

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 106 of 2020

Case filed by M/s Lloyds Metals & Energy Ltd seeking directions to Maharashtra State Electricity Distribution Company Limited for levying demand charges at the rate of 25% applicable for Start-up power requirement of generating plants as per Tariff Order of Commission in Case No.48 of 2016 and in Case No.195 of 2017

Coram

I.M.Bohari, Member
Mukesh Khullar, Member

M/s Lloyds Metals & Energy LtdPetitioner

Vs

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For Petitioner:- Shri. R.B.Goenka (Rep)
For Respondent:-Shri Ashish Singh (Adv)

ORDER

Date: 28 September, 2020

1. M/s Lloyds Metals & Energy Ltd (**LMEL**) has filed this Petition being Case No.106 of 2020, on 13 March, 2020 seeking directions to Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) for levying demand charges at the rate of 25% applicable for Start-up power requirement of generating plant as per Tariff Order of Commission in Case No.48 of 2016 and in Case No.195 of 2017 under Section 86 (1) (f) of Electricity Act, 2003.
2. LMEL's main prayers are as under:
 - a) *MSEDCL be directed to reduce the demand charges rates of petitioner to 25% of demand charges applicable from November 2016*

b) Refund the excess amount charged along with interest under section 62(6) of Electricity Act 2003.

3. LMEL in its Petition has stated as follows:

- 3.1 LMEL is a consumer of MSEDCL with a contract demand of 3600 kVA connected at 220 kV supply. LMEL has commissioned 30 MW capacity Cogeneration Power Project based on industrial waste heat generated by its kiln located at Plot No. A-1 & 2, MIDC, Ghhugus, Dist. Chandrapur. LMEL applied for grid synchronization of its plant at 220 kV level and sought Short-Term Open Access (STOA) for export of power to the grid.
- 3.2 The connectivity and synchronization permission has been obtained from Chief Engineer, State Transmission Utility (CE, STU) and Chief Engineer Maharashtra State Load Despatch Centre (CE, MSLDC) vide their letters dated 18 September 2010 and 24 September 2010, respectively.
- 3.3 LMEL is utilizing the power of MSEDCL for Start-up purpose of its generating plant of 30 MW capacity. The power generated by LMEL is consumed for its own consumption of sponge iron kiln and a major portion of power is exported under STOA.
- 3.4 Since 3600 kVA demand was not required and LMEL has to pay minimum demand charges as per applicable tariff, it applied for reduction of contract demand from 3600 kVA to 500 kVA to SE, MSEDCL O&M circle, Chandrapur vide application dated 3 September 2019 along with write up on justification of 500 kVA demand for Start-up purpose.
- 3.5 LMEL is using the contract demand rarely for a small time in the month for Start-up of power plant in case of tripping of power plant or not using the demand at all in the whole month in case power plant does not trip. This fact is clear from the data of energy consumption and demand recorded from April 2016 to January 2020. The statement clearly indicates that the contract demand is utilized only for Start-up purpose for a small time and in the month when generating plant did not trip the recorded demand was almost zero or negligible. Demand charges amount is very high compared to the consumption.
- 3.6 LMEL submitted a request letter dated 9 September, 2019 to CE Commercial MSEDCL requesting to reduce the contract demand charges to 25% of the demand charges rates specified by Commission in the tariff order because it is utilizing the grid power for Start-up purpose only and the generated power is sold to distribution licensees Brihanmumbai Electric Supply and Transport Undertaking (BEST), Tata Power Company Limited (TPCL), Adani Electricity Mumbai Limited (AEML) etc. through 220 KV grid on Short Term basis through monthly Open Access.
- 3.7 SE O&M circle MSEDCL Chandrapur vide letter dated 27 December, 2019 refused the request of LMEL for reduction of contract demand saying that the minimum quantum of auxiliary /Start-up power to be sanctioned is 10% of power to be evacuated considering

technical constraint for accurate recording of low power at high voltage. It is further said that the contract demand applied for reduction from 3600 KVA to 500 KVA i.e. 500 KVA, by LMEL is less than 10% of the power to be evacuated therefore the request of application for reduction of contract demand from 3600 KVA to 500 KVA without change in connected load on 220 KV cannot be considered.

3.8 MSEDCL is providing power for Start- up purpose only and therefore demand charges should be levied at 25% of regular demand charges as per the Commission's Tariff Orders in Case No 48 of 2016 and in Case no 195 of 2017 in all future bill and refund the excess amount paid by LMEL against demand charges from the date of Order of Commission i.e from November, 2016.

4. MSEDCL in its submission dated 11 August 2020 has stated as follows:

4.1 LMEL has approached the Commission in the capacity of a "Consumer" for reduction of contract demand from 3600 KVA to 500 KVA .The alleged dispute raised by LMEL is purely a "dispute between a consumer and a licensee" which falls under the jurisdiction of the Consumer Grievance Redressal Forum created under Section 42 (5) of the Electricity Act, 2003.

4.2 Therefore, the present dispute falls completely under the purview of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation, 2006 and has to be agitated within a specified period of time or else the same is considered to be time barred.

4.3 LMEL has been a HT Consumer of MSEDCL since 25 July 1995 having sponge iron manufacturing facility and accordingly is being billed as per the terms and conditions applicable to any such consumer. Subsequently, on 24 September 2010, MSETCL granted LMEL permission for synchronization of 30 MW Cogeneration plant. After the date of commercial operation of the Cogeneration plant, LMEL has not applied for Start-up power and LMEL continued to use the power from MSEDCL as a Consumer for Start-up as well as for the purpose other than Start-up. Thus, LMEL has been a consumer of MSEDCL without any separate connection or agreement with MSEDCL for Start-up power.

4.4 The Commission in Tariff Order dated 3 November 2016 has ruled that a generator has two options to avail the Start-up supply i.e. (i) through a separate connection or (ii) through the existing evacuation infrastructure. In case of a separate connection, all the terms and conditions applicable to any consumer would be applicable. Similarly, if a separate connection is not taken, the Power Plant shall have to enter into an agreement with the Distribution Licensee for contracting the demand for such Start-up power. In either case, the Demand Charge rate will be 25% of the rate approved for the HT Industry category, to the extent of the Start-up demand contracted by the Power Plant for Black Start, or Start-up after forced or planned outage.

4.5 However, LMEL has neither taken a separate connection nor made an agreement with the Distribution Licensee for Start-up power. LMEL is a consumer having captive generation facility which is synchronized with the grid. Whenever, there is fault or interruption in the operations of the Captive Power Plant (CPP), the consumer draws power from MSEDCL for its own consumption requirements other than Start up. Thus, the consumer enjoys the Grid support to the CPP as well. The grid provides stability to the load of CPP and there are substantial benefits to the CPP in case there is grid support. LMEL can draw power from the grid during the unavailability/ curtailed availability of source generator. Therefore, being a consumer of MSEDCL, LMEL is being correctly billed as per the terms and conditions applicable to a consumer. Following table summarises the use of LMEL in terms of consumption (in kWh) recorded.

Bill Month	Consumption (kWh)	Bill Month	Consumption (kWh)
2010-04	24,30,660	2012-09	2,47,658
2010-05	22,11,060	2012-10	1,53,770
2010-06	21,28,440	2012-12	2,32,594
2010-07	25,87,560	2013-07	2,03,000
2010-08	23,33,220	2013-09	64,935
2010-09	21,88,500	2014-08	4,84,726
2010-10	20,29,280	2014-12	1,22,183
2010-11	7,66,000	2015-01	66,099
2010-12	4,98,000	2015-07	60,090
2011-04	2,43,359	2015-08	3,58,537
2011-05	1,10,841	2015-11	1,19,991
2011-06	2,72,600	2018-08	1,03,298
2011-07	3,85,100	2018-09	1,72,954
2011-08	3,31,200	2018-11	76,256
2011-09	65,165	2020-04	2,00,968
2011-11	1,63,003	2020-05	1,14,079
2011-12	80,282	2020-06	1,67,323
2012-01	2,98,343		

From the above table, it is evident that the consumer has been using power (more than 50,000 units in a month on several occasions) for its consumption purposes other than Start up.

4.6 Table below summarizes maximum demand recorded (KVA) by LMEL during the last 4-5 years.

Month	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
April	3,480	0	3,680	20	1,780
May	4,440	3,160	20	3,320	0
June	3,640	20	20	40	1,863
July	2,780	2,920	0	960	40
August	640	3,300	2,920	1,100	
September	1,960	20	3,280	860	
October	1,340	0	3,040	1,963	
November	2,460	0	3,160	1,240	

Month	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
December	1,180	20	2,280	7	
January	1,060	0	960	0	
February	1,040	0	0	0	
March	1,840	0	0	2,283	

Thus, it is evident that the consumer has been using the power much more than the Start-up power requirement. Therefore, billing to LMEL is as per the terms and conditions applicable to a consumer, the Rules and Regulations settled by the Commission.

4.7 In case, LMEL wishes to avail the discounted rate of Demand Charges, it needs to take a separate connection or make a separate agreement with MSEDCL for its Start-up power. In such scenario, the rulings of the Commission regarding 25% of the rate approved for the HT Industry category shall be applicable to the Generating Unit of LMPL prospectively. For the consumption requirement other than Start-up purpose, a separate connection also needs to be taken with separate metering arrangements so as to have accurate recording. In this case, all the terms and conditions applicable to the relevant consumer category would be applicable. Further, the generated power shall be wheeled through Grid/Network by the consumer for its own consumption purpose. The charges may be applicable on the wheeled energy through Grid as per the applicable MERC Open Access Regulations. Also, the necessary grid connectivity for generator / consumer needs to be obtained from MSETCL for wheeling of such energy.

4.8 LMEL can also opt for Standby arrangement for availing power supply from MSEDCL. In the MYT Order dated 30 March 2020, the Commission has provided the arrangement for levy of Stand-by Charges and other conditions/charges to be applicable for availing power supply under standby arrangement by Captive Power Plants (CPP) Users.

4.9 Thus, LMPL being a Consumer of MSEDCL and utilizing the same connection from MSEDCL for its consumption purposes also, the rulings of the Commission in Tariff Order dated 3 November 2016 do not apply to it. Since LMPL is a Consumer and not a Generating Unit in the specific facts of the matter, the question of applicability of 25% of demand charges does not arise and therefore, on this ground only the Petition deserves to be dismissed being devoid of any merits.

5. LMEL in its rejoinder dated 21 August 2020 has stated as follows:

5.1 MSEDCL denied the fact that LMEL is a generator despite knowing fully well that LMEL is a generator. MSEDCL entered into agreement with LMEL on 24 August 2010 for 3 MVA Start-up power and 3.5 MVA industrial power totalling to 6.5 MVA (i.e. 6500 kVA).

5.2 LMEL entered into the Start-up power agreement in the year 2010 and MSEDCL has charged Start-up power under commercial tariff though it was not separately mentioned in the tariff Order of Commission. MSEDCL has been applying commercial rates on total consumption. In case MSEDCL says that it was not a Start-up power then the

difference between commercial tariff charged and industrial tariff should be refunded to LMEL for the complete period when commercial tariff was charged. LMEL had paid MSEDCL energy charges bills at commercial rates till August 2015 along with Electricity Duty (ED) applicable to commercial consumers. The total amount paid by LMEL till August 2015 is Rs. 9,30,49,729/-. The ED paid till August 2015 is Rs. 1,47,00,409/-. As per reply submitted by MSEDCL, LMEL load is industrial load and, in such case, industrial tariff should have been charged since the beginning and there is exemption in Electricity duty for industrial consumers in Vidarbha. LMEL has calculated the energy bill amount in case industrial tariff would have been applied which amounts to Rs. 6,29,74,246/- till August 2015. The difference in PF incentive is also calculated. As per this calculation LMEL has paid an extra amount of Rs.3,00,81,684/- till August 2015. In case MSEDCL claims that LMEL load is industrial load and not start up power load then MSEDCL should refund the amount of Rs.3,00,81,684/- to LMEL for the tariff difference.

- 5.3 LMEL reduced the contract demand to 4800 kVA in December 2013 and 3600 KVA in July 2016. LMEL's present contract demand is 3600 kVA including Start-up power. The Start-up power of LMEL remains same as 3000 kVA and reduction in contract demand is in the sanctioned load demand.
- 5.4 LMEL applied for reduction of demand to 500 kVA as it was to start the power plant by his own DG sets and also provided a Start-up sequence along with Single Line Diagram (SLD).
- 5.5 MSEDCL denied the reduction in contract demand vide letter dated 27 December 2019 on the ground that a minimum quantum of auxiliary / Start-up power to be sanctioned is 10% of power to be evacuated considering technical constraint for accurate recording of low power at high voltage. This clearly establishes that MSEDCL was fully aware that petitioner is a generator and needs power for Start-up of power plant. Besides, since MSEDCL is doing reduction in contract demand by applying CT ratio error if it is beyond the technical limit the denial of application with their stated logic is technically not correct. LMEL submitted that after online application for reduction in demand, it was reduced to 740 kVA without any technical constraints.
- 5.6 Hence MSEDCL's claim that this is a dispute between consumer and licensee is totally misplaced and misleading.
- 5.7 LMEL is a co-generating plant and waste heat generated by the kiln is used as fuel for generation. Hence the kiln load itself amounts to Start-up power as in other generating plants the boiler load for generating steam which is used for power generation is considered as Start-up power load. In case of tripping of power plant, the kiln doesn't stop suddenly and continues to consume power. Same is the case of conventional generating plant where the boiler load is running even if the power plant trips.

5.8 LMEL is fully aware about the provisions of Commission's Order about applicability of 25% of demand charges for Start-up power. LMEL has contracted and entered into agreement for Start-up power since beginning but MSEDCL did not follow Commission's Order of charging 25% of demand charges as applicable.

5.9 MSEDCL has violated Commission's Order. In case MSEDCL says that LMEL is a consumer and even then, it denied reducing the contract demand the Commission may initiate sue-motto proceeding against MSEDCL under section 142 of Electricity Act 2003.

6. MSEDCL in its additional reply dated 11 September 2020 has stated as follows:

6.1 LMEL has filed its entire rejoinder contending that there is a separate agreement for Start-Up power and that on 24 August 2010 an agreement was entered into between MSEDCL and LMEL for 3000 KVA Start-Up power and 3500 KVA industrial power. However there has been no recognition of Start-up power by MSEDCL in the subsequent agreements entered into between MSEDCL and LMEL. In fact, the undertaking given by LMEL itself does not mention anything about Start-up power. The following events would clearly establish the said fact:

a. LMEL had applied for reduction of then existing Contract Demand of 6500 kVA to 4800 kVA at 220 kV voltage level vide letter dated 11 June 2013. The application was approved by MSEDCL vide Letter dated 28 November 2013. Accordingly, fresh agreement was executed on 20 December 2013 and an undertaking was given by consumer that the reduction of Contract Demand to extent of 4800 kVA is required for supply of electrical energy for industrial purpose.

b. LMEL subsequently, vide its letter dated 12 January 2016 submitted application for reduction of Contract Demand from 4800 kVA to 3600 kVA at 220 kV voltage level. MSEDCL approved the Application vide Letter 30 April 2016. Accordingly, LMEL executed agreement on 21 July 2016 and submitted undertaking. According to agreement (Para 1) 3600 kVA supply for industrial (Sponge iron and plant) purpose had been given. Thus, present CD of consumer is 3600 kVA for industrial purpose in the agreement executed on 21 July 2016 and Start-up power has not been mentioned separately.

6.2 The consequent/subsequent acts of LMEL in reducing his contract demand and entering into new connection agreements/undertaking with MSEDCL clearly establishes that it has availed all the power for its industrial purposes. Hence it can be seen from the above facts, that the objection taken by MSEDCL on the maintainability/jurisdiction of the Petition is absolutely correct and valid.

6.3 The Petition was filed by LMEL on 13 March 2020 claiming charging of Demand Charges rates @ 25% for start-up power since November 2016. Any claim prior to the period 13 March 2017 would be barred by period of limitation. MSEDCL has placed

reliance of the Supreme Court judgment dated 16 October 2015 in the matter of “*Andhra Pradesh Power Coordination Committee and Others Versus Lanco Kondapalli Power Limited and Others*” reported as (2016) 3 SCC 468

6.4 Minimum quantum of auxiliary/start-up power to be sanctioned is 10% of power to be evacuated (plant capacity) considering technical constraints for accurate recording of low power at high voltage. As LMEL’s generating capacity is 30 MW, it has to maintain 3000 kVA (3 MW) Contract Demand with MSEDCL. But consumer applied for load reduction from 3000 kVA to 500 kVA. Hence, in any condition, the Contract Demand could not be reduced to 500 kVA even if the same is considered as Start-Up Power.

7. LMEL in its rejoinder to MSEDCL’s reply dated 21 August 2020 has stated as follows:

7.1 MSEDCL has applied commercial tariff to LMEL after executing fresh agreement dated 20 December 2013 for reduction in contract demand from 6500 kVA to 4800 kVA which as per say of MSEDCL is for industrial purpose.

7.2 MSEDCL on one hand is saying that it has executed the fresh agreements with LMEL dated 20 December 2013 and 21 July, 2016 for industrial purpose and on the other hand denies reducing contract demand for 500 KVA stating that minimum quantum of auxiliary / Start-up power to be sanctioned is 10% of plant capacity considering technical constraint. MSEDCL while making such contradictory statements is confused whether to say that the contract demand is for Start-up purpose or it is for industrial purpose.

7.3 As far as technical constraints are concerned, MSEDCL is reducing the demand of consumer beyond the technical limit of CT ratio by applying CT compensation error. MSEDCL has reduced the contract demand of LMEL to 740 KVA without any technical constraints by applying CT ratio error and adding 13 units in the month of May 2020 energy bill.

7.4 LMEL owns operates and maintains a generating station and is a generating Company as per Section 2(28) of EA, 2003. Hence this petition is maintainable and is within the jurisdiction of the Commission.

7.5 Applying wrong tariff is a mistake carried out by MSEDCL and it is not barred by limitation Act 1963 as per Section 17 (C) of the Act. The Commission also issued an Order in Case No. 94 of 2015 in which Commission directed MSEDCL to change and apply revised tariff to consumers with retrospective effect and consumers were refunded the excess amount charged by changing continuous tariff to non continuous tariff even after more than 8 years since the tariff was wrongly charged.

8. At the time of E hearing dated 15 September 2020

8.1 LMEL and MSEDCL reiterated their respective submissions made in the Petition.

- 8.2 LMEL stated that it is a generator and has executed contract with MSEDCL for Start up power only. LMEL has referred to Section 17(c) of the limitation Act, 1963 for levying tariff other than the one sanctioned for start up power and that it being a mistake by MSEDCL the Commission is requested to direct MSEDCL to refund the excess amount retrospectively as per the respective Tariff Orders for the period.
- 8.3 MSEDCL has reiterated the fact that the revised agreements executed between LMEL and MSEDCL are for industrial connection and therefore dispute is under purview of CGRF Regulations. MSEDCL denied the contention made by LMEL w.r.t Section 17 (c) of the Limitation Act, 1963. MSEDCL has levied tariff as per then applicable tariff Orders of the Commission and there is no mistake on the part of it as a licensee.

Commission's Analysis and Ruling

9. LMEL has 30MW waste heat recovery cogeneration plant having grid connectivity at 220kV level. Part of the energy produced from such co-generation is utilized for self-use and balance surplus is sold to other parties through Short Term Open Access. Claiming its status as generator, LMEL has filed this Petition seeking levy of 25% of demand charges applicable for start-up power consumption of generator. LMEL has claimed such revision in tariff since November 2016. It has also requested for reduction in contract demand from 3600 kVA to 500 kVA, which MSEDCL has refused to allow.
10. MSEDCL has contended that LMEL is its consumer and existing contract demand of 3600 kVA has been sanctioned and contract has been signed for the purpose of industrial use and not for Start-up purpose. LMEL being consumer of MSEDCL, any dispute between LMEL and MSEDCL needs to be referred to CGRF mechanism and this Commission does not have jurisdiction in the present matter.
11. LMEL opposed such contention of MSEDCL and stated that this Commission has jurisdiction in the present matter as the dispute is between a generator and a distribution licensee. It further contended that post commissioning of its co-generation plant, agreement signed between MSEDCL and LMEL in 2010, clearly stated the start-up power requirement of 3000 kVA and Industrial Load of 3500 kVA. The said start-up power requirement of 3000 kVA is part of existing contract demand of 3600 kVA and it has further applied for reduction upto 500 kVA as balance start-up requirement will be met through DG-Set.
12. As issue of jurisdiction has been raised, the Commission is first dealing with the same. LMEL has contended that its status is of a generator, whereas MSEDCL is claiming that LMEL is its consumer. The Commission notes that LMEL has sponge iron manufacturing unit. It has commissioned a 30 MW Co-Generation Power Plant based on industrial waste heat generated by sponge iron with use of fossil fuel (coal) in 2010. The Commission notes that in its earlier Order dated 29 December 2011 in Case No. 56 of 2011, LMEL itself has explained background of such co-generation facility as follows:

*“4.2 Shri. Surendra Pimparkhedkar and Shri. Prashant Puri made a detailed presentation on industrial waste heat recovery co-generation technology while relying upon Section 61 (h), Section 62 (1) and Section 86(1)(e) of EA 2003 to support the contention that tariff needs to be determined inter alia to promote co-generation based projects in the Maharashtra State. Shri. Prashant Puri explained that the **co-generation Plant has been designed in such a way, so as to produce 95 TPH (Tonnes Per Hour) of steam using waste heat and considering normative requirement of 4 TPH of Steam to generate 1 MW power, the co-generation plant is designed to produce 22.5 MW using waste heat. The power generation shall generally depend on the process controlled by Sponge Iron production; there shall be ‘infirm’ power generation. Hence, to have consistent generation of firm power, 90 TPH coal fired boiler has been installed. This coal fired boiler gives additional 7.5 MW power and supplements any shortfall of steam due to process variation and shutdown to ensure firm power generation at all times. The first phase of 30 MW waste heat recovery based co-generation power plant is commissioned recently in October 2010 at Ghugus, district. Chandrapur and out of that total 24 MW power is being scheduled and being sold to the trader”***

Thus, co-generation plant has been designed to generate electricity using waste heat. Further, depending upon Sponge Iron production process, generation of electricity may vary. In present proceeding also, LMEL has fairly stated that waste heat is input for its co-generation plant and hence, power requirement for process of generating waste heat at initial stage shall be considered as start-up power for its co-generation plant.

13. APTEL in its judgement in Appeal No 166 of 2010 dated 24 May 2011 explained the concept of Start-up power. The relevant extract of the Order is as follows

“Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word ‘Startup’ means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of ‘startup power’ vanishes. Thus ‘startup power’ is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used

to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit. “

14. Thus , Start-up power is required for starting the auxiliaries required for the generator to start its operation and for such consumption of electricity, generators cannot be treated as consumer. Above dispensation of the APTEL is based on definition of ‘generate’ stipulated in EA 2003 which means to *produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given*. Thus, generator is expected to produce electricity for supply to other. Therefore, this dispensation considers separately located generating plant which generates electricity and supplies to person who can consume it.
15. Whereas in the present matter, LMEL’s sponge iron plant and waste heat recovery co-generation plants are co-located. In fact, any co-generation plant has to be co-located. In the present case, waste heat generated from sponge iron production process is used for generation of electricity. Thus, main activity of LMEL is production of sponge iron and to improve efficiency of the process, waste heat recover based co-generation plants has been installed. Thus, waste heat recovery-based electricity generation is just a by-product of main process of production of sponge iron. If electricity is consumed for production of sponge iron, then it squarely falls in the definition of ‘consumer’ given in the EA 2003 as below:

"consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be

As LMEL’s plant is consuming electricity for production of sponge iron, it needs to be treated as consumer. For that matter, every plant having co-generation plant using electricity as input for production activity needs to be treated as consumer.

16. In view of the above analysis, LMEL’s unit having co-located co-generation plant based on waste heat recovery cannot be treated as independent generating unit and hence benefit of lower demand charge (25% of applicable demand charges) allowed to start-up power requirements of independent generator cannot be allowed to LMEL’s co-generation unit.
17. Another important factor is the agreement executed between MSEDCL and LMEL for supply of power. The Commission notes that LMEL is a HT consumer of MSEDCL since 1995. After installation of 30 MW co-generation plant in 2010, LEML had executed an agreement with MSEDCL for start-up as well as for industrial power. However, MSEDCL has contended that successive agreements dated 20 December 2013 and dated 21 July 2016 (present agreement in force) were signed between both the parties for Industrial Power and not for Start-up power. LMEL has not contradicted such arguments

about later agreements but has relied instead on an earlier 2010 agreement wherein start-up power has been contracted. The Commission notes that, once the fresh agreement is executed unless specifically mentioned to the contrary, the reference to previous agreements becomes irrelevant. Therefore, if subsequent agreement do not mention start-up power, it cannot be claimed that its contracted demand includes requirement for start-up power.


18. Therefore, the Commission concludes that LMEL is a consumer of MSEDCL having co-located co-generation plant. Hence, benefit of start-up connection allowed to independent generators cannot be allowed to LMEL. Once, the Commission has considered LMEL as a consumer, as per settled legal principle, the Commission does not have jurisdiction to adjudicate the dispute between the consumer and the Licensee. Therefore, LMEL may approach CGRF mechanism for its grievance against MSEDCL relating to reduction in contract demand and non-applicability of correct tariff. Issue of allowing reduction in contract demand upto 740 kVA in May 2020 by applying CT compensation error whereas rejecting application for reduction in contract demand upto 500 kVA by citing technical issue can be agitated before the CGRF mechanism. The Commission further clarifies that it has not made any observations on these issues including issue of limitation, if LMEL approaches CGRF mechanism it should be dealt with as per applicable Law.
19. Hence following Order

ORDER

- 1. Case No 106 of 2020 is dismissed**
- 2. Benefit of lower demand charges (25% of applicable demand charges) allowed for start-up power requirements of independent generator cannot be extended to LEML's co-generation plants.**
- 3. LMEL is a consumer of MSEDCL and hence dispute between them related to rejection of reduction applied for in Contract Demand and alleged wrong tariff applicability needs to be addressed through CGRF mechanism.**
- 4. In case LMEL approaches CGRF mechanism, its grievances shall be dealt on the merits of its claims including issue of limitation in accordance with Law.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member


(Abhijit Deshpande)
Secretary



