



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/1430/1682 of 2017-18

Date of registration : 27/07/2018

Date of order : 26/09/2018

Total days : 61

IN THE MATTER OF GRIEVANCE NO. K/E/1430/1682 OF 2017-18 OF M/S PRAXAIR INDIA PRIVATE LTD., PLOT NO.A-3, MIDC INDUSTRIAL AREA, MURBAD, DIST-THANE, PIN CODE – 421 401 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT BILLING DISPUTE.

M/s Praxair India Private Ltd.,

Plot No.A-3, MIDC Industrial Area,

Murbad, Dist-Thane,

Pin Code – 421 401

(Consumer No. 018019053600)

. . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution

Company Limited

Through it's Nodal Officer/Addl.EE.

Kalyan Circle-II, Kalyan

. . . (Hereinafter referred as Licensee)

Appearance : For Licensee

- 1) Shri.N.T.Kale, Nodal Office, Kalyan Circle-II

2) Shri.A.J.Patil, Dy.EE, Kalyan Circle-II

3) Shri. R.S.Shinde, Sr.Manager, Kalyan Circle-II

For Consumer - 1) Shri.Satish Shaha (C.R.)

2) Shri. T.N.Agrawal (C.R.)

3) Smt.Anuradha Singh

[Coram- Shri A.M.Garde-Chairperson, Shri A.P. Deshmukh-Member Secretary
Mrs. S.A.Jamdar- Member (CPO)].

1) 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 Redressed 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. [Electricity Supply Code and other conditions of supply

Regulations 2005]. 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.

2) Consumer herein is M/s Praxair India Private Ltd., having consumer no. 018019053600. Grievance is that open access billing for Dec-2017 and Jan-2018 was incorrect.

3) *Consumer submit that in September-2014 they had applied for and obtained contract demand to the extent 12 mvA for operations of both ASV and LMPL. Then with the availability of alternative cheaper source of power, consumer applied for open access approval for procurement of 6 MVA of power for operations of the ASU in Nov-2014. It is the case of consumer that in terms of clause 3.1 of Distribution of open access Regulations 2014 the power sourced through open access was deemed to be forming part of the contract demand sanctioned by MSEDCL. This arrangement was in place from Nov-2014 to Dec-2016. From Dec-2016 consumer stopped sourcing power under the open access arrangement and consumer was operating the ASU with 6 MVA sourced from MSEDCL.*

4) It is further the submission that in terms of Chief Engineer (Commercial) Circular dt.12/08/2016, Consumer reduced their contract demand from MSEDCL to 6 MVA from 12 MVA as on Jan-2017 vide consumer's letter dt.08/02/2017. It is the case of the consumer, that Hon'ble MERC issued practice directions dt.19/10/2016 for processing open access application under MERC (Distribution open access) and (Transmission open access) Regulation 2016 (practice directions 2016) as per 1.3 thereof quantum of power permitted through open access was not to be included as a part of consumer's contract demand with MSEDCL. Anticipating consumer's future power requirement through open access, metering CTS of the rated 5/ A having power drawal capacity up to 12990 KVA was retained by the consumer without change.

5) It is further the submission that in order to meet consumer's increased requirement after 11 months i.e. from December-2017 consumer had availed open access on day ahead basis from conventional power plant (JSW Ratnagiri) as per Distribution open access Regulation 2016 issued by MERC on the following day :-

22 Dec-2017	11 Jan-2018
23 Dec-2017	13 Jan-2018
28 Dec-2017	16 Jan-2018
29 Dec-2017	17 Jan-2018
4 Jan-2018	23 Jan-2018
5 Jan-2018	24 Jan-2018
6 Jan-2018	25 Jan-2018

9 Jan-2018	30 Jan-2018
10 Jan-2018	31 Jan-2018

Further, short term open access permission (NOC) to schedule power from JSW Ratnagiri on the above mentioned data was provided by MSEDCL.

6) Consumer further submits that in the bills for the month of Dec-2017 and Jan -2018 MSEDCL had levied demand penalty for drawal of power over 6 MVA and applied temporary tariff of the alleged overdrawn units in excess of 6 MVA. Consumer also lost load factor incentive on MSEDCL power due to imposition of demand penalty after considering all the above factors the financial loss Suffered by the consumer is to the tune of 1,59,23,827/-. Consumer contends that MSEDCL has failed to appreciate that the power sourced through open access is not to be deemed to be forming part of contract demand in terms of practice directions 2016 and that the consumer is entitle to consumer Contract Demand of 6 MVA from MSEDCL and also the open access power of 5 MVA from JSW Ratnagiri without having to pay Contract demand related penalties.

7) **MSEDCL in reply contends that :-**

i) *The consumer M/s. Praxair India (P) Ltd is HT consumer of MSEDCL and the date of connection is 28.10.2013 with CD 9000 KVA. Thereafter consumer made an agreement on 23.09.2014 with MSEDCL for CD enhancement of 12 MVA . The copy of agreement enclosed herewith (Annexure-A).*

ii) *In Nov-2014, the consumer opted for partial short term Open Access for procurement of contract demand power 5.75 MVA and retained CD 6.25 MVA with MSEDCL. Thus out of the total sanctioned demand of 12 MVA with MSEDCL, the consumer availed Open Access for Contract Demand 5.75 MVA and retained Contract Demand 6.25 MVA with MSEDCL. After issue of new DOAR 2016 contract demand for May-2016 was fixed as OA CD 6000 KVA and retained with MSEDCL 6000 KVA up to Dec-2016. The terms and conditions while granting short term open access permission for wheeling of power (Bilateral Transaction) are enclosed herewith (Annexure-B).*

iii) *The consumer stopped sourcing power under the Open Access arrangement from Jan-2017 and retained the contract demand 6 MVA with MSEDCL. This is evident from the letter of consumer dt.08.02.2017. (Annexure -C).*

iv) *The Chief Engineer (Comm), in his letter No. 2665 Dt.06.02.2018 has also mentioned that, his office is in receipt of consumer's letter dt.08.02.2017 for correction in bill for the month of Jan-2017 by considering the MSEDCL Contract Demand as 6 MVA instead of 12 MVA for availing load factor incentive, as the consumer has not applied for the restoration of contract demand.*

Accordingly the contract demand was reduced to 6 MVA from 12 MVA and bill for the month of Jan-2017 was raised accordingly. Consumer has not applied for restoration of the contract demand. The said letter of CE (Comm) is enclosed herewith as (Annexure –D)

v) The Chief Engineer (Comm) vide letter no. 25481 Dt. 12.08.2016 has issued guidelines regarding revision of contract demand in case of open access consumers , in this letter it is clarified that, if the consumer desire to restore /enhance its contract demand then it will governed by the provision of supply code and standard of performance of MERC and while enhancing the contract demand up to extent of its original Contract Demand with MSEDCL, it shall be done on the basis of submission of A-1 application to the respective circle office, payment of necessary processing fees and execution of new agreement only. The letter of Chief Engineer (Comm) is enclosed herewith as (Annexure-E).

vi) The consumer applied for Day Ahead Open Access of 5000 KVA and 4320 KVA respectively on 22.12.2017, 23.12.2017, 28.12.2017 and 29.12.2017. The Open Access permission was issued considering that, there is no technical constraint . It is observed that, the consumer has achieved the maximum demand of 10172.73 KVA against the Contract Demand of 6000 KVA . (Day ahead OA permission enclosed herewith as Annexure-F).

As per MERC DOAR 2016 ,Clause No.19.2 “ Settlement of energy at drawal point in respect of Open Access consumer or Trading Licensee on behalf of Open Access consumer, Deviation between the contract demand and the actual drawal in respect of an Open Access consumers shall be settled as follows,

19.2.1 Over drawal;

“ Over drawal by an open access consumers shall be settled at the higher of the following,

(i). The System Marginal Price (‘SMP’) plus other incidental charges (Net Unscheduled Interchange (‘UI’) charges , additional UI charges) or any other intra State Availability –based Tariff (‘ABT’) settlement charges as identified under the mechanism operating in Maharashtra from time to time or ,

(ii). the Energy charge or Variable Charge of Temporary Tariff Category , whichever is applicable, as determined by the commission in respect of the Distribution Licensee:

Provided that the consumer shall also be liable to payment of penalty for exceeding Contract Demand as provided in the Commission’s Orders determining the retail tariff applicable to such consumer.” Thus the denabd penalty and temporary tariff are levied in the bill for the month of Dec-2017.

vii) In MERC Case No.59 of 2015 and M.A.No.8 of 2015 (Order Dt.03.06.2016) . The commission has ruled that, considering the order dt.17.05.2017 in Case No.42 of 2006(Regarding Availability –Based Tariff) and subsequently dispensations over drawal by partial open access consumers beyond there contract demand is to be charged at the temporary tariff category.

viii) *The consumer has referred Para 1.3 of Practice Directions and Para 3.4 of statement of reasons . Further Clause 8.10, Clause 12.1 and 12.2 of DOAR , 2016, but all these provisions are required to be considered in consonance with regulation of 19.2 of DOAR 2016 which is in respect of overdrawal.*

ix) *As per the Para 3.4 of statement of Reasons:- The Commission has studied the various suggestions received and provided Consumers the freedom to choose its Contract Demand. If the Consumer chooses to reduce his Contract Demand , then any consumption beyond Open Access generation which is in excess of his Contract Demand will be charged at temporary tariff . However , if such excess consumption is within his Contract Demand then he will be charged at the tariff applicable to the respective tariff category.*

From this para , it is clear that, if the consumer choose to reduce his Contract Demand as per freedom given to him then any consumption which is excess of his contract demand will be charged as per temporary tariff.

In the present matter , the consumer himself has retained his contract demand as 6 MVA with MSEDCL by his letter dt.08.02.2017 and availed load factor incentives . Further by availing day ahead open access , the consumer overdraw the power beyond the contract demand. Therefore the demand penalty and temporarily tariff was levied.

From the above , it is conspicuous that, the action of MSEDCL is perfectly within the corners as specified in DOAR 2016 and Para 3.4 of statement of reasons.

The contentions in the compliant of the complainant are considered to be denied unless specifically admitted hearing.

In view of the above , it is crystal clear that , the complaint of the consumer is the devoid of any merits , hence liable to dismissed.

8) We have heard both sides. Now, the undisputed facts are that date of connection for the consumer is 28/10/2013 with C.D.9000 KVA. Thereafter consumer made an agreement on 23/09/2014 with MSEDCL for C.D. enhancement upto 12 MVA. Thereafter in Nov-2014. Consumer opted for partial short term open access for procurement of contract demand power 5.75 MVA and retained 6.25 MVA with MSEDCL. Thus out of the total sanctioned demand of 12 MVA with MSEDCL the consumer availed open access for contract demand 5.75 MVA and retained contract demand of 6.25 MVA with MSEDCL. Further, the partial short terms open access opted/granted were under certain terms and conditions. Condition no.11 thereof runs thus.

REDUCTION IN CONTRACT DEMAND :

11.1 As provided under Regulation 4.2.1 & 4.2.2 of MERC (Distribution Open Access) Regulations,2014, the Contract Demand of the Consumer, who have opted for the Distribution Open Access, shall deemed to be reduced to the extent (in MW terms) such consumer has been granted permission to wheel energy under Open Access from the date of commencement of open access.

11.2 Such deemed reduction in Contract Demand shall be perpetual till such time the consumer again opts for restoration of power supply from MSEDCL.

11.3 The Open Access consumer shall give at least one month notice to MSEDCL if he wishes to cancel the open access permission and reinstate the MSEDCL contract demand.

Thus once consumer availed energy from open access the contract demand to be 12 MVA as it originally stood. Consumer themselves confirmed the said position vide their letter dt. 08/02/2017 by which they got the bill for the month of Jan-2017 revised by claiming load factor incentive considering contract demand as 6 MVA and not 12 MVA. They specifically based their claim on the above referred condition no.11 stating that they had not applied for power supply afresh for 6 MVA more in form A as required. Thus even as per consumer themselves Contract Demand was not restored to original extent i.e. 12 MVA Distribution Licensee contends that in the above situation the billing based on Contract Demand of 6 MVA is correct.

9) It was also pointed out that in fact consumer was a open access consumer availing OA Contract Demand 6000 KVA and having retained MSEDCL CD of 6000 KVA totaling to 12000 MVA upto Dec-2017. As consumer did not avail open access from the month of Jan-2017, MSEDCL CD was restored to 12000 KVA and the bill for the month of Jan-2017 was issued but consumer themselves pointed out to MSEDCL that as per they had not applied in form A-1 for restoring original CD of 12000 KVA as such bill drawn for Jan-2017 as on the basis of CD of 12000 KVA was incorrect.

10) Consumer Representative Shri.Satish Shaha pointed out NOCs granted to OA on day ahead basis in which MSEDCL Contract Demand was shown as 6 MVA and OA was show as 5 MVA but it can be seen that total Contract Demand shown is 6 MVA. That being so it is clear that MSEDCL total CD was never restored back to original 12 MV.

11) Thus although the provision of reduction in Contract Demand existing in MERC (DOA) Regulation 2014 was not kept in new MERC (DOA) Regulation 2016 instead, a new provision of revision of contract demand has been introduced in 4.2.which runs this :

Revision of Contract Demand

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 tenure of the STOA, but may do so at the time of applying for Open Access.

Accordingly in case of open access consumers the contract demand to be governed by the provisions of Electricity supply code and SOP Regulation of MERC. Circulars were accordingly issued by MSEDCL requiring submission of A-1 form for restoring reduced Contract Demand on account of and to the extent of O.A. consumer has also taken benefit of the same for claiming load factor incentive.

Consumer has quoted clauses 8.10, 12.1, 12.2 of DOAR 2016 and objects and reasons therefore at para 3.4. We have gone through the same. They do not in any manner support the propositions put forth by consumer. Nowhere therein we find any bar for restricting the drawal to total Contract Demand as has been envisaged by MSEDCL. In facts object and reason para 3.4 supports the claims of MSEDCL itself.

In the above view of the matter grievance fails.

Hence the Order

ORDER

Grievance is rejected.

Date: 26/09/2018

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(A.P.Deshmukh)
MemberSecretary
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.