

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 131 of 2020

Case of Chamber of Marathwada Industries & Agriculture seeking appropriate Interim Order/ directions to temporarily modify the Commission's MYT Order in Case No 322 of 2019 dated 30 March, 2020 in respect of kVAh billing methodology during lockdown period.

Chamber of Marathwada Industries & AgriculturePetitioner
Vs
Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For Petitioner: - Shri. Hemant Kapadia (Res)
For Respondent: - Shri. Abhishek Khare (Adv)

Case No 135 of 2020

Case of Khandesh Industrial Development Association seeking appropriate Interim Order/ directions to temporarily modify the Commission's MYT Order in Case No 322 of 2019 dated 30 March, 2020 in respect of kVAh billing methodology during lockdown period.

Khandesh Industrial Development AssociationPetitioner
Vs
Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For Petitioner: - Shri. Bharat Agarwal (Res)
For Respondent: -Shri. Abhishek Khare (Adv)

Case No 143 of 2020

Case of Krishna Valley Chamber of Industries seeking extension of kWh billing methodology and other related relief on account of Corona pandemic.

Krishna Valley Chamber of Industries

.....Petitioner

Vs

Maharashtra State Electricity Distribution Company Limited

.....Respondent

Appearance

For Petitioner: -

..... Shri. S. C. Karandikar (Adv)

For Respondent: -

.....Shri. Abhishek Khare (Adv)

Case No 144 of 2020

Case of Ambad Industries and Manufacturers Association seeking modification in MYT Order in Case No. 322 of 2019 and to issue appropriate directives with respect to kVAh billing methodology.

Ambad Industries and Manufacturers Association

.....Petitioner

Vs

Maharashtra State Electricity Distribution Company Limited

.....Respondent

Appearance

For Petitioner: -

..... Shri. Siddharth Verma (Adv)

For Respondent: -

.....Shri. Abhishek Khare (Adv)

Coram

I.M.Bohari, Member

Mukesh Khullar, Member

COMMON ORDER

Date: 13 November , 2020

1. Chamber of Marathwada Industries & Agriculture (**CMIA**) ; Khandesh Industrial Development Association (**KIA**); Krishna Valley Chamber of Industries (**KVCI**) and Ambad Industries and Manufacturers Association (**AIMA**) have filed the Petitions seeking modification in Multi Year Tariff (**MYT**) Order in Case no. 322 of 2019 dated 30 March, 2020 and to issue appropriate directives with respect to kVAh billing methodology under Section 57, 61,62, 86 and 181 of Electricity Act, 2003 (**EA, 2003**) read with Regulations Nos. 92 to 94 of the MERC (Conduct of business) Regulations 2004.
2. The reliefs sought by the Petitioners are similar in nature, therefore the Commission is dealing with these four cases through the present Common Order.

3. **CMIA's main prayers are as under:**

- a) *To temporarily modify the methodology of billing for HT consumers and to issue bills as per Kwh consumption for lockdown period of March 20 to May 20.*
- b) *To withdraw the penal charges levied in bills of LT consumer having load above 20 Kw for not maintaining their PF.*

4. **KIA's main prayers are as under:**

- a) *To temporarily modify the methodology of billing for HT consumers and to issue bills as per KWH consumption for the period of one year April 20 to March 21 as this one year period is necessary for economic revival of the industrial and commercial consumers.*
- b) *To withdraw the penal charges levied in bills of LT consumer having load above 20 KW for not maintaining their PF.*

5. **KVCI's main prayers are as under:**

- a) *That the implementation of Kvah billing system be postponed for a period of one year from April 2020 upto March 2021.*
- b) *That Respondent and its concerned officers be directed to rectify/issue the electricity bills as per Kwh billing system for a period of one year from April 2020, as per earlier practice.*
- c) *That the PF penalty imposed on L.T. Industrial consumers be waived for a period of 6 months from April 2020 and the bills be revised accordingly.*
- d) *That the Fixed charges/ Demand charges be waived for a period of six months from April 2020.*
- e) *That the Members of the petitioner be allowed a period of six months to pay their bills from billing month of April 2020 & arrears, and in six installments without D.P.C. and interest.*

6. **AIMA's main prayers are as under:**

- a) *To adopt old billing methodology of calculating consumption basis kWh methodology with effect from April 2020 to next 12 calendar months i.e. upto April 2021.*
- b) *The respondent be directed to quash the bills issued based on KVAh billing methodology and re-calculate and issue monthly electricity bills to applicable*

consumers basis old billing methodology of KWh consumption with effect from April 2020 to next 12 calendar months i.e. upto April 2021.

- c) The respondent be directed to refund difference amount of KWh billing methodology and KVAh methodology to consumers who have paid the impugned bills.*
- d) The respondent be directed to withdraw the penal charges levied in bills of LT consumer having load above 20 Kw for not maintaining their PF.*
- e) The respondent be directed to withdraw the fixed and demand charges levied in bills of Industrial consumers from March 2020 to August 2020.*
- f) The respondent be directed to allow industrial consumers to pay electricity bills during the lockdown period i.e. from March, 2020 to June, 2020 in six monthly installments without levying interest, penal charges, DPC etc.*

7. Submissions made by Petitioners have been summarised below:

- 7.1 The Commission has passed MYT Order in Case No. 322 of 2019 on 30 March 2020 for MSEDCL for the 4th control period starting from FY 2020-21 to FY 2024-25. The Commission, through the MYT Order, for the first time, directed MSEDCL to issue monthly electricity bills based on kVAh consumption instead of kWh consumption with effect from 1 April 2020 onwards for all HT consumers and from FY 2022-23 to all LT consumers having load above 20 kW.
- 7.2 Due to Force majeure circumstances and closure of business activities from 22 March 2020 onwards on account of corona Pandemic, many of the consumers were not aware of the new MYT Order issued by the Commission on 30 March 2020. MSEDCL started issuing electricity bills for the month of April 2020 onwards on the basis of kVAh reading as per MYT Order dated 30 March 2020.
- 7.3 Many of the HT consumers (80-90%) received huge amount of bill issued on kVAh basis in the month of April 2020. The payable amount shown is around 4-5 times of their kWh consumption. After going through the details of the bills issued to HT consumers for the month of April 2020, it was observed that as the premises remain locked during lockdown period due to Government restriction and Corona pandemic, consumers were unable to maintain their Power Factor (**PF**) near to unity. In most of the cases the capacitors remained in “on” position, PF was recorded above unity which ultimately resulted in recording of higher kVAh units. Consumers, who have less consumption of actual energy (kWh), are required to pay huge amount due to leading PF with higher kVAh units. Many LT consumers having connected load above 20 kW, have also faced issue of abnormal bills due to levy of penal charges for not maintaining their PF during lockdown period.
- 7.4 Due to Government restrictions and force majeure conditions, both HT and LT consumers were prohibited to visit their premises and take corrective steps for maintaining PF of their installation. This fact confirms that there is no deliberate negligence on the part of consumers in monitoring PF of their installation. The recording

of poor PF or excessive kVAh reading is due to force-majeure situation in the State and also in the Nation.

- 7.5 MSEDCL is Government Undertaking and is working on the principle of revenue neutrality. It is therefore not expected for MSEDCL to generate revenue through penal charges from consumers who has recorded leading PF which has caused any adverse effect on the MSEDCL's network during the lockdown period.
- 7.6 It is very important to note that, electricity consumer is required to make necessary changes in its internal metering and electrical infrastructure in order to cope up with the latest billing technology and minimize the electricity consumption and billing. It is also required to maintain PF in order to get maximum benefit and for saving electricity cost, which is integral part of the production and required to be calculated as capital expenditure. Necessary technicians, material, consultants for carrying out the work were also not available during lockdown.
- 7.7 After permission was issued by MIDC Authorities and State Government, few industries were able to restart partial activities in the month of May 2020 by complying with various conditions laid down by Government Authorities. It is likely that the present situation might continue for longer period.
- 7.8 The industrial consumers and commercial consumers are facing huge financial crunch even to restart their units and establishments and so also presently are not in position to make necessary expenses to maintain the arrangements for the unity PF due to pandemic of COVID- 19.
- 7.9 It is not possible to pay such inflated, higher side electricity bills given the nationwide lockdown effect followed by acute financial crisis. Such consumers are required to be protected from such financial fall down caused due to inflated bills. Given the historical situation and reasons, it is required to give relief to such consumers by directing respondent to issue monthly electricity bills using old kWh billing method.
- 7.10 The Commission has always been proactive to provide assistance to consumers and Distribution Licensees to minimize the adverse impact of COVID-19 pandemic and is once again requested to do the same in present case.
8. **MSEDCL vide submission dated 22 July, 2020 and 31 August, 2020 made similar submission in all four cases. Same is summarised as below:**
- 8.1 Petitioners are seeking modification in the MYT Order. This is tantamount to seeking review of the MYT Order dated 30 March 2020. However, the Petitioners have failed to provide Legal rationale for modification/review of the MYT Order dated 30 March 2020. Fresh adjudication of MYT Order issued after Public Consultation is not permissible under the law through such Miscellaneous Petition/Application. Therefore, the Petitions are not maintainable and need to be rejected outrightly.

- 8.2 In the previous MTR Order dated 12 September 2018, the Commission had declared its intent to introduce kVAh billing for selected consumer categories from 1 April 2020. Further, MSEDCL in its MYT Petition has specifically requested for kVAh based billing for the HT Consumers. The proposal of the kVAh billing system was open for public consultation from 15 January 2020. The Commission also held Public Hearings at Pune, Navi Mumbai, Amravati, Nagpur, Aurangabad and Nashik from 6 February 2020 to 15 February 2020 during which several Public Representatives, Consumer Representatives, other stakeholders and members of the public were heard. Thus, the kVAh billing is implemented after conducting the due procedure contemplated under the Act and after hearing the suggestions/objections of the consumers. Thus, consumers were well aware of the kVAh billing system and had sufficient time to get prepared for such change in the billing system.
- 8.3 As per the MERC (Electric Supply Code and other conditions of Supply) Regulations 2005, it is the responsibility of the consumers to maintain the average PF of its load at levels prescribed by the Indian Electricity Rules, 1956 with such variations, if any, adopted by the Distribution Licensee in accordance with Rule 27 of the Indian Electricity Rules, 1956 and in accordance with the relevant Orders of the Commission. The Electric (Supply Code and other conditions of Supply) Regulations, 2005 also provides for penalty for low PF. Thus, the kVAh billing is not a new event which the consumer especially HT consumers are not aware of. In fact, the Commission has introduced it in phased manner first for HT Category and later during MTR, it will be applicable to selected LT Categories.
- 8.4 Prior to the MYT Order dated 30 March 2020, MSEDCL has taken various initiatives for raising consumer awareness. MSEDCL has conducted around 100 awareness programs across the State to explain the concept of kVAh billing and its implications to various Industrial category consumers from sub-division officer level to the director level i.e. management level. During this program, various aspects of the proposed kVAh billing were discussed and deliberated upon using a PowerPoint Presentation (PPT). The Frequently asked questions (FAQs) on kVAh billing were uploaded on the MSEDCL website and MSEDCL had sent letter through E-Mail, on 2 February, 2019, informing proposed implementation of kVAh billing from 1 April, 2020 to all HT consumers having email IDs registered with MSEDCL.
- 8.5 The Commission in its Order dated 2 January 2019 (Case No. 329 of 2018) has already clarified about the leading RkVAh. As per the MTR Order dated 12 September, 2018, the leading RkVAh was also required to be included in computation of PF. Considering the difficulties faced by consumers, in the Order dated 2 January 2019, the Commission has given sufficient time i.e. period of 1 September, 2018 to 31 March, 2019 for taking corrective measures regarding leading RkVAh. From April 2019 consumers have been billed considering the effect of leading RkVAh also. It is expected that by March-2020, all the consumers should have taken the corrective actions regarding the PF. It is expected that whenever the consumer switches on the active load, proper compensation for corresponding reactive load needs to be provided. It is pertinent to note that had it been kWh based billing system, the consumers would have been charged with very high

PF penalty. This would have also resulted into higher bills. Since maintaining the PF is the responsibility of consumers, it should have taken care. This is not a new situation which happened due to COVID 19.

- 8.6 Without any legal basis, the Petitioners have requested the Commission to temporarily modify the methodology of billing for HT consumers and to issue bills as per kWh consumption for the period of one-year April 2020 to March 2021. If such prayer without any legal support is allowed, same will result in modification / changes in the Multi Year Tariff (MYT) structure approved by the Commission for the 4th Control Period. Such modification / changes in the Multi Year Tariff structure would obviously affect the different class of consumers specially the low end residential and agriculture consumers as the burden will get passed on to them increasing their tariff.
- 8.7 The Petitioner has claimed that in many cases, the PF recorded is shown @ 0.2 to 0.4 for HT consumers, the calculation of which is purely based on theoretical calculations. As per the data available with MSEDCL for the period of lock down months i.e. March-2020 to May-20, very few consumers had the PF in the range of 0.2 to 0.4

Month	Particulars	HT Industrial
Mar-20	No. of Consumers with PF 0.2 to 0.4	427
	kWh Units (MUs)	17.94
	kVAh Units (MkVAh)	59.62
	% of Total Consumers in the category	3.03%
Apr-20	No. of Consumers with PF 0.2 to 0.4	1,303
	kWh Units (MUs)	6.95
	kVAh Units (MkVAh)	21.36
	% of Total Consumers in the category	9.22%
May-20	No. of Consumers with PF 0.2 to 0.4	618
	kWh Units (MUs)	3.82
	kVAh Units (MkVAh)	12.45
	% of Total Consumers in the category	4.37%

From the above table, it is clear that only around 3 to 9% consumers have the PF in the range of 0.2 to 0.4.

- 8.8 This is a transient period and the difficulties are temporary. In fact, after May 2020, the lock down is partially lifted and the normalcy is seen in the market since there have been some relaxations for operations of Industries. It is pertinent to note that the maximum demand catered by MSEDCL on 29 May 2020 is 19095 MW which is fairly higher than the demand catered in April 2020. Therefore, the temporary situation does not really warrant such drastic change in the billing methodology.
- 8.9 Since the kVAh billing system itself need not be changed, the need for rectification of bills does not arise. MSEDCL works with the principle of revenue neutrality. While deciding the tariffs, the Commission balances the aggregate revenue requirement and revenue from revised tariffs. Any deviation from the approved methodology of revenue

recovery results into under recovery of the revenue requirement. This under recovery again gets passed on to the consumers during truing up exercise. The Commission in the MYT Order has determined the revenue from HT category consumers considering sales in kVAh. Now, if any change is made in the consideration of sale (i.e. from kVAh to kWh), the resultant impact would be reduction in proposed recovery of revenue requirement.

- 8.10 The Tariffs in kVAh are approved by the Commission after considering the impact of PF penalty/incentives to consumers. Now, if kVAh based billing is not considered, the consumer Tariffs should increase further by 2%-3% for kWh-based billing. Otherwise, there would be lower recovery of revenue requirement which would result into tariff increase of MSEDCL consumers at large in truing up, despite not being at any fault. In this case, the impact of under recovery from HT category consumers will get passed on to the LT category consumers. Therefore, such request should not be accepted since it will lead to additional burden on the common consumers of the State resulting in their tariff increase especially for low end LT Residential and Agriculture consumers.
- 8.11 The Petitioners have requested to withdraw the penal charges levied in bills of LT consumer having load above 20 kW for 6 Months from April-2020 for not maintaining their PF. The PF incentive/penalty mechanism is not the new and has been in vogue since MSEDCL era. The Commission has time and again discussed the pros and cons of maintaining the PF. As per the provision of Section 22 (General Conditions of Wiring) of Indian Electricity Rules 1956, it was mandatory for consumers to maintain the PF above 0.85. Further, MERC (Electric Supply Code and other conditions of supply) Regulations 2005 also provides for penalty for low PF. Unity PF is the most ideal and essential to maintain the health of the Grid. Ideally, there shall be no drawal or injection of the Reactive Power into the system. Thus, since long, it has been a well-established fact that it is the responsibility of consumer to maintain the PF and this is not a new condition for consumers which is introduced in MYT Order. This has been in practice since many years.
- 8.12 From the submissions of the Petitioners, it is clear that consumers have not turned off the capacitors installed for improving PF. It is expected that whenever the consumer switches on the active load, proper compensation for corresponding reactive load needs to be provided. Similarly, if active load is disconnected, then reactive load also to be appropriately disconnected by consumer. Such overcompensation/injection of reactive power adversely affects the distribution system and it may lead to disruption in the supply as well as equipment. Since maintaining the PF is the responsibility of consumers, it should have taken due care in this regard. This is not a new situation which happened due to COVID 19. If prayer of withdrawal of PF Penalty without any legal support is allowed, same will result in modification / changes in the Multi Year Tariff structure affecting the different class of consumers specially the low end residential and agriculture consumers.
- 8.13 The Petitioners have requested to withdraw the fixed and demand charges levied in bills of Industrial consumers from March to August 2020. It has been the philosophy of the

Commission that the recovery of the fixed costs should come from fixed charges. Section 45 of Electricity Act 2003 also provides for recovery of fixed charges from consumers. Further, as per the MYT Order dated 30 March 2020, as against the ratio of fixed cost to total ARR of 55%, the revenue recovery through Fixed/Demand charges was less than 15%. Even after gradual increase in fixed / Demand Charges over the 4th Control Period, just sufficient to keep the revenue recovery from Fixed Charges at around 16% to 18% of the total revenue of MSEDCL. Further the moratorium on payment of fixed charges for three billing cycles for Industrial and Commercial category consumer coupled with estimated bill computed on average basis, has worsened financial position of the MSEDCL

8.14 Majority of expenses incurred by MSEDCL are fixed in nature and need to be incurred irrespective of any distribution / retail business undertaken by it. Fixed costs/Capacity Charges of power purchase, O&M Expenses including R&M and Employee Expenses, depreciation, obligation for loan repayment, interest on loan payments etc. are required to be incurred irrespective of the change in the demand/sales. Any revision in methodology or waiver or withdrawal of recovery of fixed costs from consumers will further burden MSEDCL and it will be more difficult for it to financially sustain. Further, any under recovery of revenue charges will be again passed on the common consumers of MSEDCL in the truing up process. Therefore, such request should not be accepted since it is against the principle of recovery of the fixed costs.

8.15 During the lock down, MSEDCL is striving hard for supplying power to its 2.7 Crs consumers in the COVID 19 scenario which includes 3.5 Lakhs Industrial consumers. The major portion of billed demand (around 60 %) is contributed by Industrial & Commercial category consumers. Due to COVID 19, MSEDCL monthly receivables for March 2020 has already moved ahead to April 2020 & has impacted the recovery & broken the financial backbone MSEDCL . A comparative statement of revenue recovery impacted due to COVID-19 is as below

Year	Amount in (Rs Crs)	% reduction compared to March 20
March-20	5287.67	
April-20	2231.84	58%
May-20	3277.57	57 38%

8.16 The Commission has already provided many measures beneficial to consumers in view of prevailing situation.

8.17 The Petitioners have requested for a period of six months to pay their bills from billing months of April 2020 and arrears in six instalments without Delayed Payment Charges (DPC) (and interest. In this regard, it is submitted that the Commission through its various Practice Directions has provided sufficient reliefs to consumers. Industrial consumers contribute major portion of MSEDCL's revenue and the financial situations of MSEDCL is already adversely affected. Hence it is requested that the prayer of petitioner to allow a six-month period to pay bills from April 2020 in 6 instalment without levying interest, penal charges, DPC etc. be rejected.

- 8.18 Considering the request of the Petitioners to temporarily modify the methodology of billing for HT consumers and to issue bills as per kWh consumption, if at all, the Commission is inclined to provide any relief to HT Industrial Consumer for billing as per kWh consumption instead of kVAh consumption, the same can be considered for a period of only 3 months of Lock down i.e. March-2020 to May-2020 only. However, while doing so MSEDCL should be duly compensated for the loss of revenue during the next MTR Process by passing on the impact of such under recovery on same category consumers and should not get passed on to the low end residential and agriculture consumers.
9. KIA and AMIA in their rejoinder submissions dated 22 October, 2020 have submitted Orders of the other Commissions, other State Governments for allowing reliefs to the Industrial consumers in terms of demand charges, Instalments/ EMI for making bill payments without attracting interest and DPC etc on the background of Corona Pandemic.
10. **At the time of E hearing held on 23 October 2020:**
- 10.1 Petitioners and Respondent reiterated their respective submissions made in the Petition/Reply.
- 10.2 Petitioners have stated that due to lock down restrictions, they are not able to make modifications in their installations for maintaining the PF and the APFC panels remained in working condition resulted into increasing RkVAh and thereby increasing the electricity bills many fold than that of previous kWh based bills. This is a force majeure condition and requested the Commission to grant consequential reliefs as prayed for.
- 10.3 MSEDCL has raised the objection on the maintainability of the Petitions as these are filed without any Legal rationale for modification/review of the MYT Order dated 30 March, 2020 in Case No 322 of 2019 and if any relief granted will have severe ramifications on MSEDCL and may result in increase in tariff for other consumers.

Commission's Analysis and Ruling

11. Petitioners are representing mainly HT and LT Industries and have filed the present Petitions seeking following reliefs:
- a) kVAh based billing system be postponed for one year and be made effective from April 2021. Till that time, old kWh-based billing system be continued.
 - b) PF penalty imposed on L.T. Industrial consumers be waived for a period of 6 months from April 2020
 - c) Fixed charges/ Demand charges be waived for a period of six months from April 2020 and to allow industrial consumers to pay electricity bills during the lockdown period i.e. from March 2020 to June 2020 in six monthly instalments without levying interest, penal charges, DPC.

12. Petitioners have stated that due to nationwide lockdown imposed from 22 March 2020, most of the industrial/ commercial business were shut down, restricting both HT and LT consumers to visit their premises and make necessary changes in metering infrastructure for maintaining PF at their installation and thereby received huge electricity bills compared with KWh reading. Petitioners stated that the situation was not under their control and is a Force Majeure event. The industries are facing financial crunch and, in this scenario, it is difficult to make necessary changes in the metering infrastructure for maintaining PF. Hence, they requested the Commission to grant relief as prayed for. In this regard, Petitioners have also placed reliance on various Orders of the Other Commissions; State Governments allowing reliefs to the industrial consumers on account of the corona pandemic.
13. MSEDCL has raised the issue of maintainability of the Petition as no legal provision is pointed out while asking for such modification/ review of MYT Order in Case No 322 of 2019 dated 30 March, 2020 which was issued after following procedure laid down in the EA, 2003 and extensive public consultation.
14. In this regard the Commission notes that Regulation 95 of the Conduct of Business Regulations, 2004 empowers the Commission to amend its Order but while exercising such jurisdiction, the Commission needs to be conscious of Regulation 85 of MERC (Conduct of Business) Regulations, 2004 which restricts the powers of the Commission to review its decision only if there is error apparent on the face of record or discovery of new fact.
15. In the present Petitions, Petitioners have not pointed out any error in the MYT Order but on account of Covid-19 Pandemic are seeking some relaxations to support the revival industry post lockdown period. The Petitioners have referred to the Orders of other Commission in support of their request. Thus, before dealing with the relief sought in these Petitions, the Commission would like to put on record, following relaxation already granted by it to Industrial and Commercial consumers for supporting them in this pandemic situation:
 - a. Vide MYT Order dated 30 March 2020, the Commission has already approved a moratorium on payment of fixed charges of the electricity bill by consumers under Industrial and Commercial category for next three billing cycles beginning from the lockdown date of 25 March, 2020.
 - b. In subsequent Practice Direction dated 9 May 2020, Commission has clarified the three-month moratorium on fixed charges to mean that those consumers would be liable to pay this amount in the subsequent three billing cycles in equal interest free instalments. If the consumers choose to pay entire moratorium amount in one go, rebate of 1 % on that amount has been allowed.
 - c. Further in the same Practice Direction dated 9 May 2020, in order to avoid excessive recovery from Industrial and Commercial consumers, on account of possibility of higher assessment for a month (in case of non-availability of meter reading), the Commission has directed that for Industrial and Commercial Consumers who do not

have AMR/MRI billing and subject to reconciliation with the meter readings when available, only a token amount based on 10 % of the average energy consumption would be billed to premises under Lockdown.

- d. Post relaxation in lockdown restrictions, in order to support quick ramping-up of Industrial and Commercial activities, vide its Practice Direction dated 21 May 2020 these consumers have been allowed to change their Contract Demand 3 times for HT and 2 times for LT in a billing month with certain caveats. This facility, which was initially allowed till July 2020, has been further extended upto March 2021 vide subsequent Practice Direction dated 31 July 2020.
- e. Distribution Licensees have been allowed to extend any further concessions as part of their business needs from their own funds including reserves

In this background of initiatives already taken by the Commission to support Industrial and Commercial activities in the State during this pandemic period, the Commission is now addressing the issues raised by the Petitioners:

16. kVAh based billing system be postponed by one year and be made effective from April 2021. Till that period old kWh-based billing system be continued

16.1 The Commission notes that Petitioners have mainly contended that the Commission vide its MYT Order dated 30 March 2020 has first time introduced kVAh billing to HT consumers starting from 1 April 2020. As the Government had already imposed lockdown from 25 March 2020, consumers did not get any time to make necessary changes or install equipment in their premises for appropriately making adjustment with kVAh based billing, which led to huge amount of bills in April 2020. Hence, they have requested to postpone kVAh based billing by 1 year and revert to kWh-based billing in the meantime.

16.2 In this regard the Commission would like to put on record the fact that kVAh based billing was not suddenly introduced through MYT Order dated 30 March 2020, but it has been done by providing advance intimation (almost 18 months) to all concerned. Chronology for the same is summarised below:

- a. The Commission has made known its intention for implementation of kVAh based billing from 1 April 2020 in its MTR Order in Case No 195 of 2017 dated 12 September 2018. The relevant extract of the said Order is reproduced below:

*“9.23.11 The Commission has taken a note of Petitioner’s proposal for adoption of kVAh-based billing for HT consumer categories. The Commission is of the view that the kVAh billing may not be appropriate at this time of juncture as it has to be done in a gradual manner to avoid any tariff shock due to such change. MSEDCL may submit its proposal for kVAh billing in next control period. **The Commission intends to implement kVAh billing to all HT consumer and LT consumers having load above 20 kW from 1 April, 2020.**”*

*All Distribution Licensees in State are required to take necessary steps such as meter replacement, if required, preparedness of billing software etc. Also, wherever possible, Distribution Licensee shall start collecting category-wise energy consumption details in kVAh terms and submit it during the next Tariff determination process. **Though the Commission agrees that the benefits and its technical superiority for measuring energy, it is felt that sufficient time needs to be given to MSEDCL and also the consumers to change over the billing kVAh method. The Commission directs MSEDCL to educate the consumers and take all necessary steps to ensure that all the consumers are billed by kVAh method from the next MYT i.e. from 1st April 2020.*** [emphasis added]

- b. Also, in the same MTR Order, for implementation of kVAh billing in gradual manner, the Commission has made changes in PF computation and included leading RkVAh in the computation of PF from 1 September, 2018. Relevant extract of the Order is as follows:

*“2.9.15. Though PF Incentive mechanism encourages the consumer to improve its lagging PF and maintain it to unity, there are cases of over compensation causing leading PF. There is no clarity about leading PF in existing Tariff Order. As is the case with lagging PF, higher magnitude of leading PF is also not desirable. **Therefore, the Commission introduces penalty for leading PF also. This penalty will be applicable from prospective effect. As a first step towards the implementation of kVAh billing system, which is devoid of any separate incentive / penalty for PF, the Commission has decided to reduce the existing PF Incentive / Penalty by 50%. Accordingly, maximum PF Incentive, which is 7% at Unity PF, has been reduced to 3.5%. Similarly, Penalty for lower PF has been rationalized.*** [emphasis added]

- c. After the above said changes in the PF computation, group of consumers approached the Commission seeking time for taking effective measures to maintain the unity PF. After considering their difficulty and recording the positive approach of the consumers towards adopting the changed methodology, the Commission vide its Order dated 2 January 2019 provided relief to compliant consumers i.e. if consumer is able to make necessary changes and there by maintains PF to desired level by March 2019, then any penalty imposed during September 2018 to March 2019 due to poor PF be refunded. Thus, without extending applicability of revised methodology for computing PF, the Commission provided six-month period to consumers for making necessary changes and also provided for refund of penalty, if any, for compliant consumers.

Therefore, it is not correct to state that kVAh billing was suddenly introduced through MYT Order dated 30 March 2020. Intent of the same was clearly stipulated in MTR Order dated 12 September 2018 (almost 18 months in advance) and Distribution Licensees were directed to ensure awareness about the same amongst the Consumers.

- 16.3 Accordingly, as stated by MSEDCL, it had conducted around 100 awareness programs across the State to explain the concept of kVAh billing and its implications to various Industrial category consumers from sub-division officer level to the director level i.e. management level. During this program, various aspects of the proposed kVAh billing were discussed and deliberated upon. The FAQs on kVAh billing were uploaded on the MSEDCL website. The Commission assumes that similar awareness programmes would most likely had been carried out by the Industrial and Commercial Consumer Associations (including the Petitioners in the case). Thus, stipulation about ensuring awareness about the applicability of this billing method was complied by the Respondent MSEDCL and possibly also by the Petitioner Organisations.
- 16.4 Further, MSEDCL in its MYT Petition, which was admitted on 13 January 2020 for public process had proposed kVAh based billing starting from 1 April 2020. Said Petition has undergone extensive public consultation process and hence consumers were aware that kVAh billing is proposed to be implemented from 1 April 2020. After following the due public consultation process contemplated in the EA, 2003 and as per MYT Regulations, 2019, the Commission has issued the MYT Order on 30 March 2020 and made it applicable from 1 April 2020. As against its intent expressed in 2018 MTR Order to introduce kVAh based billing for HT and LT consumer above 20 kW, in this MYT Order, the Commission decided to introduce the kVAh billing in gradual manner and accordingly, in the first phase kVAh based billing has been introduced only for HT consumers. Relevant part of MYT Order dated 30 March 2020 is reproduced below:

“8.10.37 Thus, after understanding the proposal and preparedness of MSEDCL, the Commission allows MSEDCL to implement kVAh based billing for HT Consumers at present. The same shall be effective from 1 April, 2020. As regards, the LT consumers above 20 kW load, the Commission directs MSEDCL to complete its meter conversion process alongwith other system modifications for such consumer categories and shall target to implement the same at the time of MTR i.e. by 1 April, 2023. For implementation of kVAh based billing for the remaining LT consumer categories below 20 kW, a comprehensive study will have to be undertaken based on experience gained through introduction of kVAh billing for more than 20 kW category, to assess pros/cons of introduction for below 20 kW alongwith implementation aspects etc. MSEDCL should evaluate the same and process for introduction of kVAh billing for such below 20 kW consumers can be undertaken in the 5th Control Period in a phased manner, if found feasible.”

- 16.5 In view of the above, the Commission concludes that consumers were well aware about the proposed plan to implement kVAh based billing w.e.f. 1 April 2020. In fact, they had a period of almost 18 long months (starting from MTR Order dated 12 September 2018) to take necessary actions and prepared itself for kVAh based billing. Reason of Covid-19 pandemic now being cited for their inaction is unjustifiable as lockdown was imposed only on 25 March 2020 onwards, which affected only last few days of 18-month period available with consumers.

- 16.6 It is also important to note that as per MERC (Electricity Supply Code and Other conditions of Supply) Regulations, 2005, maintaining the PF of its installation within prescribed limits is the responsibility of the consumers. Relevant extract of the same is as follows

12.1 It shall be obligatory for the consumer to maintain the average PF of his load at levels prescribed by the Indian Electricity Rules, 1956 with such variations, if any, adopted by the Distribution Licensee in accordance with Rule 27 of the Indian Electricity Rules, 1956 and in accordance with the relevant orders of the Commission.

Provided that it shall be obligatory for the HT consumer and the LT consumer (Industrial and Commercial only) to control harmonics of his load at levels prescribed by the IEEE STD 519-1992, and in accordance with the relevant Orders of the Commission.

- 16.7 Therefore, for the reasons stated above, the Commission is not inclined to allow extension in start date of applicability of kVAh based billing to HT consumers.

17. PF penalty imposed on L.T. Industrial consumers be waived for a period of 6 months from April 2020

- 17.1 Petitioners contended that due to lockdown condition, they were not able to maintain PF and due to this force majeure condition PF penalty on LT consumers should be waived off. MSEDCL has opposed the contention stating that PF penalty/ PF incentive is not the new fact to the consumers and has not emerged due to Corona Pandemic. As per Indian Electricity Rules, 1956 and MERC Supply Code Regulations, 2005, it is the responsibility of the consumer to maintain the same within the specified limits.

- 17.2 The Commission notes that as stated in Paragraph 16.6 above, consumer is responsible for maintaining the PF of its installation within permissible limits which is the upmost requirement for healthy system operations, otherwise consumers have to face penalty as per Supply Code Regulations, 2005 for not maintaining the same.

- 17.3 The PF incentive/penalty mechanism is not the new concept and has been in practice for several years. In the past, consumers have earned incentives through this mechanism. It is not correct to dispense with penalty mechanism by citing reason of Covid-19 pandemic. Whenever the consumer uses electricity, it is its responsibility to maintain PF towards unity. Apart from being a statutory requirement and technical necessity for secure grid operations, the tariff philosophy has also included the PF incentive/penalty mechanism for encouraging consumers to achieve unity PF. Hence, the Commission is not inclined to consider the request for waving off PF penalty as prayed for by the Petitioners.

18. Fixed charges/ Demand charges be waived for a period of six months from April 2020 and to allow industrial consumers to pay electricity bills during the lockdown

period i.e. from March, 2020 to June, 2020 in six monthly instalments without levying interest, penal charges, DPC

- 18.1 Petitioners have sought waiver of Fixed charges/ Demand charges from its electricity bills for a period six months from April 2020 on account of financial hardships faced by them on account of Corona Pandemic. They have also requested to allow industrial consumers to pay bills during lockdown period in six months without attracting interest and DPC. Petitioners have placed reliance on various Orders of other Commissions, Other State Governments in support of that.
- 18.2 MSEDCL while opposing this request has stated that majority of expenses incurred by MSEDCL are fixed in nature and need to be incurred irrespective of any distribution / retail business undertaken by it. Section 45 of Electricity Act 2003 also provides for recovery of fixed charges from consumers and it forms 15% to 18% of the total annual revenue requirement (ARR). Any revision in methodology or waiver or withdrawal of recovery of fixed costs from consumers will further burden MSEDCL and this under recovery of revenue charges will be again passed on to common consumers of MSEDCL in the truing up process. It has also stated that the Commission through its various Practice Directions have already provided sufficient reliefs to consumers.
- 18.3 In this regard, the Commission notes that as summarised in para 15 above, through its MYT Order and subsequent practice directions, it has already allowed interest free deferment of fixed charges for 3 months. It has also provided option of multiple revision in contract demand within a billing cycle. All these relaxations were granted to support consumers during this pandemic situation. While protecting interest of the consumers, the Commission also mandated to allow recovery of prudent cost to electricity utilities for the actions taken to support the Industrial Consumers. Distribution Licensee is the last and important link in electricity supply chain. Its revenue recovery is critical for other sector participants such as transmission licensees and generating companies (and through them coal/fuel companies) to recover their dues from Distribution Licensees. In the opinion of the Commission, it has already allowed various relaxation to consumers for helping the Industrial consumers to recover from impact of Covid-19 circumstances. Granting any further relaxation as sought through present Petitions will have adverse impact on finances of Distribution Licensee which can adversely impact its ability to supply continuous power.
- 18.4 Hence, the Commission is not inclined to grant any further relaxation in payment of fixed charges and payment on instalments without any cost as sought in the present Petitions. Option of payment through instalments is already provided through Regulations, but same is coupled with cost of such deferred payment. If desired, consumer can choose such option.
- 18.5 As far as reliance placed by Petitioners on various Orders of the other State Commissions, other State Governments for supporting their relief claims is concerned, the Commission notes that these are decisions taken by respective State Commission or

Government considering various state specific factors applicable in their respective matter. Same may not be applicable in present matter.

19. Having ruled as above, although no relief needs to be granted as prayed for in these Petitions, the Commission notes that these Petitioners have highlighted that due to nationwide lockdown imposed from 25 March 2020, Industrial & Commercial consumers were not able to visit their premises and take appropriate action for maintaining PF which led to poor PF in April 2020. The Commission notes that this is genuine difficulty faced by some consumers due to which even though it has installed the necessary equipment for maintaining PF in its premises, due to non-accessibility of premises PF may have remained poor due to the higher compensation of reactive power for a low inductive load during lockdown period. Although it is correct that automatic PF correction equipment should have taken care of such situation, but depending upon nature of load, consumer may have installed fixed or partly fixed and automatic PF correction equipment for achieving desired PF. If such consumer and the equipment is giving desired PF of close to unity prior to lockdown, it may not be correct to penalise such consumer for poor PF during lockdown when their premises were closed/partially closed/ not accessible. Hence, the Commission is of the opinion that only such consumers, if have been subjected to penalties/ higher bill amount due to poor PF in the month of April and May of the lockdown, deserve some relief. Hence, the Commission grants following relief to such consumers:
 - a. This relief is applicable to eligible consumer from all consumer categories to whom PF incentive/penalty mechanism or kVAh billing mechanism is applicable.
 - b. Consumer is eligible only if its monthly consumption during lockdown period of April or May is lower than or equal to 25% of consumption of March 2020. In case, the actual consumption of March 2020 is not available (due to shutdown/closure), then available actual consumption of immediate precedent month shall be used. Further, in case of billing of consumers based on assessed consumption during lockdown period, then monthly consumption during lockdown period shall be computed based on actual meter reading data as and when was available..
 - c. Billed PF of eligible consumer for March 2020 or other preceding month whose consumption is used for reference purpose at 'b' above shall be used to arrive at reference PF. Consumer would be eligible for relief only if its 'Reference PF' is equal to or above 0.90 (lead or lag).
 - d. If actual PF of eligible consumer during lockdown period is lower than 'Reference PF' then, 'Reference PF' shall be used for billing purpose. In case of higher actual PF than 'Reference PF', then billing shall be based on actual PF. Intent of use of 'Reference PF' is only to give relief to the eligible consumers (as mentioned above) for the PF penalty for LT consumers and reduce kVAh billing for HT consumer.

- e. In case of LT consumers where PF incentive/penalty mechanism is applicable, 'Reference PF' shall not be used for providing PF incentives or increasing actual PF incentives.
- f. In case of HT consumer, if consumer is eligible for use of 'Reference PF' as per 'd' above, then its monthly kVAh shall be derived by using kWh recorded during lockdown period and 'Reference PF'.
- g. This relief is applicable only for the month of April and May 2020. Eligible consumer may get benefit for none or any 1 or all 2 months depending upon whether consumption during that month is lower than threshold limit specified in 'b' above. As monthly consumption is basis of eligibility, no additional certification from consumer of any sort be asked for.
- h. Distribution Licensees may revise electricity bills of eligible consumers based on above principle and credit the refund amount in equal instalments (equal to numbers of months eligible for relief) in upcoming electricity bills of consumers.

In the opinion of the Commission, above dispensation will provide relief to consumers who have already installed equipment for PF correction but were not able to operate the same due to lockdown. The Commission also notes that these Petitions have been filed by consumer association representing consumers of MSEDCL and hence other Distribution Licensees were not made party in these cases. However, because such relief is being granted to provide some relief to compliant consumers during the period of lockdown, same needs to be extended to consumers of other Distribution Licensees in the State. Accordingly, the Commission directs its secretariat to issue copy of this Order to all Distribution Licensees in the State with direction to provide relief to eligible consumers in their area as per methodology explained above.

20. Hence following Order

COMMON ORDER

1. **Case No 131 of 2020; Case No 135 of 2020; Case No 143 of 2020; Case No 144 of 2020 are partly allowed.**
2. **All Distribution Licensees in State shall grant relief to eligible consumers as per methodology stipulated in para 19 above.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

