



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO.K/E/081/0091 OF 06-07
OF M/S KONKAN SYNTHETICS REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN
ZONE, KALYAN ABOUT THE METHOD OF LEVY OF
ADDITIONAL SUPPLY CHARGE

M/s Konkan Synthetics,

(Here in after

C-61, MIDC Mahad

referred to

Dist: - Raigad 402309

as consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its Superintending
Engineer, Pen Circle, Pen 402107,

Here in after
referred to
as licensee)

1) Consumer Grievance Redressal Forum has been established under regulation of “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conformed on it by section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

2) The consumer is a H.T. consumer of the licensee connected to their 220 Kilo-Volt network. Consumer is billed as per industrial (HT 1C) tariff. The consumer registered grievance with the forum on dated 26/02/2006.

The details are as follows: -

Name of the consumer: - M/s. Konkan Synthetics Ltd.

Address on electricity bill: - As above

Consumer No: - 04101901610-1.

Reason of dispute: - About the method adopted by licensee for charging Additional Supply Charge (ASC)

3) The batch of papers containing above grievance was sent by forum vide letter No. 851 dated 26/02/2007 to Nodal Officer of licensee. The letter was replied by licensee vide letter Nos 1592 & 1791 dated 14/03/07 & 26/03/07 respectively.

- 4) All three members of the forum heard both the parties on 29/03/2007 & 11/04/07. Shri Sudesh Seth and Shri Kamlesh Sharma consumer's representatives and Shri S. K. Gupta Nodal Officer, Shri P. M. Peshattiwari Divisional Accountant and Shri M. H. Pagawad Account Officer representing licensee attended hearings.
- 5) The consumer is using energy which is sourced, part of its power requirement, from third party (wind mill energy) wheeling its generated energy in the network of licensee.
- 6) The consumer vide application dated 16/02/07 (received by Forum on 23/2/07 & registered on 26/2/07) & vide letters dated 28/03/07, 2/04/07 & 4/04/07 addressed to Forum and Shri Sharma during hearings on 29/03/07 & 11/04/07 made submissions. The abstract of submissions is given below.
 - i) Maharashtra Electricity Regulatory Commission (MERC) vide order of 20th October 2006 had revised the base tariff & introduced ASC on the consumption as licensee has to purchase costly power from outside agency to meet the gap of shortage of power generation. The intension of MERC is that consumers should take power conservation measure to reduce their power consumption. MERC granted relief to consumers for charging ASC where power consumption for any particular month starting from February 2006 reduces from the average monthly power consumption from January 2005 to December 2005. Their gross monthly power consumption including windmill

energy from January 2005 to December 2005 is 25, 28,899 units.

- j) Their gross power consumption including windmill units in the month of November 2006 was 17,50,414 units resulting in reduction of gross power consumption (compared to monthly gross power consumption from January 2005 to December 2005) by 7,78,485 units (25,28,899-17,50,414) which works out to reduction by 30.78 %. The ASC as per MERC order should have been charged on additional supply units of 11.22% after giving credit of reduction in power consumption (42%-30.78% =11.22%) instead of 42 % charged by licensee.
- k) Their gross power consumption including windmill units in the month of December 2006 was 17,91,530 units resulting in reduction of gross power consumption (compared to monthly gross power consumption from January 2005 to December 2005) by 7,37,369 units (25,28,899-17,91,530) which works out to reduction by 29.16 %. The ASC as per MERC order should have been charged on additional supply units of 12.84% after giving credit of reduction in power consumption (42%-29.16% =12.84%) instead of 42 % charged by licensee.
- l) They paid above two bills, within 7 days from the date of bills to avail the facility of discount, under protest. The additional amount paid should be refunded to them.

- m) Their gross power consumption including windmill units in the month of February 2007 was 17,93,496 units resulting in reduction of gross power consumption (compared to monthly gross power consumption from January 2005 to December 2005) by 7,35,403 units (25,28,899-17,93,496) which works out to reduction by 29.08%. The ASC as per MERC order should have been charged on additional supply units of 12.92% after giving credit of reduction in power consumption ($42\% - 29.08\% = 12.92\%$) instead of 42 % charged by licensee.
- n) Their gross power consumption including windmill units in the month of March 2007 was 16,91,410 units resulting in reduction of gross power consumption (compared to monthly gross power consumption from January 2005 to December 2005) by 8,37,789 units (25,28,899-16,91,110) which works out to reduction by 33.13%. The ASC as per MERC order should have been charged on additional supply units of 8.87% after giving credit of reduction in power consumption ($42\% - 33.13\% = 8.87\%$) instead of 42 % charged by licensee.
- o) They also paid above these two bills, within 7 days from the date of bills to avail the facility of discount, under protest. The additional amount paid should be refunded to them.
- p) Licensee's contention of working out monthly power consumption from January 2005 to December 2005 on net consumption (excluding wind mill units) is based on wrong

interpretation of MERC'S tariff order of 20/10/06. Licensee has ignored the incentive given to consumer who reduces power consumption. In support of their contention of incentive given to consumer by MERC. They quoted Para on incentives on page No. 10 of High Tension Tariff Booklet of 1/10/06, point No. 32 on page 20 & last Para of Tariff Order of licensee for financial year 2006-07 in Case No. 54 of 2005 of MERC.

Para on incentives on page No. 10 of High Tension Tariff Booklet of 1/10/06 reads as under.

The Hon. Commission desires to incentivise the consumers who voluntarily reduce the consumption. This incentive is envisaged to be given effect in the ASC. This is proposed to be done by assessing the consumption of the consumer as against his monthly average consumption in the previous year (i.e. January 2005 to December 2005) while billing the consumer for ASC.

Point No. 32 on page 20 & last Para of Tariff Order of licensee for financial year 2006-07 in Case No. 54 of 2005 of MERC reads as under.

The Commission is of the opinion that consumers should incentivised to respond to the ASC. Therefore, the Commission directs licensee to assess the consumption of the consumer as against the monthly

average of previous year's (January 2005 to December 2005) while billing the consumer for ASC.

- q) MERC nowhere had denied the incentive to consumers who voluntarily reduce their gross consumption. If the consumption does not mean the gross consumption then it defeats the very purpose of incentivising consumers who voluntarily reduce their gross consumption. If billed consumption is taken then it would result in unjustified hardship to consumers who substantially reduce energy consumption.
- r) MERC nowhere had used the word “net consumption” or “net billing” & hence licensee’s contention is based on wrong interpretation. MERC at all places where incentive is referred has used the word “consumption” in Tariff Order.
- s) It is a basic rule of interpretation that a clarification /method cannot be used for giving an absurd meaning not intended to the main order where the main order has used clear & ambiguous language.
- t) Licensee should have used previous year’s average monthly consumption (i.e. January 2006 to December 2006) for comparing with monthly consumption of the year 2007. Licensee, however, had used average monthly consumption of January 2005 to December 2005 for comparing with monthly consumption of the year 2007.

7) The licensee vide letters dated 14th March 2007, 04th April 2007 & 19th April 2007 addressed to Forum made following submissions.

- i) The base tariff is revised by MERC with effect from 1/10/06 & is applicable from 1/10/06 to 31/03/07. As per said tariff order & clarificatory order dated 21/02/06 issued by MERC in Case No 35 of 2005, ASC on units is charged as per load shading pattern after comparing monthly consumption with last year's (January 2005 to December 2005) average monthly consumption. The average monthly consumption for the said period is worked out on the net consumption billed after adjustment of windmill units.
- j) The relevant Para No. 6 & note 1 below High Tension Tariff 1, applicable for charging ASC, of base tariff order of 1/10/06 reads as under. ***Para 6:- The tariffs are subject to the provisions of the MERC (Electricity Supply Code & Other Conditions of Supply) Regulation, 2005 in force (i. e. as on 20th January 2005) and directions, if any, that may be issued by the Hon'ble Commission from time to time. Note 1 below High Tension Tariff:- The "Additional Supply Charge" shall depend upon the ratio of contribution of costly power to the consumption mix of a particular region and therefore shall vary depending upon the geographical location (i. e. load shedding hours) & the consumer category and will be charged based on Load Shedding pattern.***

The load regulation target of 80% and 90% as applicable is to be applied only on the net consumption billed by licensee. This is relevant in cases where the HT industrial consumer has sourced part/full of its power requirement from generation facilities, either through captive or third party wheeling, and the licensee bills the consumer only for the net consumption after giving due credit for such energy generation.

- k) The consumer during the year 2006 was taking windmill energy from third party (M/S Dhariwal Industries Ltd Satara) wheeling energy arrangement. After due credit of windmill units, the monthly energy bills on net consumption were issued to consumer during the period from January 2005 to December 2005. The average monthly consumption, based on net billed consumption during the year January 2005 to December 2005, works out to 6,77,389 units. The net billed consumption of the months of November 06, December 06 February 07 & March 07 (9,81,722 units, 17,91,530 units, 17,06,528 units, & 16,91,110 units respectively) as compared to average monthly consumption of the year January 2005 to December 2005 (6,77,389 units) is higher & as such ASC @ 42 % was charged on net billed consumption of November 06, December 06, February 07 & March 07.

8) Power scenario in Maharashtra is grim. There is acute shortage of power. MERC took various steps to overcome this situation of shortage. One of the methods to bridge the gap of demand & supply is to resort to load shedding. MERC in its order in Case No 35 of 2005 of dated 10th January 06 stressed upon load shedding in view of shortage of power prevailing in Maharashtra on 16th June 2005. The key features are detailed below.

- i) It is inevitable that, when there is a shortage of available power vis-à-vis the requirement of consumers, load shedding would have to be undertaken in order to maintain the system frequency and to ensure its security.
- j) The load shedding would not apply to continuous process industries, which are on separate feeders. Load shedding would also not apply to those industries, which are supplied through separate or dedicated/express feeders.
- k) In the case of HT industries, the Commission had opined that they should not be subject to any load shedding, due to the reasons given in detail in its earlier order on the load shedding protocol.
- l) In view of the further increase in demand-supply gap, the Commission was forced to revise its exemption in the matter of load shedding for HT industrial category, supplied through dedicated feeders, and introduced the concept of load regulation, as discussed subsequently.

9) MERC in its above order of 10th January 2006 introduced the concept of load regulation. The key features of load regulation as

detailed by MERC in its Case No 35 of 2005 (CLARIFICATORY ORDER & CORRIGENDUM) dated 13th January 2006 are given below.

- i) HT non-continuous industries from February 2006 onwards have to restrict their monthly consumption to less than or equal to 80% of their average monthly consumption over the past three months, in MU terms. Similarly, HT continuous industries from February 2006 onwards have to restrict their monthly consumption to less than or equal to 90% of their average monthly consumption over the past three months, in MU terms.”
- j) Past three months is the billing period from October to December 2005.

10) MERC in its above order of 13th January 2006 introduced the reference period from October 2005 to December 2005. MERC in its order in Case No 35 of 2005 (CLARIFICATORY ORDER & CORRIGENDUM) dated 21st February 2006 revised the period of reference from three months to 12 months. The salient features are given below.

- i) The above period for reference for comparison of consumption was modified from the three-month billing period from October to December 2005, to the twelve-month billing period from January to December 2005.
- j) The monthly consumption in the billing period of February 2006 is to be compared against the average monthly

consumption over the twelve-month billing period from January to December 2005, in M U terms. Similarly, this consumption shall be carried out in each billing month commencing from March 2006 against the average monthly consumption over the twelve-month billing period from January to December 2005, in M U terms.

k) The load regulation target of 80% to 90% as applicable is to be applied only on the net consumption billed by licensee. This is relevant in cases where the HT industrial consumer has sourced part/full of its power requirement for generating facilities, either through captive or third party wheeling, and licensee bills the consumer only for the net consumption after giving due credit for such energy generation.

11) MERC in its order in Case No 54 of 20/10/06 under Chapter 8 considered principles for applying ASC. National Tariff Policy (NTP) notified by the Ministry of Power in January 2006 stated that uninterrupted power supply should be given to those consumers who are willing to pay. The relevant extract i.e. Clause 8.2.1 (1) is as follows:

“Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power.”

Licensee should be able to supply such costly power through ASC principle i. e. by charging ASC.

- 12) We cannot just read individual Para/clause from MERC's orders in isolation to arrive at conclusion. The careful study of various provisions of MERC's orders taken together needs to be done. MERC first introduced load shedding, vide Order dated 10th January 06 in Case No 35 of 2005, to maintain system frequency of supply grid to avoid collapse of grid in case of shortage of power. MERC, vide Order dated 13th January 06 in Case No 35 of 2005, also introduced the concept of load regulation restricting the consumption of continuous industries to less than or equal to 90% of their average monthly consumption over the past three months i.e. from October to December 2005. Later MERC vide Order dated 21st February 06 in Case No 35 of 2005 revised the reference period of three months to 12 months i.e. from January to December 2005. The load regulation target of 90% as applicable to HT continuous industries connected on dedicated/express feeder is to be applied only on the net consumption billed by licensee. Licensee to bill the consumer only for the net consumption after giving due credit for captive or/and third party wheeling energy.
- 13) Licensee as per MERC's order is duty bound to supply uninterrupted quality power to those consumers who are willing to pay ASC to set off the expenses incurred by licensee in purchasing costly power. These consumers would not be subjected to any load shedding or load regulation as prescribed by MERC but the condition of "net consumption" prescribed for

load regulation target does not get diluted & is applicable for charging ASC.

- 14) The submission of consumer, on interpretation of word “consumption” relating it with gross consumption on the pretext that MERC nowhere had used the word “net consumption” or “net billing” & MERC at all places where incentive is referred has used the word “consumption” in Tariff Order, at first sight appears to be forceful but on scrutiny it is found to be devoid of merit.
- 15) MERC inserted word “net consumption” in clause No. 2 (J) in its clarificatory order dated 21/02/06 in Case No. 35 of 2005 for a dual purpose, one is to give relief to supply grid of licensee by load regulation method in the event of shortage of power and also to indicate its intension of prescribing method of using “net consumption” as reference to be adopted for calculating ASC on the net consumption of consumers who are not subjected to load shedding & getting uninterrupted 24 hour power supply from licensee (power supply here means power generated by licensee & costly power purchased by licensee).
- 16) The tariff order of 1/10/06 is applicable from 1/10/06 to 31/03/07 & hence the method adopted by licensee for comparing net-billed consumption of the month of February 07 & March 07 with the net-billed consumption of calendar year 2005 as contemplated in the said order appears to be correct.
- 17) We do not agree with the submission made by consumer mentioned in Para 6 (s) above, as we do not find any

inconsistency in the clarificatory orders & other orders issued by MERC in respect of the method of charging ASC.

18) After careful study, as mentioned in Paras 8 to 17 above, we are inclined to pass the following order.

O-R-D-E-R

1. What is reasonable or otherwise must always depend on the circumstances of the case. Therefore the method adopted by licensee, of comparing net consumption excluding windmill energy for the months of November 06, December 06, February 07 & March 07 with the net consumption excluding windmill energy of the year January to December 05, for levying ASC on consumption is correct & needs no further modification.
2. Consumer can file appeal against this decision with the Ombudsman at the following address.

Maharashtra Electricity Regulatory Commission, 606/608,
Keshav Building, Bandra Kurla Complex, Mumbai 51

Appeal can be filed within 60 days from the date of this order.

Date: - 23/04/07

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(I. Q. Najam)
Chair person
CGRF Kalyan

(D. B. Nitnaware)

Member Secretary
CGRF Kalyan