 dtd 11/8/15 and consumer is availing partial open access.

Term "consumer " is defined under Elect. Act, 2003 as below:

***"Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;***

Further as per the Dist. Open Access-2016: *“Consumer” shall carry the same meaning as in the Act, but shall be restricted to such consumers within the state of Maharashtra.*

14] The consumer is paying fixed charges and energy charges to MSEDCL for part of the units directly consumed from MSEDCL and also the MSEDCL has been charging CSS to the open access consumers because he being the consumer of MSEDCL. The MSEDCL is recovering the CSS from consumer to cross subsidies the other category consumers.

15] The tariff order dtd 26/6/15 of Hon’ble MERC does not differentiate in the case of change of tariff between open access consumer and normal consumer. The said tariff order has provided clear option to the consumers to change tariff category once in any financial year. The Hon’ble MEC’s District OA Reg. 2014 and 2016 both do not provide anything additional on this issue because as per the def. of consumer mentioned in EA-2003, the consumer is one who is also drawing electricity and not only from Distribution Licensee but any other person engaged in the business of supplying electricity. Hence Commercial Circular No.246 dated 26/6/15 is applicable to the consumer and therefore prayed that change of tariff category from continuous to non continuous should be implemented to consumer.

16] The Licensee has filed reply dated 27/6/16 and contended that as per Commercial Circular No.246, the new provision made in the Tariff Order dtd 26/6/15 for change of tariff from HT-continuous to HT-non continuous is as under: -

“The consumer availing supply on express feeder may exercise its option to choose between continuous and non-continuous supply anytime during a financial year but only once in such financial year with one month prior to notice. Such consumer shall be required

to submit a written request to MSEDCL, giving one month's notice and the Tariff applicable to non-continuous supply shall apply, from the ensuing bill cycle”.

17] We heard both the sides. In particular Shri Shah and Shri Agrawal the consumer's representative and Mrs. Deepa Chavan and Mr. Palange –the Nodal Officer for the Licensee. The CR reiterated their grounds as stated in the grievance application. In particular, they have stated about the consumer's entitlement to the change of tariff category from continuous to non continuous supply. Undisputedly, the matter was stayed pending decision in case No.94/2915. There was specific order passed by the Commission as below:-

“Ongoing cases before various Forums:

6-(1) The various forums including adjudicating forums be apprised of overview in the matter of change of tariff category from Continuous to Non-continuous i.e. change of tariff category from shall be effecte4d before expiry of the second billing cycle after the date of receipt of application as per Clause 9.2. of MERC (SoP) Regulations, 2005 and the proceedings in that forum to be kept in abeyance till said review of disposed of.”

Now, the case No. 94/15 which was a review petition has been decided. A copy of the same has been furnished by the consumer, which we have gone through. They seek questions germen to the issues before this Forum . In the present matter even sufficiently clarified and settled by the Commission in the said review petition. There were three questions inserted in the said review petition in case No.94/15, they are as below:

A] Whether each is different and distinct as such the time limit for applying for change of tariff from continuous to non-continuous supply and the applicable tariff stipulated in Case No.44/08 cannot operate after 2012



tariff order. The said question was answered by the Commission in negative, thereby holding that the time limit of one month stated in Case No.44/08 was intended to be generic in nature unless revised in future. There was also observed by the Commission, the 2012 tariff order itself explicitly states that, “all previous clarifications given by the Commission through its various orders continue to be applicable, unless they are specifically contrary to anything that has been stated in this order, wherein the clarifications given in this order shall prevail.” It is thus clear that the time limit of one month for exercising the option prescribed by order in case No.44/08 continued to remain in future and was applicable for subsequent tariff order as well.

18] The second question that was answered was whether the SoP Regulations 2005 permit the consumer to seek change of tariff category without any fetters. Further whether the SoP Regulations have been infringed by the order dated 12/9/08 and whether there can be any estoppel against the operation of Law.

19] The above said question has been answered in the affirmative by the Commission. It has been observed inter-alia that SoP Regulations being in the nature of subordinate legislation, an order issued in contravention thereof is not tenable. The Commission further went on to observe that distinction stipulated in case No.44/08 was on in consistent with Sop Regulations.

20] Then there is third question answered was whether allowing change of tariff from continuous to non continuous supply by MSEDCL action for retaining the consumers from leaving their open excess and thereby safeguarding interest of its cross-subsidized consumers. The answers appears into negative.

21] In the present case, the 4<sup>th</sup> order dated 26/6/15 was issued by the Commission for case No.21/14 in which provision has been made for change of tariff category giving consumer a right to exercise choice between continuous and continuous supply any time during financial year, but only once in the financial year and within one month prior notice. The Circular No.246 dated 11/8/15 clarified in detail, how the change in tariff plan was to take place. There was also commercial circular No.246 dated 11/8/15 issued by the MSEDCL laying procedure for change of tariff category. It also inter-alia provides for compensation for failure on the part of Licensee at the rate of Rs.100/- per week.

22] Further in the present case, the application for change of tariff category was made on 16/12/15. An undertaking was also produced in the format prescribed at MSEDCL. It was the first application in the financial year 2016 for the change of tariff category. As per the Circular the tariff change was implemented with effect from 1/2/16. It is also revealed in the present case that, SE MSEDCL – KC-II approved for the change of tariff and also forwarded the proposal to CE Commercial for second approval. The CE Commercial however did not give any decision on the same.

23] Now, as we find though there was a time limitation of one month, there was fixed in the order in case No.44/08 and remained in existence all through applicable subsequent tariff orders. The Commission in its order in review petition No.94/15 has clearly opined that said condition is in contravention of SoP Regulations 2005. The SoP Regulations 2005 entitles the consumer to make application for changes including tariff category at any time.

24] The right of the consumer also unfilled as has been observed by the Commission. The consumer in the present case was at different title

to the change in the tariff category as per their application with effect from 1/2/16. It is submitted that in fact the same was approved by SE, it was sent to the CE for second approval and final approval is not come and the application is pending. It appears that the application after remained pending of action Commission revising the entire question in case No. 94/15. Considering all these, we are of the view that consumer should be entitled to change of category from continuous to non-continuous as per their application dated 07/06/16 with effect from 1/2/16. As consequential, the consumers are entitled for refund of difference as can be calculated. There is further question of granting compensation of Rs.100/- per week. The second consequential question is about granting the interest on the amount arrived at after necessary calculation of the difference in the tariff account of implementation of the change of tariff category in the present case.

24] The provision for awarding interest U/s. 62 of the Electricity Act, 2003. In particular the relevant provision is sub-section 6 of section 62 of the Act which runs thus:

.....6---- “If any Licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the Licensee.”

Advance any reason to disallow the interest as provided by section 62(6) of the Electricity Ac. Then there is further question awarding compensation as per Circular 246. Relevant SoP provision and circular are in the nature of same compensation and above legitimate liability of the Licensee in recovering the amount over and above applicable tariff.

However, so-far-as the compensation provided by SoP Regulations are concerned, they are for non performance of the difference in the prescribed standard. This is a peculiar case in which the Commission itself has observed that though the one month limitation provided in case No.44/08 and continued for subsequent 04<sup>th</sup> years was in contravention of the SoP Regulations. The Licensee MSEDCL could not refused to apply the same saying that it was in contravention of SoP Regulations. The Commission relying on several Judgments of the Hon'ble High Court, observed that it was upon the Licensee MSEDCL if being aggrieved by the said limitation clause approached appropriate Court for setting aside the said condition. Until such condition was set aside by Competent Court as the insistent with SoP Regulations, the Licensee could not refuse to apply the same. In such a situation the question appears to arise as to how some of the applications were granted even though they were made after one month of the tariff order while other remained pending. We given for – the situation it could be bonafide action of the Licensee to follow the condition of the limitation prescribed for making the application because it was not set aside by the Competent Court.

25] The above being the case as discussed in detail, we are of the opinion that the following order will meet needs of justice.

This matter could not be decided within time as the then the Executive Engineer has heard the grievance from both sides. In the meantime, the then the Executive Engineer-cum-Member Secretary has been transferred. Moreover, this Forum is functioning in absence of regular Chairperson and regular Member Secretary, the present Member Secretary in charge is discharging the additional work of Chairperson along with the regular work of Member Secretary from 28/6/2016, in addition to his

regular portfolio as Executive Engineer Enquiry MSEDCL for Kalyan Region. Now the Regular Chairperson is appointed from 20/9/2016 and further hearing was taken on 26/9/16.

Hence the order.

- 1] The grievance application of the consumer is partly allowed.
- 2] The Licensee –MSEDCL is directed to allow the prayer of the consumer made in the application dated 07/06/2016 with effect from 1/2/16.
- 3] The Licensee is further directed to pay to the consumer the difference in the 04<sup>th</sup> category from continuous to non-continuous with effect from 1/2/16 along with interest U/s. 62 (6) of the Electricity Act, 2003.

Date: 04/10/2016.

**I agree**

**(L.N.Bade))  
Member Secretary  
CGRF, Kalyan**

**(A.M.Garde)  
Chairperson  
CGRF, Kalyan.**

**NOTE**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.  
*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.*
- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or
- c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-  
*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*
- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

