

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.**  
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**CASE No. 90 of 2019**

**Case of Maharashtra State Electricity Distribution Company Limited seeking clarification about interest on refund on account of change in tariff from HT continuous to HT non continuous consumers.**

**Coram**

**Anand B. Kulkarni, Chairperson**  
**I.M.Bohari, Member**  
**Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Company Limited

Petitioner

**Appearance**

For the Petitioner:

Shri. S.S. Koltey (Rep)

**ORDER**

**Dated: 22 July, 2019**

1. Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) has filed this Case dated 8 April, 2019 under Regulation 15 of MERC (Standards of Performance of Distribution Licensees, period for giving Supply and Determination of Compensation) Regulations, 2005 (**SoP Regulations, 2005**) and under Regulation 92 read with Regulation 94 of the MERC (Conduct of Business) Regulations, 2004.

2. **MSEDCL's main prayer is as follows:**

*a) To clarify about the interest on refund on account of change in tariff from HT - continuous to HT - non-continuous consumers and approve the same in ARR.*

### 3. MSEDCL in its Petition has stated as follows:

- 3.1 In its Multi Year Tariff (MYT) Order dated 26 June, 2015 in Case No. 121 of 2014, the Commission had made disallowance in Annual Revenue Requirement (ARR) of MSEDCL because it was observed that as against condition stipulated in past Tariff Orders, MSEDCL had allowed change of Tariff sub-Category from Continuous to non-Continuous supply even after such application was received one month after the Tariff Order.
- 3.2 MSEDCL had filed Petition in Case No. 94 of 2015 for review of above stated disallowances in MYT Order. The Commission in its Order dated 19 August, 2016 in Case No 94 of 2015 had granted the review and stated that as per provisions of Regulation 9.2 of SoP Regulations, consumer can apply for change of tariff category at any time and the effect to such application shall be given before expiry of second billing cycle. Accordingly, the Commission directed MSEDCL to give effect to all pending applications with them and submit financial impact of the same to the Commission.
- 3.3 In response to the above directives, MSEDCL submitted the revenue impact vide letter dated 19 November, 2016. Initial impact was worked out at approximately Rs. 152 crore.
- 3.4 Further, MSEDCL devised a methodology for implementation of the said Order and communicated the same to field offices through various letters. A committee was formed at various field offices, headed by Chief Engineer (O&M Zone) with Superintending Engineer (Circle), Superintending Engineer (Neighboring Circle), Legal Advisor (Zone) and Senior Manager (Circle Office) as its members. The authority to decide the proposals finalized by aforesaid committee were given to Joint Managing Director/Regional Director.
- 3.5 Various cases relating to change of tariff sub-category from continuous to non continuous supply were pending before various forums, including High Court, Supreme Court etc. MSEDCL issued directions to field offices to initiate immediate actions such as withdrawal / disposal of the legal cases pending to the extent of applicability of Regulation 9.2 of SoP Regulations, 2005 and to stop further legal expenses on such cases.

#### Order in Case No. 12 of 2017 (Karamtara Engineering Pvt. Ltd)

- 3.6 The Commission vide its Order dated 3 January, 2018 in Case No. 12 of 2017, filed by Karamtara Engineering Pvt. Ltd. for non-compliance of Electricity Ombudsman Order, directed that “*MSEDCL shall submit within 45 days, with details, the status of*

*withdrawal or otherwise of cases pending in the Supreme Court and High Court covered by the Order in Case No. 94 of 2015”.*

- 3.7 MSEDCL vide its letter dated 21 March, 2018, while informing the status of various cases before different Forums, communicated that “*there is no directives for passing of refund of interest in order in case no 94 of 2015, MSEDCL is not paying the interest (centralized refund processed through IT) and will abide by the directions, if any, as may be given by the Hon’ble Commission*”. The Commission is silent on the interest part. MSEDCL has also communicated to the Commission the approximate burden of Rs.60 Crore towards payment of interest on refunded amount.

Order in Case No. 121 of 2017 (Tulsi Casting and Machining Ltd)

- 3.8 The Commission in its Order in Case No. 121 of 2017 dated 31 January, 2018 filed by M/s Tulsi Casting and Machining Ltd. regarding non-compliance of the Commission’s directives in Case No. 94 of 2015 dated 19 November, 2016 ruled as follows: -

*12. The Commission notes that the instant case is about nonpayment of interest on the amount already refunded towards tariff difference and hence it falls strictly under the purview of grievance. There is grievance redressal mechanism available for redressal of individual consumer grievances. The Commission therefore is of the view that the Petitioner in the first place should have approached such mechanism available to it. The Commission therefore directs the Petitioner to agitate the issue before the appropriate Forum.*

CGRF Orders in Case No. 188 of 2018 and 28 of 2018.

- 3.9 Consumer Grievance Redressal Forum (CGRF)s are passing Orders in the similar matters with varied interest rate and from varied dates.
- 3.10 CGRF Bhandup in its Order dated 8 October, 2018 in Case No. 188 of 2018 (filed by M/s. Allana Investing Trading Co. Pvt. Ltd.) has granted interest @ 6% p.a. on the refund of tariff difference amount for the period September 2011 to 2016.
- 3.11 Whereas, CGRF, Amravati vide its Order dated 28 December, 2018 in Case No. 28/2018 (filed M/s. Raymond UCO Denim Pvt. Ltd) has awarded interest @ 12% p.a. on tariff difference amount starting from October, 2013.
- 3.12 The Commission in Case No. 94 of 2015 has not awarded interest on the tariff difference amount from continuous to Non-Continuous. On the other hand, the Forums established under the Act are introducing their own interpretation, rate of interest and reasoning to

award interest retrospectively for the cases filed belatedly and without regard to limitation.

- 3.13 The actions by the Forums are ultimately causing dent in the precarious financial status of MSEDCL and compelling it to invoke the Writ jurisdiction of High Courts in individual Orders passed by the Forums which involves unnecessary and unending legal expenses.
- 3.14 Therefore, MSEDCL through this clarificatory petition is praying for finally and conclusively decide the issue of interest to be awarded, if any, on the tariff difference amount for shifting from HT-Continuous to HT Non –Continuous and to allow the same to be claimed through ARR.
4. At the time of hearing dated 9 July, 2019, MSEDCL reiterated the submission in its Petition.

#### **Commission’s Analysis and Ruling**

5. MSEDCL has filed the present Petition seeking clarification about the interest rate on the amount refunded as per Commission’s Order dated 19 August, 2016 in Case No 94 of 2015. Although said Order does not specify any interest rate, various CGRFs are allowing different interest rates on such refunded amount effective from different dates. MSEDCL has also requested the Commission to allow it to claim such interest amount, if any, through ARR.
6. The Commission notes that it is admitted fact that in its Order dated 19 August, 2016 in Case No. 94 of 2015 while directing MSEDCL to give effect to the pending applications for change of tariff sub-category from continuous to non-continuous category, the Commission directed MSEDCL to refund differential amount to such applicant, however there is nothing stated in the order about payment of interest on such refund amount.
7. Thereafter, on the Petition filed before it in Case No. 121 of 2017, claiming interest on such refund amount, the Commission vide its Order dated 31 January, 2018, has ruled that issue of payment of interest needs to be decided by grievance redressal mechanism. Relevant part of the Order is reproduced below:

*“12. The Commission notes that the instant case is about nonpayment of interest on the amount already refunded towards tariff difference and hence it falls strictly under the purview of grievance. There is grievance redressal mechanism available for redressal of individual consumer grievances. The Commission therefore is of the view that the Petitioner in the first place should have approached such mechanism*

*available to it. The Commission therefore directs the Petitioner to agitate the issue before the appropriate Forum.”*

8. Thereafter, as highlighted by the MSEDCL, various CGRFs have delivered Orders levying varied interest rate on the amount to be refunded on account of tariff difference in continuous and non-continuous tariff sub-category. MSEDCL has also stated that it has filed Writ Petition in High Court challenging these Orders of the CGRF. Through, present Petition, MSEDCL seeks clarity on payment of interest on amount refunded as directed in Order dated 19 August, 2016 in Case No 94 of 2015.
9. The Commission notes that it is not appellate authority for the Orders issues by CGRF / Ombudsman. Hence, it is not going into specific CGRF Orders cited by MSEDCL. At the same time, different CGRFs granting different interest rate for amount refunded as per the same Order of the Commission, creates discrimination amongst the consumers which is not permissible under the Electricity Act, 2003 (EA). Further, although MSEDCL has pointed out such discrimination only with respect to Commission’s Order dated 19 August, 2016 in Case No 94 of 2015, possibility of such discrimination in other matters coming before the Grievance Redressal Mechanism cannot be ruled out. Hence, considering the larger issue of having uniformity in interest rate on the refunded amount, the Commission is dealing with this issue in following paragraphs.
10. The Commission notes that EA has already provided provision that when licensee or generating company recovers excess amount than the approved tariff, it shall refund it along with interest equivalent to Bank Rate. Said provision of the EA is reproduced below:

*“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”.*

MERC (Multi Year Tariff) Regulations, 2015, as reproduced below, has further specified Bank Rate as declared by Reserve Bank of India:

*“16.2 If any Generating Company or Licensee recovers a price or charge exceeding the Tariff determined under Section 62 of the Act and in accordance with these Regulations, the excess amount shall be payable to the person who has paid such price or charge, along with interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period, without prejudice to any other liability to which such Generating Company or Licensee may be subject :*

*Provided that such interest payable to any party shall not be allowed to be recovered through the Aggregate Revenue Requirement of the Generating Company or Licensee:*

*Provided also that the Generating Company or Licensee shall maintain separate details of such interest paid or payable by it, and shall submit them to the Commission along with its Petition.”*

Thus, combined reading of provisions of the EA and MYT Regulations reveals that when a licensee recovers excess amount than the approved tariff, then same should be refunded to concerned consumer along with interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period.

11. In view of the above clear provisions of the statute, until the Commission does not specifically deny or approve different interest rate on amount ordered to be refunded, Distribution Licensee needs to refund such amount along with interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period. Having ruled thus, the Commission deems it fit to invoke its power to issue Practice Directions under Regulation 26 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 which is reproduced below:

*“26. Issue of Order and Practice Directions*

*Subject to the provisions of the Act, the Commission may from time to time issue orders, circulars and practice directions in regard to the implementation of these Regulations.”*

Accordingly, the Commission thinks it fit to direct its Secretariat to frame Practice Directions stating that forums under CGRF Regulations, 2006 shall uniformly grant interest, if applicable, on amount to be refunded at interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period.

12. As far as MSEDCL’s contention that different CGRFs have made interest rate effective from different dates is concerned, the Commission notes from the Orders of CGRF submitted by MSEDCL that different dates of making interest rate effective is on account of different date (date from which non-continuous tariff should have become applicable to that consumer subsequent to its application for change of category) from which refund to that particular consumer becomes eligible. Interest rate would apply from date when licensee recovers the excess amount till it refunds such excess amount to the consumer. These dates would differ based on the fact of each case. Hence, it is not correct to claim that interest should be allowed from the same date to all consumers without validating facts of each case /consumer.
13. About MSEDCL’s prayer of allowing inclusion of the interest paid on the amount refunded as per Commission’s Order dated 19 August, 2016 in Case No 94 of 2015 in its ARR, the

Commission is of the opinion that such relief cannot be sought through Petition of present nature. As relief sought is to allow expenses in ARR, same needs to be sought through MYT Petition only along with supporting justification for the same.

14. Hence, the following Order:


### **ORDER**

- 1. The Case No 90 of 2019 is partly allowed.**
- 2. The Commission Secretariat to frame Practice Directions stating that forums under CGRF Regulations, 2006 shall uniformly grant interest, if applicable, on amount ordered to be refunded at interest equivalent to the Bank Rate declared by the Reserve Bank of India prevailing during the relevant period.**

**Sd/-**  
**(Mukesh Khullar)**  
**Member**

**Sd/-**  
**( I.M.Bohari)**  
**Member**

**Sd/-**  
**(Anand Kulkarni)**  
**Chairperson**

  
**(Abhijit Deshpande)**  
**Secretary**

