

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/046/2007

Applicant : M/s. RAMSONS Casting Pvt. Ltd.,
At, A-301, Neeti Gaurav,
Ramdaspath,
Central Bazar Road,
NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
Division No. II, NUZ,
Nagpur.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

3) Shri S.J. Bhargawa
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 12.09.2007)

The present grievance application has been filed on 04.08.2007 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of charging of excess amount Rs. 72,12,326=50 towards additional supply charges (in short ASC) during the period from October 2006 to April 2007.

He has requested this Forum to direct the non-applicant to refund this amount to the applicant alongwith interest at Bank rate as per Section 62 (6) of the Electricity Act, 2003. He has also requested that the non-applicant be directed to pay amount of Rs. 10,000/- under Regulation 8.2 of the said Regulations towards expenses incurred by the applicant in fighting the case with the Internal Grievance Redressal Cell (in short the Cell) and this Forum.

The applicant, before coming to this Forum, had approached the Cell under the said Regulations by filing his complaint dated 08.06.2007 on the same subject matter of the present grievance. The Cell, upon inquiry and hearing, replied the applicant by its letter, being letter no. 4826 dated 01.08.2007, that the applicant's grievance cannot be considered by it and held that the reference month for computing ASC should be taken as September 2006 and reference consumption as 2204860 KWH units.

Being aggrieved by this decision of the Cell, the applicant has filed the present grievance application before this Forum under the said Regulations.

The applicant is a consumer of MSEDCL and connected at 33 KV voltage. The applicant had a contract demand of 5000 KVA from January 2005 to February, 2006. This contract demand was increased to 5300 KVA from March 2006 upto January 2007. He got reduced this contract demand to 5250 KVA effective from the month of February 2007. The MSEDCL considered a new average consumption of 21,06,120 Kwh i.e. the consumption of February 2007 for computing ASC units after reduction of contract demand by the applicant to 5250 KVA. The Cell in its order dated 01.08.2007 considered September 2006 as the reference month and 2204860 units as reference consumption for computing ASC. The applicant's request for consideration of 3000382 units as reference consumption and March, 2006 as reference month for computing ASC units & ASC was rejected both by MSEDCL and the Cell.

The matter was heard on 27.08.2007.

The applicant's case was presented before this Forum by his nominated representative one Shri R.B. Goenka while the case of the non-applicant Company was presented by the Executive Engineer, (Adm), Nagpur Urban Circle, MSEDCL, Nagpur.

It is the submission of the applicant's representative that the non-applicant has violated orders of MERC herein-after referred to as Commission while charging the applicant towards ASC during the period from October 2006 to April 2007. He has relied upon the Commission's tariff order dated 20.10.2006 determining ASC and upon its orders dated 13.01.2006, 26.02.2007 & 18.05.2007. The relevant text of the Commission's tariff order dated 20.10.2006 relied upon by him is as under:-

“The Commission is of the opinion that consumers should be incentivised to respond to the Additional Supply Charge. Therefore, the Commission directs MSEDCL to assess the consumption of the consumer as against the monthly average of previous years’ consumption (January 2005 to December 2005) while billing the consumer for Additional Supply Charge. For instance, if a commercial consumer located in industrial and urban agglomeration reduces the consumption by 5% as against the average of previous years’ consumption, then only 14% (19% - 5%) of his current consumption should be billed at Additional Supply Charge.

This shall not only incentivise the consumers to conserve energy and eventual procurement by MSEDCL from costly sources but also reduce the tariff impact on the bills of consumers. For computation of previous years’ average, the clarifications issued by the Commission through its Clarificatory Orders dated January 13, 2006 and February 21, 2006, in Case No. 35 of 2005 shall apply. In addition, in case of closure of any industrial unit for a period greater than one month during the period January 2005 to December 2005 for maintenance or other purposes, and documentary evidence of the same is provided to MSEDCL, then MSEDCL will exclude this period of closure, while computing the monthly average for the purposes of levy of Additional Supply Charges.”

The relevant text of the Commission’s clarificatory order dated 13.01.2006 quoted by the applicant’s representative is as under:-

“ (a) The period for reference will be the three-month billing period from October to December 2005;

- (b) The monthly consumption in the billing period of February 2006 is to be compared against the average monthly consumption over the three-month billing period from October to December 2005, in MU terms.
- (c) In case of new consumers, who have not completed three months from the date of energisation of the connection, the reference period for comparison of consumption may be taken as the last bill period.”

The text of the Commission’s another clarificatory order dated 21.02.2006 taken support of by the applicant’s representative is as under.:

“(b) The period for reference for comparison of consumption has been modified from the three-month billing period from October to December 2005 to the twelve-month billing period from January to December 2005.

(c) 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 MU terms. Similarly, this comparison 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 MU terms.

(h) In case of temporary connections in the corresponding period of 2005 which were made permanent thereafter, or if the nature of the connection had otherwise changed as compared to that period, then the reference period may be taken as the last bill period (as in the case of new consumers). This would include cases of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December 2005.

(i) In case of temporary connections in the corresponding period of 2005 which were made permanent during the period January to December 2005, or if the nature of the connection had otherwise changed during this period, then the reference period may be taken as the billing period after the change in the nature of the connection. This would include cases of consumers whose sanctioned load/ contract demand had been duly increased during the billing period of January to December 2005.”

The applicant’s representative has also relied upon the Commission’s clarificatory order dated 26.02.2007 the relevant text of which as reproduced by him in his grievance application is as under:-

“(a) In case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract Demand or the billing period of the month in which the consumer has utilised at least 75% of the increased sanctioned load/Contract Demand, whichever is earlier.

The following examples illustrate the above clause for ease of understanding and implementation:

Case	Increase in sanctioned load /contract demand	Atleast 75% of increased sanctioned load /contract demand is utilised	Billing period after three months of increase in sanctioned load / contract demand	Reference billing period for comparison
1.	October 2006	November 2006	January 2007	November 2006
2.	October 2006	June 2007	January 2007	April 2007

The applicant's representative also quoted recent order dated 18.05.2007 in which the Commission has said that "However, in case of reduction in contract demand which is probably an effort to conserve, the above reference period of average consumption during January 2005 to December 2005 would continue to be applicable".

Strongly relying on the Commission's aforementioned orders, the applicant's representative's submission is that the reference average consumption for ASC units in this case should be the billing period in which the applicant utilized 75% of contract demand after enhancement in the contract demand i.e. the month of March 2006. While justifying this claim, he stated that in the month of March 2006, the applicant's load factor was 76% and billing demand was 5159 KVA. Thus, the applicant did utilize more than 75% of contract demand of 5300 KVA in March, 2006. The consumption in this month was 3000382 KWH. As such, according to him, this consumption should be considered as reference consumption for calculating ASC units. Further, this average consumption should remain unchanged even after reduction of applicant's contract demand to 5250 KVA. He vehemently argued that the reference consumption for calculating ASC units is not correctly worked out by the non-applicant and as such, the energy bills issued are not correct. The energy bills of the applicant are required to be revised from October 2006 till April 2007 considering applicant's benchmark consumption of 30,0382 KWH units.

He has annexed to his grievance application a tabular statement showing contract demand, consumption from January 2005 till April 2007, average reference consumption for calculation for ASC, ASC units charged, reference consumption to be considered, excess ASC

units charged and details of amount to be refunded. As per his calculation, excess amount of Rs.72,12,326=50 towards ASC has been charged to the applicant by MSEDCL erroneously. He requested that this excess amount should be refunded to the applicant along with interest at Bank rate of interest as per Section 62 (6) of the Electricity Act, 2003.

He continued to submit that both the MSEDCL and the Cell misinterpreted the clarificatory order issued by the Commission on 26.02.2007 in which it is mentioned that the reference period should be considered as billing period of the month in which consumer has utilized at least 75% of the increased contract demand. He stressed that the Commission has nowhere stated that 75% of additional demand is to be utilized. The increased contract demand of the applicant was increased in March, 2006 and it was 5300 KVA and 75% of this increased contract demand comes to 3975 KVA only. The applicant's energy meter has not only recorded more than 75% of increased contract demand in terms of KVA but the applicant has also utilized this enhanced contract demand upto 76% in terms of unit consumption in the month of March 2006. He vehemently submitted that consumption recorded in March, 2006 of 3000382 KWH should have been considered as reference consumption for calculation of ASC units by the non-applicant.

Commenting upon the Cell's decision, the applicant's representative stated that the Cell has not understood the spirit behind the Commission's clarificatory orders and issued a wrong order which will have a reverse effect of the Commission's clarificatory orders. As per the Cell's order, the applicant shall have to make additional

payment of ASC charges after he has increased the contract demand because the reference consumption considered by the Cell is even less than what has been considered by MSEDCL for the months of October, November, December 2006 and January, 2007. He reiterated that as per the Commission's clarificatory order dated 21.02.2006, the reference period for computing of ASC may be taken as the last bill period since the nature of connection had otherwise changed as compared to the period January to December 2005 and in that his sanctioned load / contract demand had been duly increased to 5300 KVA after the billing month of December 2005. The Commission's order dated 21.02.2006 discussed specific cases possible and also gave illustrations for ease of understanding and implementation as follows :

“(h) In case of temporary connections in the corresponding period of 2005 which were made permanent thereafter, or if the nature of the connection had otherwise changed as compared to that period, then the reference period may be taken as the last bill period (as in the case of new consumers). This would include cases of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December 2005.

3. It has been brought to the attention of the Commission that the interpretation of the above clause is causing hardship to consumers whose contract demand has increased after December 2005, but have not been able to utilize their contract demand to the expected limit, due to gradual increase in load during the stabilization period. The result has been that the share of costly power for levy of ASC has become effectively

much higher than the peak level of 42 % considered by the Commission for continuous industries. This is un-intended hardship being caused to consumers, who may take some time to start consuming at higher levels after increase in the contract demand, depending on the nature of the industry/process”

He lastly prayed that the relief of refund sought for by the applicant in his grievance application may be granted.

The non-applicant, on his part, submitted his parawise report dated 24.08.2007, a copy of which has been given to the applicant’s representative.

The non-applicant has stated in his parawise report as well as in his oral submissions that there is no case for revision of ASC in this matter. According to him, his interpretation of the Commission’s order is correct and proper. He has not disputed that the contract demand of 5000 KVA was increased to 5300 KVA from March 2006 upto January 2007. He has also not disputed that the applicant got reduced his sanctioned contract demand of 5300 KVA to 5250 KVA w.e.f. February 2007. He further submitted that the applicant’s industry is a continuous process industry and he got his load increased from 5000 KVA to 5300 KVA when he was penalized for exceeding the then existing contract demand of 5000 KVA in the months of December 2005, January 2006 and February 2006. This shows that the applicant had used power in excess of the sanctioned contract demand for which he was penalized. According to him, after reduction of contract demand from 5300 KVA to 5250 KVA w.e.f. February, 2007 the MSEDCL

rightly considered a new average consumption of 2106120 KWh i.e. average of February 2007, for computing ASC. He also stated that the Commission's Tariff Order applies only to those consumers who have reduced consumption but not increased sanctioned load. Here, the applicant has misinterpreted the meaning of orders of Commission. The clarificatory orders dated 13.01.2006 and 21.02.2006 are not applicable to the applicant's case. The applicant has first increased contract demand from 5000 KVA to 5300 KVA in March, 2006 and then reduced it from 5300 KVA to 5250 KVA. This effort of the applicant cannot be said to be a probable effort to conserve energy because contract demand recorded in March 2007 is not less than the one applicable to the reference period of January 2005 to December 2005 considered by the Commission.

According to him, 75% of the increased contract demand amounts to 75% of 300 KVA which is the increased contract demand in this case. The applicant has to utilize minimum 75% of this 300 KVA in addition to the original contract demand of 5000 KVA. This comes to 5225 KVA. For enabling the applicant to avail of the benefit towards ASC, he should have thus utilized minimum contract demand of 5225 KVA. At no point of time, the applicant has exceeded M.D. of 5225 KVA between October 2006 to April 2007. The M.D. in KVA recorded during this period was below 5225 KVA and hence, consideration of reference period of March 2006 for computing ASC does not deserve to be considered. In the month of March 2006, the M.D. recorded was 5159 KVA which was less than 5225 KVA. The reference month in this case, according to him, is the month of September, 2006 and the applicant's consumption in September 2006 was 2204860 KVA and as such this

reference consumption will be the correct benchmark thereof as rightly held by the Cell. The non-applicant has further stated that the justification given by the applicant's representative is not proper and correct.

He, therefore, prayed that the grievance application may be rejected.

We have considered and analyzed all submissions, written and oral, made by both the parties and also documents produced on record by both of them.

The limited issue to be decided in this case is as to what quantum of reference consumption and which billing period should be considered as the correct respective benchmark for the purpose of charging ASC to the applicant.

While relying on various orders issued by the Commission pin-pointed by the applicant's representative, his strong submission is that the reference consumption for charging ASC should be considered as 30,00,382 KWH units throughout the period of 7 months from October 2006 to April 2007 effective from the month of October 2006 and excess ASC amounting to Rs.72,12,326=50 charged should be refunded to the applicant alongwith interest at Bank rate of interest. The non-applicant, on his part, has stated that the reference month is the month of September 2006 and the reference consumption is 22,04,860 KWH as in September 2006 as rightly held by the Cell.

It is not a matter of dispute that the applicant's contract demand was 5000 KVA during the period January 2005 to December 2005. It is also not disputed that this contract demand was increased to 5300 KVA in March 2006 upto January 2007 and further that this

contract demand of 5300 KVA came to be reduced by the applicant to 5250 KVA effective from the month of February 2007. The applicant's stress in this matter is particularly on the direction issued by the Commission in its clarificatory order dated 26.02.2007 in which the Commission has said that in case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/Contract demand or the billing period of the month in which the consumer has utilized at least 75% of the increased sanctioned load/Contract Demand, whichever is earlier. According to him, the applicant increased his contract demand from 5000 KVA to 5300 KVA from March 2006 and he has utilized more than 75% of the this increased contract demand of 5300 KVA in the month of March 2006 when his consumption was 30,00,382 KWH units. Hence, according to him, based on the above clarificatory order, the applicant's reference consumption should be taken as 30,00,382 KWH and the applicant granted appropriate relief from October, 2006 onwards on his reduced quantum of consumption till April, 2007.

The non-applicant's submission is that the applicant should have utilized at least 75% of the increased contract demand of 300 KVA i.e. minimum of 225 KVA over and above 5000 KVA in order to enable the applicant to claim relief as sought for by him. He further stated that the actual utilization the contract demand never reached this benchmark of 5225 KVA till April 2007 and hence the applicant cannot claim relief sought for by him.

The reference consumption already considered by MSEDCL for charging ASC from October 2006 till April 2007 is as under.:

Month	Reference consumption considered by MSEDCL in KWH units
October,2006	27,09,066
November,2006	27,09,066
December,2006	28,49,942
January,2007	28,49,942
February,2007	21,06,120
March, 2007	21,06,120
April 2007	21,06,120

The non-applicant was not able to clarify as to why

the reference consumption considered by MSEDCL shot up to the level of 28,49,942 in the months of December 2006 and January 2007.

It is very pertinent to mention here that the Commission has recently issued a clarificatory order, being order dated 24.08.2007 in case no. 26 of 2007 and case no. 65 of 2007 in which detailed clarification has been issued by the Commission with regard to the issue related to additional supply charges. This clarificatory order, according to us, is an important order which is very much applicable to the present matter.

The incentive and disincentive mechanism in the charging of ASC has been explained by the Commission in this order with the help of illustrations.

The MSEDCL in the case before the Commission had submitted that it was facing genuine difficulties in determining the reference consumption in cases where a consumer increases the demand and subsequently reduces the same in subsequent months. It

also submitted that certain consumers may take undue benefit of the Commission's clarification by marginally increasing the load / contract demand. Hence, the MSEDCL requested the Commission to clarify as to how ASC should be charged in such cases. The Commission has, thereupon, clarified in unequivocal terms that the Commission finds merit in MSEDCL's submission on this matter. It also said that though there is nothing that prevents any consumer from seeking a marginal increase in the contract demand, the Commission is of the opinion that for the purpose of implementation of clause (g) of its order dated 24.08.2007, there should be a minimum increase in contract demand / sanctioned load, to discourage consumers from seeking undue benefit under this clause.

The text of clause (g) of this order is as under.:-

“ In case of consumers whose sanctioned load / contract demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load/contract demand or the billing period of the month in which the consumer has utilized at least 75% of the increased sanctioned load / contract demand, whichever is earlier”.

The Commission further opined that increase in Contract Demand will be sought only when there is a significant increase in scale of operations, and hence, it clarified that clause (g) of the Order reproduced above, will be applicable only in cases, where the increase in Contract Demand is equivalent to 25% or more of the Contract Demand during the reference period from January 2005 to December 2005.

The relevant text of the Commission's order (page 15) is as under.:

“The Commission clarifies that clause (g) of the order will be applicable only in case where the increase in the contract demand is equivalent to 25% or more of the contract demand during the reference period from January 2005 to December 2005. The Commission further clarifies that in case the Contract Demand is reduced subsequent to increase of Contract Demand, such that the revised Contract Demand is less than 25% higher than the original Contract Demand during the reference period, then this clause will not be operative for such consumers, and the reference consumption during January to December 2005 will be applicable. (eg: CD during January to December 2005 = 100 KVA; CD increased during May 2006 = 200 KVA; Current CD = 120 KVA; reference period is average monthly consumption during January to December 2005).”

The Commission has also illustrated as to how the reference period and quantum of reference consumption should be arrived at in respect of sample cases described by MSEDCL in this context.

This is the latest order issued by the Commission which has a bearing upon the present matter.

The applicant in this case increased his contract demand from 5000 KVA to 5300 KVA in March 2006 and reduced it 5250 KVA from February 2007. His original contract demand was of 5000 KVA during the calendar year 2005 i.e. from January 2005 to December 2005. Increase in the contract demand is evidently much less than 25% of his contract demand during the period from January 2005 to

December 2005. It is a case of marginal increase in the contract demand. Hence, it is amply clear that the clause (g) referred to above of the Commission's order will not be applicable in the present case. Hence, submissions made by the applicant's representative cannot come to the rescue of the applicant in the context of claiming the benefit of clause (g) above, or for that matter of clause (h) of para 2 and clause (a) of para 4 of the Commission's order dated 26.02.2007 passed in case no. 54 of 2005.

The applicant's representative's submission that the applicant's consumption of 3000382 units should be considered as the benchmark or reference consumption for computing ASC during the period from October 2006 to April 2007 cannot, therefore, be accepted by this Forum.

The reference consumption to be considered by MSEDCL in the present matter should be the monthly average consumption over the period from January to December 2005. This comes to 27,09,058.1 KWH units. This will be the benchmark consumption in terms of the Commission's clarificatory order dated 24.08.2007. In view of this position the Cell's order dated 01.08.2007 directing the MSEDCL to consider the reference month as September 2006 and consumption of 22,04,860 units as reference consumption will have to be quashed. The same, therefore, stands quashed.

The non-applicant should now revise the applicant's bills from October 2006 to April 2007 considering consumption of 27,09,058.1 units as the reference consumption for the purpose of computing ASC w.e.f. October 2006 to April, 2007.

The applicant's request for considering 30,00,382 KWH units as reference average consumption for charging ASC from October 2006 to April 2007 stands rejected. Consequently, his claim for refund of amount of Rs.72,12,526.50 is also rejected. Question of awarding expenses of Rs. 10,000/- to the applicant as requested by him also does not arise. His request in this respect stands rejected.

In the result, the applicant's grievance application stands disposed off accordingly.

The non-applicant shall report compliance of this order to this Forum on or before 15.10.2007.

(S.J. Bhargawa)
Member-Secretary

(Smt. Gauri Chandrayan)
MEMBER

(S.D. Jahagirdar)
CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**