

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

Case No. CGRF(NUZ)/053/2012

Applicant : M/s. Starkey Point Resort Pvt.Ltd.,
At Starkey resorts,
Bazargaon,
NAGPUR.

Non-applicant : Nodal Officer,
The Executive Engineer,
(O&M) Dn. No. II,
M.S.E.D.C.L., Nagpur.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Smt. Gouri Chandrayan,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON DT. 11.7.2012

The applicant M/s. Starkey Point Resorts Pvt. Ltd., at Bazargaon, filed present Grievance application before this Forum on 14.5.2012 under regulation 6.4 of the MERC (CGRF & Ombudsman) Regulations 2006 (hereinafter referred to as the Regulations).

1. The applicant's case in brief is that the applicant M/s. Starkey Point Resorts Pvt. Ltd., Bazargaon, consumer of O&M Sub-Division No. I, M.S.E.D.C.L. Nagpur under the authority of Executive Engineer Division No. II, the Non

applicant, have connected load of 63.82 KW, sanctioned load of 43.20 KW & connected at L.T. Supply with Consumer No. 41001619287. In the month of May 2010, there was inspection of Flying Squad of M.S.E.D.C.L. which reported that consumption of the applicant is as per connected load of 63.82 KW and not as per sanctioned load hence non applicant has issued a bill of Rs. 490207/- by applying tariff for more than 50 KW. Prior to this energy bills received by the applicant were with Tariff L.T.-II (B), i.,e. for 20 KW – 50 KW. Non applicant has added an amount of Rs. 490207/- in the energy bill for June 2010. Therefore the applicant has raised objection on this billing as per letter Dt. 16.7.2010. Disconnection notice was issued to the applicant on 29.7.2010. The applicant filed grievance application under regulation 6.5 read with regulation 8.3 of the said regulations before this Forum vide previous Case No. CGRF/(NUZ)/062/10. As per Interim order Dt. 23.8.2010 in case No. 62/10, non applicant was directed not to disconnect the supply and to maintain status quo. At that time grievance of the applicant was filed and pending before I.G.R.C. Nagpur Rural Circle, MSEDCL, Nagpur on 18.8.2010 and therefore applicant was directed to get the matter decided by I.G.R.C. It was ordered that applicant shall be at liberty to come before this Forum in the event of decision of I.G.R.C. going against him.

2. I.G.R.C. had dismissed the grievance application of the applicant as per order Dt. 20.3.2012 in case No. 12/11. Non applicant issued notice under section 56 of Electricity Act 2003 Dt. 3.5.2012 calling upon the applicant to pay amount of Rs. 4,90,207/- on or before 19.5.2012, failing which supply shall be disconnected. Therefore the applicant filed present case before this Forum under regulation 6.4 of the said regulations and also filed an application under regulation 8.3 of the said regulations, claiming interim relief not to disconnect the supply. As per the order Dt. 23.5.2012, in this case, this Forum without going to the merits of the matter decided the interim application directing the non applicant not to disconnect the electricity supply for non payment of Rs. 490207/- till disposal of the application on merits.
3. In present Grievance application, the applicant claimed main relief on merit for issuance of directives to M.S.E.D.C.L. to withdraw the illegal energy bill amounting to Rs. 490207/- and to direct M.S.E.D.C.L. to apply proper tariff i.e. tariff applicable to 20 KW to 50 KW consumers till the applicant applies for higher load if required by him.
4. Non applicant denied the case of the applicant by filing reply Dt. 7.6.2012. It is submitted that M/s. Starkey Point Resorts Pvt. Ltd. is having Commercial tariff (20-50 KW). Flying squad Nagpur has inspected premises of the applicant and its installation on 17.5.2010. During the

inspection, flying squad found KVA MD 70.92 which has come out as 63.82 KW. Consumer was being charged on commercial tariff 20 KW – 50 KW. As shown by M.D. connected load is 63.82 and hence he must be charged for commercial tariff above 50 KW. Accordingly, difference of bill is charged for last 12 months amounting to Rs. 490207/-. The meter of said consumer was not compatible for 'M.R.I.' so that MRI of meter could not be taken. From the record, the consumers M.D. is exceeded in the month of May 2010, June 2010, March 2011, April 2011, May 2011 and June 2011 etc. As per CPL, load existed over 50 KW and billed on commercial tariff above 50 KW in the month of April 2011, May 2011, June 2011, August 2011 etc. and consumer has paid all the bills. Consumer has applied for extension of load for 88 KW which shows that consumer himself is agree that he is having load above 50 KW. In this case, only tariff difference is charged and no penalty is imposed. From the above facts, it is clear that consumer's connected load is above 50 KW and accordingly tariff applied must be commercial tariff above 50 KW and hence additional bill is issued and it is correct.

5. Forum heard arguments of both the sides and perused entire record. Shri R.B. Goanka, representative of the applicant argued the matter on behalf of the applicant, whereas Shri P.N. Lande, Dy. Executive Engineer, Flying Squad and Shri G.L. Pise Asstt. Engineer (O&M) Sub-Division No. I argued on behalf of the non applicant.

6. So far as this matter is concerned, there is difference of opinion amongst members of the Forum. Therefore decision is based on majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the Forum, whereas dissenting note of Hon'ble Member of the Forum is noted at the bottom of the order being part of the order.

MAJORITY VIEW OF HON'BLE CHAIRPERSON AND
HON'BLE MEMBER / SECRETARY OF THE FORUM

7. It is a matter of record that initially applicant filed case No. 12/11 on 18.8.2010 under Regulation 6.2 of the said regulations before I.G.R.C. Nagpur. The applicant was apprehending the disconnection due to disconnection notice Dt. 29.7.2010. Therefore applicant filed grievance application No. 62/10 under regulation 6.5 read with regulation 8.3 before this Forum and claimed interim relief not to disconnect his supply till the matter is decided by I.G.R.C. As per order Dt. 23.8.2010 in case No. 62/10, this Forum granted interim relief and directed non applicant not to disconnect the supply of the applicant till disposal of the matter by IGRC and it was ordered that applicant shall be at liberty to come before this Forum in the event of dismissal of the application by I.,G.R.C. I.G.R.C. had dismissed grievance application of the applicant vide case No. 12/11 as per order dt. 20.3.2012. Again the non applicant issued disconnection notice Dt. 3.5.2012.

Therefore applicant filed present matter before this Forum under regulation 6.4 of the said regulation and in this matter interim relief was claimed under regulation 8.3 of the said regulations not to disconnect supply of the applicant till disposal of this application on merit. This forum had granted interim order in favour of the applicant without touching the merits of the matter as per order Dt. 23.5.2012 and matter was fixed for final hearing.

8. Shri R.B. Goanka, representative of the applicant argued that applicant is commercial consumer connected on L.T. and supply is being used for commercial resort purpose. The applicant had sanctioned load of 43.2 KW and tariff applicable is L.T.-II (B), i.e. 20 KW – 50 KW. He further argued that during the month of May 2010, flying squad visited the premises and inspected the spot. As per the load test and results derived from acucheck, the load was observed 47.8 KW having power factor 0.95. During the observations, the M.D. recorded in the meter was 70.92 KVA. He further objected for calculation of KW MD on the basis of KVA MD. He also insisted that as per tariff order in case No. 116 of 2008, 65 % of maximum demand in KVA is considered for billing purpose in calculation of fixed charges. He argued that list of connected load was not attached during the inspection and therefore according to him energy bill issued by M.S.E.D.C.L. amounting to Rs. 490207/- is illegal.

9. On the contrary, on behalf of the non applicant Shri P.N. Lande, Dy. Executive Engineer, Flying Squad had supported entire action of M.S.E.D.C.L. and argued that inspection was carried on 17.5.2010 and during the inspection it was observed that the consumer billed on commercial tariff L.T.-II (B) (20 KW -50 KW). KVA MD recorded on the meter was 70.92 KVA. Accordingly, the connected load derived was observed to be 63.82 KW. During the load test and acucheck test, P.F. observed was 0.9. As the P.F. was good, therefore failure of capacitor is denied. Above connected KW was derived by mathematical relation existing between KVA & KW considering average P.F. He further argued that after replacement of meter with TOD meter, it is observed through CPL that the load has exceeded from the month of October 2010 onwards, during the month of April 2011, May 2011, June 2011, August 2011, October 2011, February 2012, for which the penalty was levied and consumer has paid the bills also. He further argued that regarding calculations, he stated that computation can be done from KVA to KW considering 0.8 P.F. or average P.F. He further argued that as per present status also, connected load is above 50 KW and can be ascertained after the data is retrieved.
10. After hearing rival arguments from both the sides, Forum has scrutinized the case carefully and meticulously. Along with reply of non applicant several

important documents are produced on records in support of the contention. On the basis of documentary evidence on record, it is clear that there was inspection of flying squad on 17.5.2010. During the inspection it is found KVA MD is 70.92 which has come out to 63.82 KW. Consumer was being charged on commercial tariff 20 KW – 50 KW. As shown by M.D., connected load is 63.82 and therefore the applicant must be charged in commercial tariff above 50 KW. Therefore difference of bill for 12 months amounting to Rs. 490207/- is correctly charged by the non applicant. Record shows that the meter of the applicant was not compatible for M.R.I. and therefore M.R.I. of the meter could not be taken. Record shows that consumer M.D. is exceeded in the month of May 2010, June 2010, March 2011, April 2011, May & June 2011. As per CPL, load exceeded above 50 MW and billed on commercial tariff above 50 KW in the month of April 2011, May 2011, June 2011, August 2011 etc. It is note worthy that applicant consumer has paid all the bills.

11. It is pertinent to note that consumer has applied for extension of load for 88 KW and this fact itself proves that consumer himself agrees that he is having load above 50 KW. It is a matter of record that non applicant has charged only difference in tariff and no penalty is imposed. After scrutiny of entire record, in our opinion, the consumers connected load is above 50 KW and

therefore tariff applicable must be commercial above 50 KW. Therefore, it is our considered opinion that additional bill by the non applicant is perfectly correct, legal and valid. Therefore needs no interference.

12. We have carefully perused order Dt. 20.3.2012 passed by learned I.G.R.C. in case No. 12/11. Said order is based on sound reasoning. There is no illegality or perversity in this order. Therefore, in our opinion, order passed by learned I.G.R.C. is perfect, correct, legal and valid and therefore needs no interference.
13. For these reasons, we find no merits and no substance in the present grievance application and application deserves to be dismissed.
14. We must mention here that this Forum has granted interim relief in favour of the applicant as per Order Dt. 23.5.2012 in the present case directing the non applicant not to disconnect the electric supply of the applicant for non payment of Rs. 490207/- till disposal of the main application on merits. Today we are dismissing main grievance application from the applicant on merits. Therefore, it is necessary in the interest of justice, to cancel interim order Dt. 23.5.2012 by this Forum.

15. DISSENTING NOTE OF HON'BLE MEMBER.

1. Present grievance of the applicant is regarding assessment amount of Rs. 4,90,207/-. This assessment was raised by the non – applicant on the report of Flying Squad. The flying squad inspected the applicant's premises in the month of May 2010. During the inspection, F.S. observed that recorded M.D. was 70.92 KVA and P.F. on the meter was 0.8. Therefore, F.S. concluded that applicant using load of 63.80 KW against sanctioned/ connected load of 43.20 KW. Since the consumer using higher load than the connected load and present billing category is 20 KW to 50 KW, the consumer is liable for higher billing slab i.e. > 50 KW. Accordingly, F.S. assessed tariff difference between 20 KW to 50 KW and > 50 KW, P.F. penalty, demand charges for excess connected load for past 12 months, since no impact of M.D. and capacitor is included in plain billing.

2. I have carefully gone through the documents on record. In my opinion, it is necessary to study following points to decide this case.
 - i) F.S. concluded that applicant is using 63.82 KW. Therefore, it is necessary to find out from where this 63.82 KW is calculated. From the inspection, M.D. (KVA) observed by F.S. in the inspection of May 2010 = 70.92 KVA.
P.F. recorded by Acucheck = 0.9.
Therefore Calculated KW = KVA x P.F. = 70.92 x 0.9 = 63.82 KW.

The same logic is also accepted by I.G.R.C.

In other words all the calculations and tariff applicability by the non applicant is based on the concept of connected load. However, the billing on the basis of connected load is no longer in existence. In this regard, Hon'ble Commission passed an order in case No. 2 of 2003. The point No. 33© & (d) of this order clarifies the basis of charging for L.T. consumers except L.T. agricultural consumers.

“33 (c) All L.T. consumers (except L.T. agricultural consumers) with sanctioned load exceeding 20 KW will be assessed only by Maximum Demand recording through the meter. MSEB shall taken immediate steps to install suitable meters in line with the directions in the Tariff Order dated March 10, 2004 (para 44), if no done so far. In the intervening period, any remaining such cases shall be dealt with as per the dispensation at (d) below.

(d) As an interim dispensation for L.T. consumers (other than agricultural and residential) with less than 20 KW load, MSEB shall review/ monitor the last one year's consumption (kWh) of the concerned consumer, and compare it will the normalized maximum limit of energy consumption for the sanctioned load, month-wise. In case such normalized consumption is found to be lower than the actual consumption in at least six months out of twelve, then MSEB shall install a MD (Tri-vector) meter at its own cost, or shall notify the concerned consumer to install the prescribed MD meter at his own cost within a reasonable stipulated time frame, failing which he would be liable to

penal provisions regarding violation of sanctioned load limit, and demand charges accordingly, with prospective effect from the date of notice”.

This clarified that L.T. consumers with sanctioned load exceeding 20 KW will be assessed only by Maximum Recording through the meter and penal provision regarding violation of sanction load limit and demand charges will be with prospective effect from the date of notice.

In this case, the non applicant never notified to consumer for past period and no recording of maximum demand for past period is available with the non applicant. Hence in my opinion, the non applicant can not recover penalty for past period on the basis of observations in May 2010.

3. Regarding tariff applicability > 50 KW.

The applicant is charged for the past 12 months from the inspection i.e. May 2010. In other words, the assessment period considered was June 2009 to May 2010. For calculation of any assessment it is essential to consider tariff prevailing during that period.

Tariff Applicability :-

June 2009 to July 2009	- (MERC tariff order in case No. 72
	2007 w.e.f. 1.6.2008)
Aug. 2009 to May 2010	- (MERC tariff order in case No. 116 of 2008 w.e.f. 1.8.2009).

In both the tariff orders, the tariff applicable to L.T. industry is given as –

L.T.V: LT – Industrial

Applicability

Applicable for industrial use at LT voltage, excluding Agricultural Pumping Loads. This Tariff shall also be applicable to IT industry and IT enabled services (as defined in the Government of Maharashtra Policy).

Rate Schedule

Consumer Category	Fixed / Demand Charge	Energy Charge (Paise / kWh)
L.T. Industrial		
0-20 KW (Up to and including 27 HP)	Rs. 150 per connection per month	300
Above 20 KW (above 27 HP)	Rs. 100 per KVA per month for 65% of maximum demand or 40% of contract demand, which ever is higher	
	Rs. 60 per HP per month for 50 % of sanctioned load, till such time of MD meters are installed for all consumers	
TOD Tariff (In addition to above base tariffs)		
2200 hrs.- 0600 hrs.		- 85
0600 hrs.– 0900 hrs.		0
0900 hrs.- 1200 hrs.		80
1200 hrs.- 1800 hrs.		0
1800 hrs.- 2200 hrs.		110

Note :-

1. The ToD tariff is available to LT V – Industrial above 20 KW, and optionally available to LT V – Industrial up to 20 kW having ToD meter installed”.

“LT V: LT-Industry

Applicability :-

Applicable for industrial use at Low / Medium Voltage in premises for purpose of manufacturing, including that used within these premises for general lighting, heating / cooling, etc. excluding Agricultural Pumping Loads. This consumer category also includes IT industry and IT enabled services (as defined in the Government of Maharashtra Policy.

Rate Schedule

Consumer Category	Fixed/Demand Charge	Energy Charge(Paise/kWh)
<u>LT V - Industrial</u>		
(A) 0 – 20 kW (Upto and including 27 HP)	Rs. 150 per connection per month	3.50
(B) Above 20 kW (above 27 HP)	Rs. 100 per kVA per month for 65 % of maximum demand or 40% of contract demand, whichever is higher	4.75
TOD Tariff (In addition to above base tariffs)		
0600 hrs.- 0900 hrs.		0.00
0900 hrs.- 1200 hrs.		0.80
1200 hrs.- 1800 hrs.		0.00
1800 hrs.- 2200 hrs.		1.10
2200 hrs.-0600 hrs.		- 0.85

Note :-

a) The ToD tariff is applicable for LT V (B) and optionally available to LT-V(A) having TOD meter installed.

In above tariff orders, there is no category as > 50 kW. Hence the assessment considering tariff category for > 50 kW is totally illegal.

4. Penalty for exceeding contract demand and power factor penalty :-

The documents on records reveal that no MD based billing to consumer prior to F.S. inspection. Only connected load and sanctioned load are printed on applicants electricity bill.

Connected Load : 43,2 kW (At the time of inspection)

Sanctioned Load: 43.2 kW.

Prior to going into the details of basis for charging excess demand penalty the definition of contract demand and sanctioned load as mentioned in the prevailing tariff order is reproduced below :-

“Contract Demand :-

Contract Demand means demand in Kilowatt (kW) / Kilo – Volt Ampere (kVA), mutually agreed between MSEDCL and the consumer as entered into in the agreement or agreed through other written communication (For conversion of kW into kVA, Power Factor of 0.80 shall be considered).

Sanctioned Load :-

Sanctioned Load means load in Kilowatt (kW) mutually agreed between MSEDCL and the consumer”.

So in absence of contract demand, sanctioned load can be considered as Contract Demand.

“Penalty for exceeding contract demand”

In case, a consumer (availing Demand based Tariff) exceeds his Contract Demand, he will be billed at the appropriate Demand Charge rate for the Demand actually recorded and will be additionally charged at the rate of 150% of the prevailing Demand Charges (only for the excess Demand over the Contract Demand)”.

Here it is mentioned that in case consumer exceeds his contract demand against demand actually recorded. The only record available with the non applicant for assessment period i.e. June 2009 to May 2010, is kVA MD recorded at the time of inspection. The recorded MD is in kVA and sanctioned load of the applicant is in kW. For comparison both should have same unit. By referring definition of contract demand, it is mentioned that for conversion of kW into kVA, Power factor of 0.80 shall be considered).

In this case SL :- 43.20 kW.

Therefore Contract Demand in kVA = $43.20/0.8 = 54$ kVA.

Recorded Maximum Demand = 70.9 kVA.

It indicates that the consumer exceeded his demand in the month of May 2010. But no recorded data as per

tariff order is available with the non applicant. Hence the non applicant can not assess the penalty for exceeding contract demand for past period, on the basis of May 2010 data.

“Power Factor Penalty :-

(Applicable for HT I, HT II, HT IV, HT V and HT VI categories, as well as LT II (B), LT II (C), LT III, and LT V (B) categories).

Whenever the average PF is less than 0.9, penal charges shall be levied at the rate of 2% (two percent) of the amount of the monthly bill including energy charges, FAC, and Fixed / Demand Charges, but excluding Taxes and Duties for the first 1% (one percent) fall in the power factor below 0.9, beyond which the penal charges shall be levied at the rate of 1% (one percent) for each percentage point fall in the PF below 0.89”.

As the average P.F. for past period is not available with the non applicant, he can not presume that whatever he has observed during the inspection, the same PF was there for past period also. Further, for assessment purpose, PF is considered as 0.82 with a note on inspection report as on meter. That means 0.82 is not the average P.F. Therefore the non applicant can not recover PF penalty for past period.

5. In brief, in absence of recorded data, wrong tariff applicability and wrong demand calculation, in my opinion, non applicant can not recover assessment from the applicant.
16. In majority view of the Forum, we hold that there is no force in the grievance application of the applicant and the grievance application deserves to be dismissed.
17. Resultantly, Forum on majority view, proceeds to pass the following order :-

ORDER

1. Grievance application is hereby dismissed.
2. Interim order passed by this Forum Dt. 23.5.2012 in this case is hereby modified and cancelled.

Sd/- (Smt.K.K.Gharat) (Adv.Smt.GauriChandrayan) (ShriShivajirao S.Patil) MEMBER SECRETARY	Sd/- MEMBER	Sd/- CHAIRMAN
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