



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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NO. K/E/1555/1835 OF 2018-19

Date of registration : 07/03/2019

Date of order : 24/04/2019

Total days : 48

IN THE MATTER OF GRIEVANCE NO. K/E/1555/1835 OF 2018-19 OF M/S D'DECOR EXPORTS PVT. LTD., PLOT NO. J/259 & 260, MIDC – TARAPUR BOISER, TALUKA & DISTRICT – PALGHAR, PIN CODE – 401 506 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT DDF OR NON DDF.

M/s D'Decor Exports Pvt. Ltd.,
Plot No. J/259 & 260,
MIDC – Tarapur Boiser,
Taluka & District – Palghar,
Pin Code – 401 506

(Consumer No. 003019038440) . . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited
Through it's Nodal Officer/Addl.EE.
Palghar Circle, Palghar

. . . (Hereinafter referred as Licensee)

Appearance : For Licensee - Shri.Yuvraj Jarag, EE, Nodal Officer, Palghar Circle

For Consumer - Shri.Pratap Hogade (C.R.)

[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 one M/S D'decor Exports Pvt. Ltd., Having Consumer no. 003019038440. Grievance is as follows :

(A) DETAILS OF THE GRIEVANCE, FACTS GIVING RISE TO THE GRIEVANCE -

Consumer is the HT Industrial Consumer of the licensee MSEDCL, Palghar Circle and the details of connection are given in detail in Para No. 3 above. Copy of our recent bill is attached herewith. (Annexure-1)

Their earlier Contract Demand was 2150 KVA. We had applied for enhancement in Contract Demand 900 KVA and total Contract Demand 3050 KVA vide our application dt. 05/04/2017 & revised on 08/08/2017. The then S.E., MSEDCL, Palghar Circle approved our application and issued Power Sanction Letter bearing No. SE/PLG-S/T/Tech No. 2781 dt. 28/08/2017 for load enhancement at 33 KV level to our unit. The copy of the Sanction Letter is attached herewith. (Annexure-2)

S.E., MSEDCL, Palghar Circle issued us Estimate under DDF vide its letter No. SE/PLG-S/T/Tech No. 2780 dt. 28/08/2017 with estimate amount of Rs. 16,98,775/- for 12 poles and 2.3 KM HT line and the concerned infrastructure work including the Metering work. The copy of the estimate is attached herewith. (Annexure-3)

They have paid 1.3% Supervision Charges amount of Rs. 22,085/- to MSEDCL on 15/09/2017. Receipt Copy is attached herewith. (Annexure-4) We have completed all the infrastructure work as per estimate on 02/01/2018. Then after SE, MSEDCL, Palghar Circle issued additional load release letter on 27/03/2018 and the load was released. The copy of the load release letter and the copy of the Single Line Diagram of the concerned feeder is attached. (Annexure-5)

The issue of refund of Infrastructure Cost was pending due to Stay given by the Honorable Supreme Court in the Civil Appeal filed by MSEDCL. Honorable Supreme Court dismissed the Civil Appeal and then it became clear that We can claim for the refund of all the expenses done for the Non DDF Infrastructure Works and/or Metering Works.

After the Final Decision of the Honorable Supreme Court in Civil Appeal No. 4305/2007 dt. 10/11/2016 regarding Refund of such charges, MSEDCL issued its first Refund Circular on date 12/10/2017. Then after we have applied to the S.E., MSEDCL, Palghar Circle for the Refund of the estimate amount Rs. 16,98,775/- along with the interest thereon on dt. 12/10/2018. The copy of our application is attached herewith. (Annexure-6)

But till today consumer has have not received any response or refund from the licensee. We had filed our complaint to IGR Cell, Palghar Circle, Palghar but IGR Cell had rejected our complaint. Hence We are submitting this grievance & application for refund with interest before CGR Forum, Kalyan Zone, Kalyan

(B) SUBMISSION/GROUNDS IN SUPPORT OF THE GRIEVANCE -

S.E., MSEDCL, Palghar Circle has not given any response to our application of Refund on the basis of the Order of the Honorable Supreme Court & concerned MERC Orders. IGR Cell has also denied it. This denial of refund is totally wrong, illegal and against the orders of the Honorable Commission & Honorable Supreme Court. Our detailed submissions in this regard are given in the following paragraphs.

- (1) **Work Done** - *The work done by us as per estimate of MSEDCL is the extension of the existing HT 33 KV line up to our premises. The scope of the work was laying of @ 2.3 KM HT 33 KV line along with 12 poles and all the concerned infrastructure work and Metering work. The copy of the Single line diagram is attached herewith for easy understanding of the feeder and extension work. (Annexure-5)*

In case of Meter/Metering Cubical, We wish to state that, As per MERC Order regarding "Schedule of Charges" dt. 08/09/2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dt. 27/09/2006, meters are to be installed by the licensees. Also if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars. Copies of concerned Circulars No. 21560 dt.09/05/2017 and No. 34307 dt. 03/09/2007 are attached herewith. (Annexure-7)

- (2) **Feeder Details** - *The name of the feeder is 33 KV Feeder No. 8, which is emanating from 220/132/33 KV, Khairpada, MICD II Substation. Feeder from MSEDCL Substation was existing and we have done only the further extension work of the existing feeder. This can be clearly understood from the enclosed single line diagram also.*
- (3) **Other Consumers** - *There are many other consumers getting power supply from the same 33 KV feeder No. 8 i.e. Valiant Glass Works, DCTex Home Furnishings, GR Engineering, Samruddha Pharmaceuticals, Viraj Profiles, D'Decor Home Fabrics, Siyaram Silk Mills (2 Units), Future Retail, Bombay Rayon Fashion Ltd. etc. Some consumers are shown on line diagram. List of consumers is taken from MSEDCL office itself.*
- (4) **MERC Order 16/02/2008** - *Only the extension work was done by us and many other consumers are getting supply from the same feeder. "Mere extension or tapping of the existing line (LT or HT) can not be treated as DDF (Dedicated Distribution Facility)" is the Clarification given by MERC, on the demand of MSEDCL itself, in its order in Case No. 56 of 2007 dt. 16/02/2008. Order copy is attached herewith. (Annexure-8)*

- (5) **Work Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by MERC in detail in the above mentioned order, our feeder and the work done by us is clearly Non DDF. Hence We are fully eligible for the refund of the said amount i.e. Rs. 16,98,775/- as per MSEDCL's own office estimate.
- (6) **MERC Order 17/05/2017** - Honorable MERC in its Order dt. 17/05/2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dt. 08/09/2006. The copy of the Order Dt. 17/05/2007 is attached herewith. **(Annexure-9)**

Few Extracts of this Order are as below.

Para 4 end - "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006."

Para 5 end - "The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests."

Para 9 end - "While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006."

- (7) **MERC Order 21/08/2007** - Again the Honorable Commission has issued further Order dt. 21/08/2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dt. 17th May 2007. Copy of the order dt. 21/08/2007 is attached. **(Annexure-10)**

Few important extracts of this order are as below,

Para 7 - "Public Utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory Control and cannot be permitted to claim charges beyond what the legislature regards as legal."

Para 9 - "The directions of the Commissions to MSEDCL were to refund amounts that never belonged to them as they were collected illegally. It is well settled that interest shall also be leviable on such amounts. MSEDCL cannot argue that the amounts spent towards creating infrastructure must be replenished at the cost of those consumers at whose cost MSEDCL has enriched unjustly. What is sought to be prevented is unjust enrichment or unjust benefit derived by MSEDCL from its consumers."

- (8) **DDF Clarifications** - Again Case No. 56 of 2007 was filed by the same petitioner before MERC for the compliance of the directions issued on 17/05/2007 in Case No. 82 of 2006. In this case issues of ORC, DDF and Non DDF were fully discussed by the Honorable Commission. In this order, MERC has clarified the concept and issued detailed clarification on "DDF" on request of MSEDCL itself.

Few important extracts of this order are as below,

Para 9 - "The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL. MSEDCL may seek the recovery of the same as an annual revenue requirement."

Para 12 - "It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility."

Para 12 - "Also Dedicated Distribution Facility can not be shared in future by other consumers. Such facilities can not be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of E. Act 2003 read with SoP regulations."

- (9) **Provisions of S.62 (6) of the E. Act 2003** - It is very much clear from the directions of MERC quoted in Para 7 above that "the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally". Also it is clear from the directions quoted in Para 8 above that "consumers should not be burdened with infrastructure costs which are the liability of MSEDCL".

Also S.62 (6) of the E Act 2003 reads as below,

S.62(6) - "If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

The directions of the Honorable Commission clearly states that "the collection towards infrastructure cost is totally illegal and consumers should not be burdened with infrastructure costs." Also Section 62(6) clearly states that excess recovered amount must be refunded to the concerned person along with the interest thereon. Hence we are clearly eligible to get the refund of infrastructure cost along with the interest thereon.

- (10) **MSEDCL Circular 20/05/2008** - After this order dt. 16/02/2008, MSEDCL has issued circular on 20th May 2008 as Guidelines for release of new connections on the basis of above mentioned MERC orders. The copy of the circular is attached herewith. **(Annexure-11)** The circular itself clarifies that all the Non DDF connections are refundable. MSEDCL

has issued circular only for LT connections. Actually MERC order is for both LT & HT connections.

MSEDCL Circular 21/12/2009 - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21st December 2009 regarding refund of the infrastructure cost. The copy of the circular is attached herewith. **(Annexure-15)** It is pertinent to note here that it is clearly stated in the circular that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.

- (11) **MSEDCL Civil Appeal in Supreme Court** - In the meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Honorable Supreme Court had ordered "Stay on Refund" while hearing on 31/08/2007. Hence all the Refunds were stopped.
- (12) **Supreme Court Order 10/11/2016** - Finally the Civil Appeal filed by MSEDCL before the Honorable Supreme Court came for final hearing in the Year 2016. Honorable Supreme Court heard the matter, issued final order on dt. 10/11/2016 and dismissed the Civil Appeal in toto. The copy of the Order is attached herewith. **(Annexure-12)**
- (13) **MSEDCL Circular 12/10/2017** - After the order of the honorable Supreme Court, It is binding on MSEDCL to implement concerned MERC orders in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist/D-IV/MERC No. 25079 on 12/10/2017. Copy of the circular is attached. **(Annexure-13)**
- (14) In this circular dt. 12/10/2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by MERC in its order dt. 16/02/2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non DDF cases, Consumer is eligible to get the refund along with the interest thereon.

At many places, Consumers had asked for refund of Infrastructure Expenses. But MSEDCL always took stand before various forums & courts that "the issue of refund of Infrastructure Cost is pending before honorable Supreme Court." The copy of the concerned MSEDCL Circular dt. 07/11/2017 is attached. **(Annexure-14)**

- (15) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the

infrastructure work should be done by the concerned consumers at their own cost. Actually using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Actually such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

19.1 "Any terms & conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."

- (16) **Interest** - As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate. The copy of the bank rate for last 10 years, as declared by RBI is attached herewith. **(Annexure-16)**
- (17) Actually our expenditure on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, We can claim the estimate amount only. Hence, on the basis of all above mentioned grounds, We are eligible to get the refund of estimate amount Rs. 16,98,775/- along with the interest thereon at bank rate from January 2018 up to the actual date of repayment.
- (18) **Compensation** - Our complaint is a complaint other than bills. Hence as per **SoP regulations 2014, Regulation No. 7.6, "In other cases the complaint shall be resolved during subsequent billing cycle."** We have filed our complaint on 12/10/2018. It is necessary & binding on MSEDCL to resolve it in subsequent billing cycle means maximum upto the end of November 2018. Hence We are eligible for SOP Compensation of Rs. 100 per Week or part thereof from 1st December 2018.

DATE OF ORIGINAL INTIMATION OF GRIEVANCE BY THE CONSUMER TO THE DISTRIBUTION LICENSEE (IGR CELL) -

Complaint Submitted to IGR Cell, Palghar	Dt. 12/11/2018 Copy Attached (Annexure - 17)
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Order issued by the IGR Cell, Palghar	Dt. 25/01/2019 Copy Attached (Annexure - 18)
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The Order of the IGR Cell, Kolhapur is totally wrong, illegal. The details are described above in these submissions. MSEDCL is the only distribution licensee in our area. Due to its monopoly, We have no option but to accept its conditions, though illegal. Also the works done

by us are handed over to MSEDCL after completion. Hence the order of the IGR Cell should be squashed and set aside on the basis of all above mentioned grounds & submissions.

REMEDY PROVIDED BY THE DISTRIBUTION LICENSEE, IF ANY -

----- Nil -----

(8) NATURE OF RELIEF SOUGHT FROM FORUM -

We hereby humbly pray to the Honorable CGR Forum as below,

- (1) Our connection should be declared as a Non DDF connection on the basis of Supply Code Regulations & Concerned MERC Orders.
- (2) The expenditure amount as per MSEDCL estimate Rs. 16,98,775/- should be refunded to us along with the interest thereon at bank rate from 1st January 2018 till the date of repayment, or alternatively the total amount should be credited in our further bills.
- (3) SOP Compensation, for delay in Complaint Resolution, amount Rs. 100/- per week from 1st December 2018 should be awarded.
- (4) Any other orders may be passed by the Honorable IGR Cell, in the interest of justice, as it may think fit & proper.

3) Distribution Licensee in reply states as under :

- i) It is submitted that MSEDCL states that, M/s. D'Decor Exports Pvt. Ltd. is MEDCL consumer having the date of supply 12.05.2012 at Plot. No. J-259 & J - 260, MIDC-Tarapur Boisar, Tal & Dist. Palghar. The Consumer has applied for additional HT power supply on dtd.05.04.2017. The MSEDCL has sanctioned supply on dtd. 28.08.2017 under DDF head, the consumer has submitted consent to carry out estimated work through his own expenses. The consumer carried out the estimated work through licensed electrical contractor and after submission of Work & Completion Report etc the supply was released. The said supply line and Transformer was dedicated to the consumer and it his DDF supply.
- ii) That, as per MERC Supply Code,2005

3.3 Recovery of expenses for giving supply

3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18:

Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of giving supply.

3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant's premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:

Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith.

3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.

3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system:

Provided that where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4:

Provided further that any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall be determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations.

4) We have heard both sides. It is not in dispute that consumer had an existing contract demand of 2150 KVA and applied for enhancement by 900 KVA and to total it to 3058 KVA. The application for enhancement was made on 05/04/2017 and revised on 08/08/2017. The same was sanctioned on 28/08/2017 Estimate under DDF was issued 28/08/2017 for Rs.16,98,775/- for

12 poles and 23 km HT line and the concerned infrastructure work including metering work. Consumer paid 1.3% supervision charges amount of Rs.22,085/- to MSEDCL on 15/09/2017 consumer then completed all the infrastructure work as per estimate on 02/01/2018. Thereupon additional load has been released on 27/03/2018. Consumer has applied for refund of estimate amount of Rs.16,78,775/- along with interest.

5) It is further not in dispute that the name of the feeder is 33 kv feeder no.8 which is emanating from 220/132/33 kv, khairpada MIDC II substation. Feeder from MSEDCL was existing and that there are many other consumers getting power supply from the same 33 kv feeder no.8 viz. valiant glass works. DC tex Home furnishing, GK Engineering, Smruddha Pharmaceuticals, Viraj profiles D' décor Home Fabrics, system Silk Mills, future retail Bombay Rayon fashion Ltd., etc. consumer did only extension work.

6) In the above state of things the claim of Distribution Licensee that the supply line and the transformer was dedicated to consumer and it comes under DDF supply cannot sustain. It has been stated by MERC in It's order in case no.56 of 2007 dt. 16/02/2008 that mere extension or tapping of the existing line (LT & HT) cannot be treated as DDF. In case no.82 of 2006 MERC has ruled that MSEDCL must refund all the overcharged amount collected towards ORC or such other head based charges. Including cost of meter at variances from the order dt.08/09/2006. Consumer herein is therefore entitled to entire amount including the meter cost.

7) Distribution Licensee has tried to make another point on the basis of MERC supply code 2005 3.3, 3.3.3 and 3.3.4 which we have gone through. We fail to understand how the consumer can be deprived of the refund on the basis of those provisions. We have already found on facts that consumer is not on DDF. Further we do not find that the supply granted to present consumer entails works for augmentation of the distribution system. The ground sought to be made out by the Distribution Licensee therefore can not sustain.

Hence the Order

ORDER

- 1) The Grievance application of consumer is allowed.
- 2) Distribution Licensee to refund all the expenses incurred by the consumer including meter costs as per WCR showing actual work carried out along with interest of RBI rate from the date of receipt of refund application i.e.12/10/2018 till realization by consumer.

- 3) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 24/04/2019

(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.