

BEFORE CONSUMER GRIEVANCE REDRESSAL FORUM NANDED ZONE
NANDED

Case No. 7/2017

Complaint received on 01.06.2017

Complaint decided on 10.08.2017

ETCO Industries Pvt. Ltd.	}	-- Applicant
Plot No.B- 2/3, MIDC Ind. Area, Parbhani	}	
Dist. Parbhani. 431401	}	
(Consumer No. 5300 1900 3890)	}	

Vs.

MSEDCL,	}	
(Through : O&M Circle, Parbhani)	}	-- Non-applicant

Quorum : Shri V.S.Tekaday, Member Secretary
Shri M.Q.Bawala, Member

JUDGEMENT

Consumer ETCO Industries Pvt. Ltd. (hereafter referred as the Applicant) MIDC Ind. Area, Parbhani is the H.T. consumer of the Maharashtra State Electricity Distribution Company Ltd, (hereafter referred as the Non-Applicant). The Applicant has submitted grievance against MSEDCL for not allowing change of Tariff category from HT Continuous to HT Non Continuous, to the Internal Grievance Redressal Cell of the Maharashtra State Electricity Distribution Company Ltd.. But not satisfied with the decision of the IGRC, the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.7 of 2017 on 01.06.2017.

After receiving Form 'A' of the applicant consumer, the Forum had issued notice to MSEDCL to file there parawise written statement.

The forum decided to admit this case for hearing on Dt. 13.07.2017 at 13.00 Hrs. in the office of the forum. A notice dated to 04.07.2017 to that effect was sent to the applicant and the concerned officers of the Non- applicant. A copy of the grievance was also forwarded to the Nodal officer, MSEDCL, Parbhani Circle for submitting parawise comments to the Forum on the grievance within 15 days under intimation to the consumer. MSEDCL has filled their written statement through Superintending Engineer, Circle Office, Parbhani on Dt. 05.07.2017 & 01.08.2017

At the time of hearing on Dt. 13.07.2017 the consumer representative Shri T.N.Agrawal and Shri Satish S. Shah were present. On behalf of MSEDCL Shri P.N.Kapse Executive Engineer (Adm.)Parbhani Circle was present.

Consumer Representation in brief :

1. We are consumer of MSEDCL having Contract demand of 3,500 KVA and availing power supply at 33 KV Express/dedicated feeder emerging from 33 KV MIDC Parbhani sub-station. We had also availed partial open access for part of our requirement i.e. 2.25 MVA out of total contract demand of 3.5 MVA.
2. we had applied with M.S.E.D.C.L. Parbhani circle for change of tariff category from continuous to non-continuous category on 07.07.2016. The application was forwarded by Parbhani circle to CE (Comm.) vide letter dt.18.07.2016 but so far nothing has been heard from HO also. Thereafter MERC merged together Cont. & Non-cont. tariff category from 01.11.2016 onwards. However in spite of our repeated follow up, our tariff category was not changed for the period prior to 01.11.2016, hence this grievance was lodged with IGRC for redressal on 02.03.2017. The IGRC passed final decision on dt.29.04.2017 stating reason that CE Comm. MSEDCL has not given any approval from HO. Hence we are filing this grievance with CGRF, Nanded for redressal.
3. Any dispute as per section-18 of DOA Reg-2005, between a Distribution Licensee and a person availing open access shall be adjudicated upon by the Consumer Grievance Redressal Forum, hence we have filed the grievance with IGRC/CGRF. Further as per CGRF/ Ombudsman Regulation 2006 issued by MERC, the grievance application after rejection by IGRC is to be lodged with CGRF within 60 days after decision is received.
4. In the tariff order dt.26.06.2015 issued by MERC for case No. 121 of 2014, (section: 7.24.6) provision has been made for change of tariff category & clarifies that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply anytime during the financial year but only once in the financial year with one month prior notice.
5. In the same tariff order, Hon'able commission has approved category wise energy tariff rate and cross subsidy for HT Industries as below.

Energy rate for HT Industry: Rs.7.21/unit for continuous category
Rs.6.71/unit for non-continuous category

Cross Subsidy Surcharge for HT Ind. Rs.1.49/unit for continuous category
Rs.1.09/unit for non-continuous category

6. Based upon the above tariff order, the MSEDCL also issued commercial circular No. 246 dt.11.08.2015 where in procedure for change of tariff category has been formalized. As per the circular, SE MSEDCL of concerned circle office is empowered to allow change of tariff category on submission of

application as stipulated in the above circular. Further it is also mentioned that the change will be effected in next billing cycle after expiry of one month notice period.

7. As per MERC's tariff order and commercial circular No. 246, we had submitted our application for change of tariff category on 07.07.2016. Our application was forwarded by SE MSEDCL Parbhani to CE Comm. MSEDCL Mumbai vide letter dt.18.07.2016 for further necessary action. As per the circular number 246, powers were delegated to SE MSEDCL for change of tariff category, but still the application was unnecessarily forwarded to CE Comm. Mumbai. This was our 1st application in the financial year for change of tariff category and as per the circular, tariff change was to be implemented wef 01.09.2016 and now we are eligible to claim diff. of tariff till 31.10.2016 i.e. date before merging of tariff categories after 01.11.2017.
8. The CE Commercial on recommendations of SE Parbhani has not communicated so far any decision on our application dt.07.07.2016 for change of tariff category.
9. The MERC's tariff order for case no. 121 of 2014 also covers open access tariff for cross Subsidy Surcharge for both the category of consumers i.e. Continuous & Non-continuous. In the same order MERC made rule to allow for change of tariff category once during any time of financial year irrespective whether consumer is availing open access or not.
10. Despite the above provisions, we have been deprived from our rights to get implemented change of tariff category from Continuous to Non-continuous industry HT tariff. Anticipating decision from MSEDCL as per Commercial circular No. 246, we had already priced our product considering energy cost at non-continuous tariff for the period from 01.09.2016 to 31.10.2016.
11. We request the forum to allow change of tariff category wef 01.09.2016 to 31.10.2016 as the application filed by us is in line with rules & regulations of MERC & MSEDCL. The delayed period please be compensated by advising MSEDCL to pay interest at bank rate on the tariff diff. & CSS diff. due for refund from 01.09.2016 to 31.10.2016.
12. MERC vide order dt.19.08.2016 in case No. 94 of 2015 also permitted for change of tariff category to the applicants from Cont. to Non-Cont. category.
13. It is true that we had availed power supply during the staggering days. In this connection, we wish to bring to your notice that there is no load shedding to industrial feeder after 2013, copy of load shedding protocol circular No. 46 of 14.01.2013 is attached. The supply was made available to all the industries in Maharashtra state.
14. It is further stated that we had enjoyed supply in continuity. We availed the supply as per availability of power on feeder and MSEDCL made it available as per load shedding protocol.
15. Our application dt.07.07.2016 was made under SOP regulations 9.2 and since we were availing open access at that time, hence SE MSEDCL had recommended to HO for necessary action. The MSEDCL never demanded or communicated at that time to submit any such undertaking which now MSEDCL has mentioned in their say of dt.05.07.2017.

16. The MSEDCL is silent on section 8.2 of SOP regulations-2014 where no such undertaking is necessary.
17. Further as per IGRC's final order dt.29.04.2017, it is stated that the application is forwarded to HO and after receipt of approval, necessary action towards change of tariff category and refund will be done. Now MSEDCL has raised all new points which were not brought to notice at the time of hearing conducted by IGRC. Hence no such new points should be entertained at this stage by CGRF.
18. MSEDCL's Board Resolution No. 908 dt.01.06.2017: As per this board resolution, it has been decided by MSEDCL to effect the tariff change as per section 9.2 of SOP Regulation-2005 for all applicants after 2nd billing cycle. This resolution of board along with instructions forwarded by CE Comm. to all O&M Circle SE's vide letter No. 167 dt.10.07.2017.
19. Further as per CE Comm's letter No. 16403 dt.05.07.2017 stating that the change of tariff category shall be effected before 2nd billing cycle after the date of receipt of application in all cases including change from Cont. to Non-cont. category. This has been agreed and decided by MSEDCL in line with section 9.2 of SOP Regulation-2005.

RELIEF SOUGHT :

- i. We appeal to admit this application as per section-18 of DOA Reg-2005, dispute between a Distribution Licensee and a consumer **availing open access** shall be adjudicated upon by the Consumer Grievance Redressal Forum. Also as per CGRF/ Ombudsman Regulation 2006 issued by MERC, the grievance application after rejection by IGRC is to be lodged with CGRF within 60 days after decision is received.
- ii. As per section 3 of the Commercial circular No. 246 dt.11.08.2015, change of tariff should have been implemented in our electricity bill wef 01.09.2016. Hence we appeal to change tariff category from Cont. to Non-Cont. for the period from 01.09.2016 to 31.10.2016 (2 months) and advise MSEDCL to pay the diff. between Cont. & Non-continuous tariff for energy rate, FAC & cross subsidy surcharge etc., statement of refund is attached.
- iii. To pay the interest charges at bank rate as per section 62 (6) of electricity act, 2003 for the delayed period on the refundable amount due from MSEDCL.
- iv. Compensation under SOP Regulation 2014, Appendix-A, section-8(ii), if change of tariff is not done in 2nd billing cycle, compensation @ Rs.100/- per week is payable to the consumer. Hence for 36 week delay, compensation is worked out as Rs.3,600/- which may also be allowed.
- v. Compensation under section 8.2 (C) of CGRF Ombudsman Regulation -2006 for loss suffered by the consumer, say for mental agony, man hrs loss for follow up, travelling exp. etc. upto Rs.25,000/-.

Arguments from the Non-applicant:

- 1) That, as per the application of the applicant, authorities of the respondent company has provided H.T. Connection to the ETCO Industries Private Limited, Plot No. B-2/3, MIDC Ind. Area, Parbhani bearing Consumer No. 560019003890 from the 33 KV Express/dedicated feeder emerging from 33KVA MIDC Parbhani Substation as per the Terms and Condition of MSEDCL / (erstwhile MSEB) and on the said 33KV line/feeder no any other Consumer is/are availing power supply and no any load shedding or compulsory staggering day taken/observed on that 33KV line/feeder and continuously supply had given to the consumer.
- 2) As consumer had use and using Continuous supply and enjoy the facility of Continuous power supply & availed all the benefits of Continuous supply without observing any load shedding/staggering day after the application for change of tariff category from Continuous to Non-continuous tariff and demand for Non-continuous tariff illegally. So, non continuous tariff never attracts/applicable to applicant and he is bound to pay as per continuous tariff as he had enjoyed the benefit of the same. *The consumer/applicant's TOD electricity consumption pattern for the period of from 01.09.2016 to 31.10.2016 is marked as Exhibit 'A' for kind perusal of this Hon. Forum.*
- 3) That, the applicant/consumer had simply applied for change of tariff category from Continuous to Non-continuous but fails to submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Load Shedding/Staggering Day if the situation arise.
- 4) That, as per the Commercial Circular No.246 dated 11.08.2015 *"The Consumer connected on Express Feeder having continuous supply, if demands Non-continuous option, shall submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Load Shedding/Staggering Day if the situation arise. - In case such consumer default in his undertaking of not utilizing of power during specified hours will automatically mean the consumer is utilizing continuous supply and will be traded as a HT Continuous consumer & will be billed accordingly w.e.f. such change has been implemented."*
- 5) Taking in to account the facts quoted above it is evident as such MSEDCL has provided continuous supply to the consumer and never taken load shedding or stragglng day which is compulsory applicable to the Non-continuous tariff consumers and consumer had enjoyed the facility of continuous power supply after application of change of tariff category and even not given undertaking same may please consider while deciding the matter. In view of the above facts and circumstances, grievance raised by the applicant is not having any subject and devoid of merit, hence same may kindly be dismissed.
- 6) That, the load shedding on Industrial feeders as mentioned by Consumer has already withdrawn since 2013 as per the Circular-46 dated 14.01.2013. As such in Sept-Oct 2016 there was no load shedding but the staggering day was there on Industrial Feeders on that day the works of maintenance of

feeders/transformers are carried out. The MSEDCL compulsory observes the Staggering Day (weekly one day) and in Parbhani Circle Thursday is Staggering Day to Non-continuous Consumers other than Express/dedicated Industrial Feeders to routine work of maintenance and almost majority of the Companies except urgency are giving weekly holidays to their employees on staggering day assuming that the supply may be interrupted on the day. The applicant/consumer had simply applied for change of tariff category from Continuous to Non-continuous but fails to submit an undertaking thereby *agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Staggering Day/Load Shedding if the situation arise* as per the Commercial Circular No. 246 dated 11.08.2015. In this matter the applicant/consumer has availed all the benefits of Continuous supply and he is bound to pay as per Continuous Tariff for which consumer has already agreed while availing connection as per the terms and condition of agreement and now the consumer is claiming for Non-continuous Tariff only for the billing purpose. That, the applicant/consumer M/s ETCO Industries Private Ltd. has agreed and committed in their additional say dated 18.07.2017 that, they had availed the Continuous Supply even on Staggering Day. The MSEDCL has applied the correct tariff as per the provisions. The doctrine of Estoppel prevents the consumer claiming such type of demand.

- 7) That, the Tariff applied to the applicant/consumer is correct and only submitting bare application for change of Tariff is not enough to attracts the Tariff benefit i.e. Continuous to Non-Continuous in the absence of an undertaking and without fulfilled the procedures in this regard and the applicant/consumer has availed all the benefits of Continuous supply and also agreed the fact in their additional say. Accordingly the MSEDCL has applied the correct tariff as per the circular/provision. As per the Commercial Circular No. 246 dated 11.08.2015 *"The consumers connected on Express Feeder having continuous supply, if demands Non-Continuous option, shall submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Staggering Day/Load Shedding if the situation arise. In case such consumer defaults in his undertaking of not utilizing of power during specified hours will automatically mean the consumer is utilizing continuous supply and will be treated as a HT Continuous consumer & will be billed accordingly w.e.f. such change has been implemented."*
- 8) That, the applicant/consumer had used Continuous supply and enjoyed the facility of Continuous power supply & availed all the benefits of Continuous supply without observing any Staggering Day/Load Shedding after the application for change of Tariff category from Continuous to Non-Continuous Tariff and demand for Non-continuous Tariff illegally. So, Non-Continuous Tariff never attracts / applicable to applicant and he is bound to pay as per Continuous Tariff as he had enjoyed the benefit of the same.
- 9) That, the Hon. CGRF has no jurisdiction to decide or adjudicate the tariff of the consumer. As, it is the sole jurisdiction of Appropriate Commission as per

the Sec. 61 of the Electricity Act, 2003 for which reasons the Hon. CGRF cannot entertain the present grievance application in hand.

Observation by the Forum :

1. Applicant is consumer of MSEDCL having Contract demand of 3,500 KVA and availing power supply at 33 KV Express/dedicated feeder emerging from 33 KV MIDC Parbhani sub-station. They had also availed partial open access for part of their requirement i.e. 2.25 MVA out of total contract demand of 3.5 MVA.
2. The present tariff applicable is HT Continuous. The applicant had applied for change of tariff to HT Non-Continuous by an application dated 07.07.2016 to the Superintending Engineer, Parbhani Circle.
3. As per the MERC tariff order dated 26th June 2015 [In case No. 121 of 2014] applicable from 1st June 2015, the provision at para 6.10.7 regarding the change of tariff from Continuous to Non-Continuous is as under:

The Commission clarifies that the availing supply on express Feeder may exercise his option to choose between Continuous and non-Continuous supply anytime during a financial year but only once in such financial year with one month prior notice. Such consumer shall be required to submit a written request to MSEDCL, giving one month's notice and the Tariff applicable to non-Continuous supply shall apply, from the ensuing billing cycle.

4. In view of the MERC TARIFF ORDER DATED 26TH June 2015, Chief Engineer (Commercial) MSEDCL, Mumbai has issued circular no. 246 dated 11th August 2015 giving guidelines for permitting change of category from HT continuous to HT non-continuous. According to this circular:

i) Powers are re-delegated to respective Superintending Engineer to permit a consumer to switchover from HT continuous tariff to HT non-continuous tariff. The circle office shall be competent only to permit prospective implementation & shall ensure that no retrospective effect is given to any consumer without prior approval of Head Office.

ii) Change of categorization is to be implemented with effect from ensuing billing cycle after expiry of one month notice period i.e. change of categorization from continuous to non continuous in respect of consumer who has made application in the period 26th June 2015 to 30th June 2015 shall be made effective from 1st August 2015 as HT billing cycle start from 1st of month, & the consumer who applies from 1st July to 31st July will be effective from 1st September. Similar procedure for actual implementation of change of categorization shall be followed for application received thereafter.

iii) Before the actual benefit passed to the consumer, the concern Superintending Engineer shall verify whether the consumer is in arrears of otherwise & such permission will be given only on recovery of arrears from consumers.

iv) The consumer connected on express feeder having consumers supply, if demand non continuous option, **shall submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of load shedding /Staggering Day if the situation arise.**

- v) In case such consumer defaults in his undertaking of not utilizing of power during specified hours will automatically mean the consumer is utilizing continuous supply and will be treated as a HT continuous consumer & will be billed accordingly w.e.f. such change has been implemented .
5. Now as per the prevailing MERC tariff order dated 03/11/2016 [In Case No. 48 of 2016] applicable from 1st November 2016, the Commission has merged the Continuous and Non-Continuous subcategories of the respective HT consumer categories. Hence there is no issue after 01/11/2016. The issue is regarding the HT I Continuous tariff applied to the complainant for the period from 01.09.2017 to 31/10/2016.
6. **It may be noted that, applicant himself accepted that they had availed power supply during the staggering days.**
7. **It may be noted that, applicant/consumer has availed the facility of Continuous Power Supply after application of change of Tariff category without given undertaking and MSEDCL has provided Continuous Supply to the applicant/consumer and never taken Straggling Day which was/is compulsory applicable to Non-Continuous Tariff/Industrial Feeders consumer**
8. The forum has carefully considered the statements of the applicant's representative & the official of MSEDCL and also the documents produced by the applicant and MSEDCL.

Therefore the forum has given its finding on the above points accordingly.

Therefore, in the result for the aforesaid reasons, the forum passes following order :

ORDER

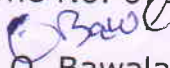
- 1) The grievances / complaints of the applicant in "A" form are rejected in toto.
- 2) If the applicants are not agree with the judgment given by the forum then the applicant can file his representation within 60 days from the date of decision in "B" form before the Ombudsman on the following address. Form "B" is available with free of cost in this office.

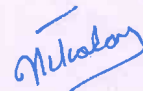
Address :

The Ombudsman

Maharashtra Electricity Regulatory Commission,
Plot No.12, Shri Krishnavijay Nagar Chavani,
Nagpur-440 013.

Phone No. 0714-2022198


(M.Q. Bawala)
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Member Secretary CGRF
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