

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.44/2016

Date of Grievance : 28 .12.2016

Date of Order : 01 .02.2017

In the matter of refund of excess demand charges of Rs.944786/- for the month of April-2016 along with interest.

M/s. Centruy Enka Ltd.,
MIDC, Bhosari,
Pune - 411026.

Complainant
(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Ganeshkhind Urban Circle,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Mrs.B.S.Savant
Mr. S.S.Pathak

Appearance

For Consumer

Mr.D.B.Roongtha ,
Mr.Subodh Sigtia,
(Representatives)

For Respondent

Mr.M.V.Diwakar, Supdt.Engr.
Mr.Bapat, Ex,Engr, GKUC

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.
- 2) Being aggrieved and dissatisfied by the order dated 3.11.2016 passed by IGRC Ganeshkhind Urban Circle, Pune, thereby rejecting the grievance, the consumer above named prefers this grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Parvati Dn., Pune vide letter no. EE/CGRF/PZ/Notice/44 of 2016/275 dtd.28.12.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 09.01.2017.
- 4) We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties.

Facts giving rise to the grievance may be stated as under :

The HT consumer namely M/s. Century Enka Ltd. having consumer No.1700149002009 with connected load (CL) 32065.00 KW having total contract demand (CD) as 11500.00 KVA i.e. open access (OA) as 10000 KVA and MSEDCL retained CD as 1500 KVA and presently billed under tariff category HT-1 (N). The consumer applied for short term open access provision in the month of March-2016 for the period April-2016. Accordingly the Licensee granted permission to the consumer for open access (OA) contract demand (CD) as 10000 KVA & MSEDCL retained CD as 1500 KVA for the period 1.4.2016 to 30.4.2016 as per the provisions of MERC (Distribution Open Access) Regulations, 2014 vide letter dated 19.3.2016 issued by Chief Engineer (Commercial) MSEDCL Mumbai. Thereafter the MERC introduced, MERC (Distribution Open Access) Regulations, 2016 & those were notified on 30.3.2016 in the Maharashtra Government Gazette & made applicable from the date of their publications in the official gazette i.e. with immediate effect. The Licensee generated the bill of the consumer in the month of May-2016 for the month of April-2016 with total CD as 11500 KVA, i.e. OA CD as 10000 KVA and MSEDCL retained CD as 11500 KVA. As per Clause 2.1(6), higher billing demand of $(11500 \times 50\%) = 5750$ KVA was charged by the Licensee and bill for Rs.9,44,786/- as per said rules have been issued to the consumer. The consumer challenged the said bill with Licensee stating that short term open access (STOA) was granted as per the prevailing MERC (DOA) Regulations, 2014 vide letter dated 19th March

2016 whereas the open access billing for the month of April-2016 was done as per Regulations MERC (DOA) Regulations, 2016. According to consumer the bill for the month of April-2016 should have been made as per MERC (DOA) Regulations, 2014 as the permission was granted prior to 30th March 2016 i.e. prior to coming into force of MERC (DOA) Regulations, 2016. Therefore consumer claims refund of excess demand charges of Rs.9,44,786/- for the month of April-2016 along with interest for the relevant period. The consumer had made application to the Licensee for refund of said amount vide email dated 26th Aug.2016. In reply to the said email the Licensee i.e. Chief Engineer, (Commercial), MSEDCL Mumbai while rejecting the said request observed that the demand charges levied in the open access bill for the month of April-2016 is correctly preceded with the provisions of MERC (DOA) Regulations, 2016. Thereafter the consumer made complaint before IGRC, Ganeshkhind for refund of the said excess amount of demand charges. The IGRC rejected the said complaint vide impugned order dated 3.11.2016. Therefore consumer approached to the Forum with this grievance.

5. The Representative of the consumer, Mr. Subodh Sigtia submitted that the consumer applied for short term open access for the month of April-2016. Accordingly the Licensee granted permission for STOA as per the prevailing MERC (DOA) Regulations, 2014 vide letter no. STOA /Conventional/No.08645 dated 19th March-2016. He further submits that inspite of the said sanction the Licensee issued open access bill for the month of April-2016 as per new regulations i.e. MERC (DOA) Regulations, 2016. The said bill should have been issued as per MERC (DOA) Regulations, 2014 since the permission was granted before coming into force of Regulations, MERC (DOA) Regulations, 2016. The said new Regulations have come into force from 30th March-2016 whereas permission was granted on 19.3.2016. Mr. Subodh further submitted that the consumer being a open access consumer, as per MERC (DOA) Regulation, 2014 billing demand would be higher of the following for the month of April-2016 :

- i. Actual Maximum Demand recorded less Open Access Demand availed by Partial Open Access Consumer in the month (11137.50-10000)=1137.50 KVA ;
- ii. 75% of the highest Billing Demand pertaining to retained Contract Demand recorded during preceding eleven (11) month (776.679) KVA;
- iii. 50% of retained Contract Demand with the Licensee (1500/2) = 750 KVA.

6. Mr.Subodh further submitted that the Licensee in the open access bill of the consumer for the month of April-2016 has shown total contract demand 11500 KVA, MSEDCL retained CD as 11500 KVA & final billed demand as 5750 KVA as per MERC (DOA) Regulations, 2016 which is incorrect as pointed out in the Para No.5 above. Therefore excess demand charges of Rs.9,44,786/- for the month of April-2016 be refunded alongwith interest.

7. On the other hand, Mr.Diwakar. Supdt.Engr., GKUC , MSEDCL Pune submitted that the consumer has applied for the short term open access permission for the month of April-2016. Accordingly the Licensee granted permission to the consumer for open access contract demand as 10000 KVA & MSEDCL retained CD as 1500 KVA for the period 1.4.2016 to 30.4.2016 vide letter no. STOA/conventional/8645 dated 19.3.2016. Thereafter the MERC introduced, MERC (DOA) , Regulations 2016 & these were notified on 30.3.2016 & made applicable with immediate effect. As per Regulations 4.2 of MERC (DOA) Regulations 2016, " the mandatory reduction of contract demand is not applicable, instead new provisions of revision in contract demand governed as per electricity supply code & the regulations of the commission governing," Standard of Performance". He further submitted that the Chief Engineer (Commercial), MSEDCL, Mumbai had rejected the consumers request for refund of excess demand charges. As per MERC (DOA) Regulations, 2016, the application for reduction in contract demand shall be submitted at the time of short term open access application. As per new open access policy 2016, it was clarified that a consumer availing STOA shall not be eligible to revise his

contract demand with the distribution Licensee during the tenure of STOA, but he may do so at the time of applying for open access. The consumer has not fulfilled the said requirement for STOA for the month of April-2016. The MERC (DOA) Regulation 2014 ceased to exist w.e.f. 30.3.2016. Hence mandatory automatic reduction in contract demand for April-2016 billing was not possible. The consumer's bill for the month of April-2016 has been generated with total CD as 11500 KVA, i.e. with OA CD as 10000 KVA & MSEDCL retained CD as 11500 KVA & therefore as per Clause No.2.1(6) higher billing demand i.e. 50% of retained contract demand with MSEDCL as 5750 KVA has been charged. Therefore the amount of Rs.9,44,786/- against demand charges for the month of April-2016 are as per rules & therefore the request of the consumer for refund of demand charges with interest be rejected with cost.

8. Admittedly, as per the application of the consumer, the Licensee granted permission for short term open access for the month of April-2016 vide letter No.STOA/Conventional/8645 dated 19.3.2016 as OA CD as 10000 KVA & MSEDCL retained CD as 1500 KVA for the period 1.4.2016 to 30.4.2016. Thereafter the MERC notified revised open access regulations i.e. MERC (DOA) Regulations, 2016 on 30.3.2016 & made applicable with immediate effect. Thereafter the Licensee generated STOA bill of the consumer for the month of April-2016 in the month of May-2016 as per the provisions of MERC (DOA) Regulation, 2016. According to consumer since the approval for short term open access for the month of April-2016 has been granted on 19.3.2016, i.e. prior to coming into force of MERC (DOA) Regulation, 2016, the final bill for the month of April-2016 should have been made as per prevailing regulations i.e. MERC (DOA) Regulation, 2014.

9. The crucial point for our determination is that short term open access bill for the month of April-2016 whether to be issued as per MERC (DOA) Regulation, 2014 or MERC (DOA) Regulation, 2016. For this purpose we have to take into consideration relevant provisions of electricity laws.

The term open access has defined under Section 2 (47) of Electricity Act, 2003 as under.

“Open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission”

The Commission made MERC (DOA) Regulation, 2016 & they came into force from 30th March-2016 i.e. from the date of publication in official gazette which are published in Maharashtra Government Gazette, extra ordinary, part 4 -C dated 30th March-2016.

The present consumer is a partial open access consumer. As per Regulation 2.1 (30) of MERC (DOA) Regulation, 2016 partial open access consumer is defined as under.

“Partial Open Access Consumer” means an Open Access Consumer who maintains some demand with the Distribution Licensee in whose area of supply he is located in order to cater to his load requirement.”

The term short term open access is defined under Regulation 2.1(33) of MERC (DOA) Regulation, 2016 as under.

“Short term Open Access” or “STOA” means the right to use the Distribution System for a period not exceeding one month at a time.”

10. The short term open access permission was granted to the consumer on 19.3.2016 as per prevailing MERC (DOA) Regulation, 2014. As per the said Regulations, the consumer sourcing power, the reduction of contract demand to the extent of open access capacity was mandatory & the retained demand was considered for billing. After the commencement of MERC (DOA) Regulation, 2016 i.e. from 30.3.2016 provision of revision of contract demand has been made under Regulation No.4.2 as under:

The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply code and the Regulations of the Commission governing Standards of Performance:

Provided that a Consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the terms of the STOA but may do so at the time of applying for Open Access.

11. The "Repeal & Savings" Clause under Regulation No.38 of MERC (DOA) Regulation, 2016 is as under :

38. Repeal and Savings :

38.1 *Save as otherwise provided in these Regulations, the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014, shall stand repealed from the date of notification of these Regulations.*

38.2 *Notwithstanding such repeal, anything done or purported to have been done under the repealed Regulations shall be deemed to have been done or purported to have been done under these Regulations.*

12. Therefore the MERC (DOA) Regulation, 2014 has ceased to exist w.e.f. 30.3.2016 as per Regulation No.38.1 of MERC (DOA) Regulation, 2016. As per 4.2 of MERC (DOA) Regulation, 2016 the application for reduction in contract demand shall be submitted at the time of short term open access application. The mandatory automatic reduction in contract demand is not provided under MERC (DOA) Regulation, 2016. The Licensee has generated short term open access bill of the consumer in the month of May-2016 for the consumption of energy for the period 1.4.2016 to 30.4.2016 in accordance Clause No.2.1(6) of MERC (DOA) Regulation, 2016. The said provision reads as under :

"Billing Demand", for the purpose of these regulations in respect of a Partial Open Access Consumer, will be the higher of the following:

(1) *Actual Maximum Demand recorded less Open Access Demand availed by Partial Open Access Consumer in the month during 0600 hours to 2200 Hrs.:*

(2) *50 % of retained Contract Demand with the Licensee:*

13. The Licensee carried out open access billing of the consumer in the month of May-2016 for the period April-2016 in accordance with MERC (DOA) Regulation, 2016. The bill for the month of April-2016 of the consumer is generated with total CD as 11500 KVA, having OA CD as 10000 KVA & MSEDCL retained CD as 11500 KVA. Therefore as per Clause No.2.1 (6) of MERC (DOA) Regulation, 2016 higher billing demand (11500x 50% of retained contract demand with MSEDCL) = 5750 KVA is seems to be correct. Therefore we find that the demand charges levied by the Licensee for Open Access bill for

the month of April-2016 has been correctly proceeded as per the provisions of MERC (DOA) Regulation, 2016. The IGRC Ganeshkhind has rightly rejected the request of the consumer for refund of demand charges of Rs.9,44,786/- for the month of April-2016. Hence the grievance of the consumer is liable to be rejected.

14. Lastly we proceed to pass following order.

ORDER

Grievance of the consumer stands rejected with cost.

Delivered on: - 01.02.2017

Sd/-
S.S.Pathak
Member
CGRF:PZ:PUNE

Sd/-
B.S.Savant
Member/Secretary
CGRF:PZ:PUNE

Sd/-
S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg., Bandra Kurla Complex,
Bandra (E), Mumbai-51.