

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 152 of 2021

**Case of Steel Manufacturers Association of Maharashtra seeking Load Factor Incentives
on Open Access consumption sourcing power from infirm sources.**

Coram

Sanjay Kumar, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member

Steel Manufacturers Association of Maharashtra (SMAM)Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Appearance:

For the Petitioner : Shri Ashish Singh (Adv.)

For MSEDCL : Smt. Deepa Chawan (Adv.)

ORDER

Dated 6 April 2022

1. Steel Manufacturers Association of Maharashtra (**SMAM or Petitioner**) has filed a Case on 15 November 2021 under Section 86(1)(e) of the Electricity Act, 2003 (**EA**), Regulation 32 and 35 of Distribution Open Access Regulations 2016 (**DOA Regulations 2016**) and Regulation 92 and 93 of MERC (Conduct of Business) Regulations, 2004 seeking Load Factor Incentive (**LFI**) on actual Contract Demand (**CD**) for Open Access (**OA**) consumers sourcing power from infirm Renewable Energy (**RE**) Sources. The Petitioner have also sought practice directions to pass such benefits / dispensation.
2. **The Petitioner's main prayers are as follows:**
 - i. *Direct MSEDCL to correct the billing methodology so as to pass the benefits of "Load Factor Incentive" on actual Contract Demand for open access consumers sourcing infirm power;*

- ii. *Issue Practice Directions on the said issue by clarifying that MSEDCL is mandated to pass the benefits of “Load Factor Incentive” on actual Contract Demand for open access consumers sourcing infirm power.*

3. The Petition states as follows:

3.1. The Petitioner has more than 200 High Tension Industrial bulk power consumers of MSEDCL as its members. The members of the Petitioner also avail Open Access (OA) from RE sources to comply with the Renewable Purchase Obligation (RPO) being an obligated entity. However, while consuming OA power from RE sources, MSEDCL has been denying LFI to the members of the Petitioner by adopting a billing methodology which excludes such incentives being passed on the consumers. Aggrieved with treatment of MSEDCL, present Petition is filed.

3.2. The ground for filing the Petition:

- (i) It is an admitted position that whenever OA is being sought through RE sources especially through solar and wind, then CD with Distribution Licensee is not reduced by the consumers. It means that the Distribution Licensee is still obligated to supply power upto CD.
- (ii) Due to nature of continuous industry, steel industries have to run 24 X 7 at constant load. For meeting the constant load, steel industries cannot run only on infirm RE sources. The Distribution Licensee supplies the power to the consumer as per its CD. Therefore, LFI needs to be calculated on the entire load of the consumer vis-a-vis its CD.
- (iii) Maintaining a higher Load Factor (LF) with Distribution Licensee by the consumers not only ensures safety of the Grid but also helps the Distribution Licensee in maximizing its load against a consumer’s CD.
- (iv) MSEDCL recovers the fixed charges as per the actual CD from OA consumer sourcing through RE sources. However, MSEDCL completely ignores the concept of CD while providing LFI to such OA consumers.
- (v) Maintaining a specific CD with MSEDCL means that the consumer would utilize power upto the CD. Hence, passing of LFI being linked to CD has to be passed on actual CD and not by deducting OA quantum from CD.
- (vi) In case of OA from RE sources, energy injection is unpredictable. For example, 70-80% of energy is generated from wind turbines only during four months of high wind season. The rest of the months, major quantum of supply of power is from Distribution Licensee. Similarly, from Solar, energy is generally generated during day time and during night time major quantum of supply is from Distribution Licensee. Hence, the CD requirement is met by the Distribution Licensee which is main reason to provide LFI on the entire load vis-a-vis CD.

- (vii) MSEDCL has adopted a billing methodology wherein it reduces the units injected by RE source under OA for calculation of LFI. Such a methodology is incorrect as it defeats the nature of transaction and billing mechanism under OA from RE sources.
- (viii) As per RPO Regulations, MSEDCL has an obligation to fulfil its RPO targets. When MSEDCL accounts for the green power under its total power purchase then there can be no logic for denying any incentives on the said green power when the same is purchased by industries/consumers.
- (ix) If infirm power sourcing under OA is not considered for calculation of LF, then it is not at all possible to avail benefit of LFI in any situation. In the present scenario, industries are losing 15% incentive, whereas MSEDCL is taking benefit of the same RE generation for various purposes including Grid Security. Moreover, MSEDCL also purchases over-injected units of such OA consumers limited to 10% of actual total generation in respective months at generic tariff. MSEDCL fulfills the RPO from the over injected units and also recovers money by selling the same to its consumers.

4. MSEDCL in its reply dated 3 February 2022 stated as follows: -

- 4.1. The Petition has been filed under Regulation No. 32(Disputes) and 35(Issue of Orders and Practice Directions) of the DOA Regulations,2016, seeking the LFI on OA consumption. However, the provisions of the LFI are as per the Commission's MYT Tariff Order and not as per the DOA Regulations 2016.
- 4.2. The Commission vide its Order dated 27 February 2018 in Case No. 80 of 2016 (*Arwind Cotsyn Vs MSEDCL for LFI on OA consumption*) has held that the Commission has been incentivizing consumers to maintain a high LF from several years. LFI is intended to encourage a consumer to consistently maintain a high level of monthly consumption of power in relation to the CD with Distribution Licensee. Thus, the definition of LF and the stipulations in the MYT Order also imply, that LF is in relation to the demand contracted by the consumer with the Distribution Licensee vis-à-vis his actual consumption against that demand. Therefore, the LFI has no nexus with the consumer's demand and consumption of power met from other sources through OA. Hence, there is no question of OA consumption being included in the computation for the purpose of LFI by MSEDCL.MSEDCL computes LF as explained in the formula as below:

$$\text{Load Factor} = \frac{\text{Consumption during the month in MU}}{\text{Maximum Consumption possible during the month}}$$

Maximum Consumption Possible = CD (kVA) x Unity Power Factor x Total Number of Hours during the month, less actual interruptions hours recorded on meter for billing period.

- 4.3. MSEDCL in its reply has also submitted an illustration for calculation of LF based on assumed Consumer Contact Demand, Contact Demand of consumer with MSEDCL, OA

Contact Demand. MSEDCL has computed the LF based on the MSEDCL's consumption excluding OA consumption from RE infirm source.

- 4.4. The LFI computation methodology has been set out by MSEDCL in its High-Tension Tariff Booklet (**HTT Booklet**) issued in 2007 which is in effect as on date. The Petitioner has not sought any directions requesting for amendment and/or modification with the HTT Booklet issued by MSEDCL and hence, it is not entitled to any relief from the Commission on that basis alone.
- 4.5. Further when a consumer exceeds its CD for a particular month, including during the non-peak hours i.e. 10.00pm to 6.00 am every day, LFI will not be payable to that consumer for that particular month. The aforesaid formula is applicable to the OA consumers.
- 4.6. Partial OA Consumers are OA consumers who maintain some demand with the Distribution Licensee in whose area of supply they are located in order to cater to their load requirement. The Consumption of partial OA consumers during the month in terms of MU component of the LF formula is taken as per the actual load requirement from Distribution Licensee as demand supplied by the Distribution Licensee would be entitled to avail benefit of LFI. Accordingly, LFI is computed based on the actual load requirement.
- 4.7. LFI is passed on to OA consumers whose major quantum of supply is from its distribution licensee and resulting LF is within the range from 0.75 to 0.85.
- 4.8. The DOA Regulations, 2016 states that Billing Demand in respect of a partial OA Consumer, will be the higher of actual maximum demand recorded less OA demand availed by partial OA consumer in the month during 0600 hours to 2200 hrs or 50% of retained CD with the Licensee.
- 4.9. The Steel Manufacturing Industries having Electric Arc Furnace are availing concession of Demand Charges 75% on applicable Demand Charges. Thus, the Petitioner is already availing the benefit of LF.
- 4.10. When OA consumers sourcing a major quantum of supply from RE Sources then they have benefits such as availing OA power more than its CD, avail power from multiple RE sources banking of energy etc.
- 4.11. The Commission vide Order dated in Case No. 8 of 2012, Case No. 18 of 2012, Case No. 20 of 2012 and Case No. 33 of 2012, held that levy of penalty or provide incentives for various parameters as specified by the Commission in Tariff Schedule of the Tariff Order of MSEDCL from time to time (e.g., PFI, Power Factor Penalty, Prompt Payment discount, etc.) shall be charged on the net energy supplied by MSEDCL to the OA consumer and captive user after adjusting the banked energy and actual generation during the month.
- 4.12. In the present case, role of MSEDCL is only as a carrier of electricity. MSEDCL could only be responsible to grant incentive/benefit under LF to the extent the Petitioner is availing power from MSEDCL and not for the quantum used by it through OA, from RE source or otherwise.

- 4.13. Further, if the case of the Petitioner is to be accepted by considering the OA power being used by the Petitioner to be added as MSEDCL's procurement of RE, then the same would create an unprecedented confusion as to the actual procurement of power by MSEDCL and even in case when consumer refuses to pay the entire bill of the said generator, MSEDCL would become liable to pay the same being the procurer of the said OA power.
- 4.14. In case of OA through RE generators, MSEDCL has to cater CD maintained by the consumer with MSEDCL and supply the electricity for the utilized portion or the whole CD as and when required by the consumer.
- 4.15. The prayers of the Petitioner in the present case are confusing as MSEDCL uses the actual quantum utilized by the consumer for calculation of LFI, whereas the Petitioner wants the Commission to pass an Order to the effect of considering the entire CD it has with MSEDCL for calculation of LFI which is not permitted anywhere including the EA2003 itself.
- 4.16. Incentives and discounts are in the nature of promoting and encouraging consumer usages in the best interest of the grid and all stakeholders. Discounts and incentives are therefore essentially in the nature of concessions granted by utilities.
- 4.17. Accordingly, all these separate charges payable by an OA consumer are framed by a Regulatory process after analyzing all aspects. The LFI, which is fixed only for retail consumers, cannot be passed on to OA consumers without determining the impact and without initiating a Regulatory process, and without taking into account the aforesaid parameters.
- 4.18. Petitioner has not sought a relief which are tenable in law, rather they are trying to expand/widen the powers of the Commission.

5. At the E-hearing through video conferencing held on 4 February 2022:

- 5.1. Advocate of the Petitioner re-iterated its submission as made out in the Petition.
- 5.2. Advocate of MSEDCL re-iterated its submission as made out in its Reply. She further stated that;
 - (a) The proposition in the present Petition is for LF on OA consumption sourcing through RE sources.
 - (b) When sourcing power through RE Generator, there are numerous advantages to the consumers such as option of reduction of CD, OA through multiple sources and banking etc.
- 5.3. Advocate of the Petitioner in rejoinder on argument of MSEDCL stated that:
 - (a) For calculation of LF, the Numerator and Denominator should be same. In the Numerator, the formula provides OA consumption reduced from the CD with MSEDCL, then the same needs to be considered in the Denominator also. MSEDCL has made the billing

methodology for calculation of LFIs wherein the only Numerator has changes and not the denominator.

(b) If the consumers are availing some benefits such as option of reduction of CD, OA through multiple source, banking etc it does not mean that they are not entitled for additional legitimate benefits.

5.4. The Commission pointed out that claim of the Petitioner seeking LFI is not supported by the actual monetary impact with LFI and without LFI. Hence, the Commission enquired with the Petitioner about factual financial impact if the LFIs for OA consumption sourcing from RE is allowed. In reply, advocate for Petitioner sought one week to file its submission on this issue.

6. The Commission notes that at the hearing, the Petitioner sought time to file the submission regarding actual impact of the LFI as claimed by the Petitioner vis-a-vis paid by MSEDCL. However, the Petitioner has not submitted the requisite information.

Commission's Analysis and Rulings:

7. The Case is filed by SMAM on behalf of its members which are partial OA consumers of MSEDCL and sourcing power from infirm RE Sources for meeting their RPO. The case has been filed seeking LFI on actual consumption including OA consumption sourced from RE sources. The Petitioner also sought to correct billing methodology followed by MSEDCL to pass the benefits of LFI on actual consumption /entire CD instead of net consumption which excludes OA consumption. The Petitioner also sought to issue practice direction under DOA Regulations 2016 on LFI clarifying that MSEDCL is mandated to pass such benefits of LFI.
8. Before going into the details on the issues raised by the Petitioner and Respondent, it is essential to refresh the rationale as to why the LFI is offered to the consumers by MSEDCL and what are the statutory provisions related to applicability of LFI to the partial OA consumers of the Petitioner. Also, it is equally important to go through the Commission's past Orders addressing the issue of LFI.
9. As defined in the SOP and Supply Code Regulations 2021, LF is the ratio of total number of units (kWh) consumed during a given period to the total number of units (kWh) which may have been consumed had the CD or Sanctioned Load been maintained throughout the same period. Hence, LF is a useful indicator for describing the average consumption vis-à-vis maximum consumption characteristics of electricity over a period of time. The consumer with high LF consumes more electricity with the available infrastructure. It means that the consumer with high LF uses the available infrastructure of MSEDCL more efficiently and generates more revenue than the consumer having low LF. Hence, the Commission under its MYT Tariff Order of MSEDCL (Order dated 30 March 2020 in Case No. 322 of 2019) has provided LFI for incentivizing the bulk consumer in the State to avail higher loading as compared to the CD thereby maintaining a steady demand on the system with lesser peaks and troughs in the consumption. Theoretically, if the consumer maintains 100% of his contract demand on 24 x 7 uniformly, the Load Factor is 100%.

10. At the outset it is worthwhile to note that the Commission vide Order dated 30 March 2020 in Case No. 322 of 2019(MYT Order of MSEDCL) has allowed the LFI as under:

- (i) Consumers having LF above 75% and upto 85% will be entitled to an incentive in the form of a rebate of 0.75% on the Energy Charges for every percentage point increase in LF from 75% to 85%.
- (ii) Consumers having a LF above 85 % will be entitled to a rebate of 1% on the Energy Charges for every percentage point increase in LF from 85%.
- (iii) The total rebate will be subject to a ceiling of 15% of the Energy Charges applicable to the consumer.
- (iv) This incentive is applicable only to consumers in the tariff categories HT I: Industry, HT II: Commercial and HT VIII: Public Services – HT VIII (A) and HT VIII (B) only.

11. **Calculation of LFI:** As per the MYT Order dated 30 March 2020 in Case No. 322 of 2019, the LF is to be computed as follows:

$$\text{Load Factor} = \frac{\text{Consumption during the month in MU}}{\text{Maximum Consumption Possible during the month in MU}}$$

Maximum consumption possible = Contract Demand (kVA) x Unity Power Factor x (Total no. of hours during the month, less actual interruptions hours recorded on meter for billing period).

In case the consumer exceeds its Contract Demand (including during the non-peak hours, i.e., 22:00 hrs to 06:00 hrs.) in any particular month, the Load Factor Incentive will not be payable to the consumer in that month.

For partial Open Access consumer (Method adopted by MSEDCL):

Load factor is also computed as above method wherein Consumption during the month in MU considered in above formula is actual load requirement from the Distribution Licensee i.e. excluding OA consumption.

12. Further, the Commission notes that at the hearing, the Petitioner was asked if it had the illustrations/submissions regarding actual impact of the LFI as claimed by the Petitioner vis-a-vis paid by MSEDCL. However, the Petitioner could not submit the requisite information. Therefore, based on the submissions of MSEDCL and claim of the Petitioner, the Commission is analysing the issues with sample illustrations in respect of calculation of LF and LFI as per MSEDCL vis a vis as claimed by Petitioner which is summarized in the following illustration for better clarity and understanding (all numbers are based on assumptions unless specially mentioned) :

Table No.1: Sample illustrations in respect of calculation LF and LFI of MSEDCL vis-a- vis Petitioner (based on the prayers/ submission of the Petitioner and MSEDCL on assumption basis)

Sr. No.	Particulars related to demand	MSEDCL's methodology of calculation of LFI.	Methodology of calculation of LFI as per Petitioner's prayer	Remark/Difference
1	Total Contract Demand	2700 kVA	2700 kVA	No Change
2	OA Contract Demand	2000 kVA	2000 kVA	No Change
3	MSEDCL Contract Demand	2700 kVA	2700 kVA	No Change
4	Total Drawal Units (A)	1571735	1571735	No Change
5	Units Drawal from MSEDCL(B)	1482581	1482581	No Change
6	Units Drawal from OA(A-B)	89164	89164	No Change
7	Energy Charges Rs./kWh (Assuming Rs. 6.96 /Unit For HT-I Industry)	1482581X6.96= 10,318,763	1482581X6.96= 10,318,763	No Change
8	Load Factor %	Units Drawal from MSEDCL(B) = ----- MSEDCL Contract Demand X No. of Days X No. of Hrs	Total Drawal Units(A) (including OA units credit) = ----- MSEDCL Contract Demand X No. of Days X No. of Hrs	Only change in the numerator i.e., Only Units drawal from MSEDCL is considered as per MSEDCL whereas as per Petitioner such units drawal should include OA
		(1482581)/(2700X24X30)	(1571735)/(2700X24X30)	Total drawal should include OA credit
		76%	80%	4% More LFI on total consumption as per Petitioner methodology
9	LFI Rs. **	0.75 X(76-75) X Energy Charges Rs.	0.75 X(80-75) X Energy Charges Rs.	

		0.75 % X 1 X 10,318,763	0.75 % X 5 X 10,318,763	
		77390.72	386953.61	Rs. 3,09,562.89 more LFI on total consumption

** LFI is calculated as per Commission Order dated 30 March 2020 in Case No. 322 of 2019 (MYT Order of MSEDCL) which provides as follows:

“Consumers having LF above 75% and upto 85% will be entitled to an incentive in the form of a rebate of 0.75% on the Energy Charges for every percentage point increase in LF from 75% to 85%.”

13. As illustrated in the above Table the consumer’s LF with only MSEDCL’s consumption is 76% and with total consumption (MSEDCL+OA consumption) it is 80 %. Hence, consumer will get extra LFI of Rs. 309562.89 (Rs. 386953.61- Rs.77390.72) if the LFI is calculated on the total consumption (MSEDCL+OA).
14. In the above background, sample illustration and considering the prayers of the Petitioner, submissions of the Parties, arguments at the hearing and provisions of the DOA Regulations 2016 as amended from time to time, various Commission’s previous Orders etc. following issues need to be addressed in the present Case:

Issue No. I: Whether the DOA Regulations, 2016 and its Amendments in the year 2019 provide for LFI on actual Contract Demand/Consumption (Consumption of MSEDCL and OA) , for open access consumers sourcing infirm RE power ?

Issue II: Whether the Petitioner’s prayer for issuance of practice directions clarifying that MSEDCL is mandated to pass the benefits of LFI on actual Contract Demand for OA consumers sourcing infirm RE power for payment of LFI is tenable ?

Issue III: Whether the Petitioner’s grounds, as narrated in the Petition in support of its claim of LFI on actual Contract Demand are justified?

Accordingly, the Commission has dealt with the above issues in the following part of the Order.

Issue No. I: Whether the DOA Regulations, 2016 and its Amendments in the year 2019 provide for LFI on actual Contract Demand/Consumption (Consumption of MSEDCL and OA), for open access consumers sourcing infirm RE power ?

15. The Petitioner has submitted that while calculating LFI, MSEDCL reduces the number of units injected by RE sources under OA from the actual consumption (Total consumption less OA consumption) and the methodology adopted by MSEDCL is incorrect and the consumers are deprived from claiming full LFI.
16. MSEDCL’s argument is that the provisions of the LFI are made in the Commission’s MYT Order and not as per DOA Regulations 2016. However, the Petition is filed as per the

provisions of the DOA Regulations, 2016. MSEDCL further submitted that LFI is related to Petitioner's demand with MSEDCL and not on OA demand from RE source. Hence, LFI is not applicable on OA demand of the Petitioner. MSEDCL also referred to the Commission's Orders related to the applicability of LFI in support of its claim. Further, MSEDCL stated that those separate charges payable by an OA consumer are framed by a Regulatory process after analyzing all aspects and LFI, which is fixed only for retail consumers under MYT Order, cannot be passed on to OA consumers without determining the impact and without initiating a Regulatory process.

17. The Commission notes that the Petitioner's consumers are partial OA consumers and maintain some demand with MSEDCL. Further, the Petitioner's consumers fulfill the balance power requirements of meeting RPO through OA from RE Sources. Hence, relevant provisions of the MYT Regulations, Supply Code and SOP Regulations, DOA Regulations etc., are applicable in the present case. Further, it is settled principle that the provision of the EA 2003, Regulations and the Orders of Commission/ Court need to be read conjointly.
18. The Commission notes that there is no specific definition of LF in the MYT Regulations, 2019 as well as DOA Regulations, 2016 as amended in the year 2019. However, MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (**Supply Code and SoP Regulations,2021**) defines LF as follows:

ee. "Load Factor" means the ratio of the total number of units consumed during a given period to the total number of units which may have been consumed had the Contract Demand or Sanctioned Load been maintained throughout the same period and shall usually be expressed as a percentage;

19. Further, relevant provisions of DOA Regulations, 2016 in respect of Billing Demand, CD etc., are as follows:

" 2.1

.....

(6) "Billing Demand", for the purpose of these regulations in respect of a Partial Open Access Consumer, will be the higher of the following:

(1) Actual Maximum Demand recorded less Open Access Demand availed by Partial Open Access Consumer in the month during 0600 hours to 2200 hrs;

(2) 50% of retained Contract Demand with the Licensee;

.....

(17) "Contract Demand" means the demand in kilovolt ampere ('kVA'), or Megavolt ampere ('MVA') as mutually agreed between the Distribution Licensee and the Consumer

(i) in the agreement for supply of electricity; or

(ii) through other written communication: -----"

20. The above provisions of DOA Regulations, 2016 provide that billing demand of the partial OA consumer will be higher of the actual maximum demand recorded less OA demand availed or 50 % of retained CD with the licensee. Hence, the definition of the Billing Demand needs to be applied while calculating the LF and LFI and OA consumption of the Petitioner needs to be excluded from calculating its Billing Demand.

21. The provisions of the DOA First Amendment Regulations 2019 are as follows:

"4.2 Revision of Contract Demand :

The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulations of the Commission governing Standards of Performance :

Provided that a consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access.

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9.

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E. A new clause 14.11 shall be inserted as follows :

"14.11. Availability of PF Incentive/ PF Penalty :

Entitlement to PF incentives or levy of PF penalty, as the case may be, as specified under Tariff Schedule of the Tariff Order issued from time to time shall be applicable only for the net energy supplied by Distribution Licensee to the Open Access consumer and captive user after adjusting the banked energy and actual open access consumption during the month."

22. Further, DOA First Amendment Regulations 2019 provides that PF incentives or levy of PF penalty shall be applicable only on net energy supplied by Distribution Licensee to OA consumer. Hence, while providing PF Incentive, these amended Regulations do not specify the incentive for LF.

23. From the above illustrations at Para 12 , Table No.1, it is clear that the Petitioner has sought LFI based on the total drawal of units (i.e., MSEDCL+ OA consumption) on the ground that it is not reducing demand with MSEDCL. However, for partial OA consumer the billing demand itself is excluding OA demand . Hence, for computation of LF, only MSEDCL's consumption needs to be considered (i.e., excluding OA consumption sourced from RE infirm power from the total consumption). As explained above, the basic principle for LFI incentive

was to ensure a steady load on the system of MSEDCL and hence the Commission notes that there is no merit in the methodology proposed by the Petitioner for calculation of LFI based on actual total consumption including OA consumption sourcing infirm power. The Commission further notes that neither DOA Regulations, 2016 nor its First Amendment Regulations provide for the LFI on actual consumption of the Petitioner which includes OA consumption. Therefore, the Petitioner is not entitled to LFI as per the provisions of DOA Regulations 2016 and its amendment.

Issue II: Whether the Petitioner's prayer for issuance of practice directions clarifying that MSEDCL is mandated to pass the benefits of LFI on actual Contract Demand for OA consumers sourcing infirm RE power for payment of LFI is tenable ?

24. The Commission notes the submission of the Petitioner regarding the issuance of practice directions mandating MSEDCL to pass the benefits of LFI on actual CD for OA consumers sourcing infirm power. In this context, the provisions of practice directions stipulated in the DOA Regulations 2016 are as follows:

" 35. Issue of Orders and Practice Directions

Subject to the provisions of the Act, the Commission may issue Orders and Practice Directions with regard to the implementation of these Regulations.---"

25. The aforesaid Regulation makes it clear that the provision for issuance of practice direction is for implementation of the provisions of the DOA Regulations, 2016. It means that there shall be difficulty in implementation of the provisions of the Regulations and that can be resolved through practice directions. However, as discussed above, it is imperative to note that the provisions of LFI on actual CD inclusive of OA as sought by the Petitioner have neither been specified in the DOA Regulations, 2016 nor in its Amendments. Hence, the issuance of the practice directions under DOA Regulations 2016 does not arise and hold any ground. The Petitioner through this Petition under the pretext of issuance of practice direction is seeking amendment to the DOA Regulations, 2016 and change in established methodology of calculation of LF and LFI to avail benefit to its consumers. The methodology adopted by MSEDCL for computation of LFI is in conformity and consistent with the provisions of the MYT Order and thus no change is required in the OA billing methodology.
26. In view of the above discussion, prayer of the Petitioner to issue practice directions on the issue of LFI, mandating MSEDCL to pass the benefits of LFI based on actual CD for open access consumers sourcing infirm power is not tenable.

Issue III: Whether the Petitioner's grounds, as narrated in the Petition in support of its claim of LFI on actual Contract Demand are justified?

27. The Commission notes that in support of its claims of LFI on actual CD, the Petitioner has relied on the following grounds:

- (a) Though OA consumers are sourcing power through RE sources, they also maintain the entire CD with MSEDCL. Also MSEDCL is recovering fixed charges from them. Hence, LFI on OA consumption must be passed on to the consumers. However, MSEDCL has adopted a billing methodology wherein it reduces the units injected from RE source under OA from the total units consumed for computation of LF and LFI.
- (b) Due to infirm nature of RE, mostly demand of the consumers is met by Distribution Licensees when the OA is sought from RE sources. The Petitioner also claimed that sourcing power from RE helps MSEDCL in terms of grid stability and reliability.
- (c) As per RPO Regulations, MSEDCL has an obligation to fulfil its RPO targets. When MSEDCL accounts for green power under total power purchase then LFI incentive needs to be passed on to the consumers on actual Contract Demand.

28. Per contra, MSEDCL, while rebutting the claim of the Petitioner, submitted that :

- (a) As per the provisions of the DOA Regulations, 2016, for partial OA consumer billing demand is higher of actual maximum demand recorded less OA demand or 50 % of retained CD with Distribution Licensee.
- (b) The demand of partial OA consumer needs to be fulfilled by MSEDCL. Hence, only consumption from MSEDCL needs to be considered for calculation of LF and LFI as only the demand supplied by MSEDCL is entitled to avail benefit of LFI.
- (c) MSEDCL also referred to the Commission's Orders dated 30.3.2020 in Case No. 322 of 2019 , Order dated 27 February 2018 in Case No 80 of 2016 and Order dated 3.1.2013 in Case No. 8 of 2012, Case No. 18 of 2012, Case No. 20 of 2012 and Case No. 33 of 2012, supporting its stand that LFI shall be applicable on the net energy supplied by MSEDCL to OA consumer and on the actual energy consumed.

29. It is worthwhile to note that the concept of LFI has been introduced by the Commission vide Order dated 1 December 2003 in Case No. Case No. 2 of 2003 (Determination of Tariff applicable to various categories of consumers of Maharashtra State Electricity Board).The relevant rulings of the Commission in said Order are as follows:

“43. The Commission is of the opinion that the MSEB faces a threat from movement of consumers having very high consumption to captive generation, under the provisions of the Electricity Act, 2003 (EA 2003). In order to incentivize such high consumption consumers who also contribute a steady load to the MSEB system, the Commission has introduced a Load factor incentive for consumers having Load Factor above 75% based on contract demand. Consumers having load factor over 75% upto 85% will be entitled to a rebate of 0.75% on the energy charges for every percentage point increase in load factor from 75% to 85%. Consumers having a load factor over 85 % will be entitled to rebate of 1% on the energy charges for every percentage point increase in load factor from 85%. The total rebate under this head will be subject to a ceiling of 15% of the energy charges for that consumer. Further, the load factor rebate will be available only if the consumer

has no arrears with the MSEB, and payment is made within seven days from the date of the bill or within 5 days of the receipt of the bill, whichever is later.”

30. The genesis of the LFI lies in the Commission’s Order dated 1 December 2003. The objective of the LFI was to avoid the movement of the high consumption consumers of MSEDCL to captive generation and to ensure a steady load on MSEDCL (erstwhile MSEB). Also the objective of LFI was to incentivize high consumption consumers and create a win-win scenario. Hence, the Commission vide aforesaid Order has provided LFI for incentivizing the bulk consumers in the State availing higher consumption thereby maintaining a steady demand on the system. Further, LFI is subject to maintaining the LF by the consumer in specific range and payment of bill within the stipulated time. Further, the aforesaid Order did not provide the LFI on captive consumption. It implies that LFI is applicable on the demand of consumers met by MSEDCL.

31. Further, the various statutory provisions/ previous Commission’s Orders in respect of LF, LFI , CD are summarized as follows:

(i) The MSEDCL’s High Tension Tariff Booklet applicable with effect from 01.05.2007, defines the following terms(Case No. 65 of 2006 *MYT Order for MSEDCL for FY 2007-08 to FY 2009-10*):

a) Billing Demand:

“ 5. BILLING DEMAND for all HT consumers (except HT II Seasonal Category)!

A) Monthly Billing Demand will be the higher of the following:

i. Actual Maximum Demand recorded in the month during 0600 hours to 2200 hours.

ii. 75% of the highest billing demand recorded during preceding eleven months subject to limit of contract demand.

iii. 50% of the Contract Demand.

b) Contract Demand :

“ 6. CONTRACT DEMAND! means demand in Kilowatt (kW) / Kilo Volt Ampere (kVA), mutually agreed between the MSEDCL and the consumer as entered into in the agreement or agreed through other written communication.”

c) Sanctioned Load :

“ 9. SANCTIONED LOAD! means load in Kilowatt (kW) / Horse Power (HP) mutually agreed between the MSEDCL and the consumer;

d) Incentive / Dis-incentive and general charges :

“ Load Factor Incentive:

1) Consumers having load factor over 75% up to 85 % will be entitled to a rebate of 0.75 % on the energy charges for every percentage point increase in load factor from 75% to 85%. Consumers having a load factor over 85 % will be entitled to rebate of 1% on the energy charges for every percentage point increase in load factor from 85 %. The total rebate under this head will be subject to a ceiling of 15% of the energy charges for that consumer. This incentive is limited to HT-I category only.

Further, the load factor rebate will be available only if the consumer has no arrears with the MSEDCL, and payment is made within seven days from the date of the bill or within 5 days of the receipt of the bill, whichever is later.-----

e) The above provisions as contained in the MSEDCL's High Tension Tariff Booklet made it clear that the Contract Demand and Sanctioned Load are as mutually agreed between MSEDCL and consumer. Most importantly, LFI is applicable on the energy charges payable by the consumer to MSEDCL. Partial OA consumers does not pay the energy charges on their OA consumption to MSEDCL. Hence, LFI is applicable for the demand of the consumer supplied by MSEDCL and not on the infirm power (or any other power) sourced through OA.

(ii) The MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code and SoP Regulations,2021) defines the Contract Demand, LF and Sanctioned Load of the consumer as follows:

a) Contract Demand:

.....
2.2. (m). Contract Demand” means demand in kilowatt (kW) / kilovolt ampere (kVA)/ Horse Power (HP), mutually agreed between Distribution Licensee and the Consumer as entered into in an agreement in which the Distribution Licensee makes a commitment to supply in accordance with the terms and conditions contained therein; or equal to the Sanctioned Load, where the Contract Demand has not been provided in such agreement;
.....

b) Sanctioned Load :

rr. “Sanctioned Load” means load in kilowatt (kW) / kilovolt ampere (kVA) / Horse Power(HP) which the Distribution Licensee has agreed to supply from time to time subject to governing terms and conditions;

c) The aforesaid provisions of the MERC Supply Code and SoP Regulations, 2021 made it clear that the Contract Demand and the Sanctioned Demand are as mutually agreed between MSEDCL and consumer. Further, the LF of the consumer is based on the Contract Demand or Sanctioned Load. Hence, any incentive or dis-incentive in respect of LF in terms of LFI shall be based on the Contract Demand or Sanctioned Load of the consumer supplied by MSEDCL.

(iii) Further, the Commission notes that a Case No. 80 of 2016 was filed by Arvind Cotsyn (India) Ltd. and others against MSEDCL for non-compliance of directions under DOA Regulations, 2016 for wind energy adjustment in Time-of-Day slots. One of the prayers of the Petitioner in Case No. 80 of 2016 was to direct MSEDCL to pay LFI as per gross consumption(MSEDCL + OA) of them and not only on the energy supplied by MSEDCL. While addressing the said prayer of the Petitioner, the Commission vide its Order dated 27 February 2018 in Case No. 80 of 2016 had ruled that LF is in relation to the demand contracted by the consumer with the Distribution Licensee vis-à-vis his actual consumption against that demand and therefore, LFI has no nexus with the consumer's demand and consumption of power met from other sources through OA. The relevant rulings of the Commission in the said Order are as follows:

“(4)The Load Factor Incentive is intended to encourage a consumer to consistently maintain a high level of monthly consumption of power in relation to the Contract Demand which the Distribution Licensee is obligated to make available to the consumer. Thus, and as the definition of Load Factor and the stipulations in the MYT Order also imply, the Load Factor is in relation to the demand contracted by the consumer with the Distribution Licensee vis-à-vis his actual consumption against that demand. Therefore, the Load Factor Incentive has no nexus with the consumer's demand and consumption of power met from other sources through Open Access. Hence, there is no question of such consumption being included in the computation for the purpose of Load Factor Incentive from MSEDCL.”

(iv) The Commission notes that Petitioners in the aforesaid Case were the Wind Generators and the Commission clarified in the aforementioned Order that LFI has no connection with the consumer's demand and consumption of power met from other sources through OA.

(v) Further, on the issue of applicability of LFI, some cases such as Case Nos. 8 of 2012, 18 of 2012, 20 of 2012 and 33 of 2012 (IWPA/ Tata Motors/ Enercon /Ushdev International VS MSEDCL) were filed before the Commission wherein the Commission vide its Order dated 3 January 2013 in Case No. 8, 18, 12, and 33 of 2012 has ruled as under:

“ 3.138 The Commission is of the view of that levy of penalty or providing incentives for various parameters as specified by the Commission in Tariff Schedule of the Tariff Order of MSEDCL from time to time (e.g., Power Factor incentive, Power Factor Penalty, Prompt Payment discount, etc.) shall be charged on the net energy supplied by MSEDCL to the open access consumer and captive user after adjusting the banked energy and actual generation during the month. A sample illustration for net energy to be considered for incentives and penalty is shown the Table below:

Particulars		Unit (MU)
Total consumption recorded at Consumer end	A	100
Wind generation during the month after adjusting applicable losses (wheeling, transmission or both depending upon open access)	B	30

Available Banked Energy C 20

Net Energy to be considered for Incentives and Penalties $D=[A-(B+C)]$ 50

**Note: Above illustration is for representation purpose ” Empasis added*

The Commission in the aforesaid Order has clarified that the levy of penalty or incentives shall be charged on the net energy supplied by MSEDCL to the OA consumer and not on the gross energy consumed as sought by the Petitioner.

- (vi) Further as explained above at Para 10 , the Commission vide Order dated 30 March 2020 in Case No. 322 of 2019(MYT Order of MSEDCL for Control Period from FY 2020-21 to FY 2024-25) has ruled that the LFI is applicable on energy charges payable by the consumers to MSEDCL i.e demand of consumer fed by MSEDCL. Further, the Commission in the MYT Order of MSEDCL dated 30.3.2020 in Case No. 322 of 2019 has conducted the detailed deliberations on the LF and LFI issue based on the submission of MSEDCL and objections by the various stakeholders. However, the Petitioner chose not to participate on LFI issue raised in this Petition during MYT Order proceeding. Prayer of the Petitioner seeking changes in computation of LFI cannot be entertained at this juncture. Any change in the billing method of MSEDCL as sought by the Petitioner will impact entire tariff design/structure of MSEDCL.
32. The Petitioner further raised the issue that as the Petitioner’s Members are obligated for the fulfillment of the RPO and hence the LFI shall be allowed on the actual consumption of OA power sourced from RE sources. In this context, it is imperative to note that the fulfillment of RPO by MSEDCL and the consumer of the Petitioner is a different aspect at all. MSEDCL and the OA consumers are liable to meet the RPO independently as per the RPO Regulations. Hence, the Petitioner’s claim that MSEDCL is accounting for the Green Power in its total power purchase, and hence the Petitioner is entitled for LFI on OA demand does not hold ground. In the present case, role of MSEDCL is only as a carrier of electricity in terms of granting OA. Hence, the Commission finds merit in the argument of MSEDCL that it is only responsible to grant incentive/benefit under LF to the extent the Petitioner is availing power from MSEDCL and not for the quantum used by it through OA from infirm sources. Further, LFI is an incentive on the energy consumed by the Petitioner and supplied by MSEDCL. Hence, it is also not logical to apply LFI on the demand which is not part of MSEDCL’s billing demand and not supplied by MSEDCL.
33. It is a fact that the RE sources are infirm in nature and do not maintain the steady Generation. Further, the Petitioner has an option to reduce the demand with MSEDCL as per the DOA First Amendment Regulations 2019 depending upon its OA consumption from RE source. There is no mandate to maintain particular demand with MSEDCL. It is the Petitioner, for its benefits, is not reducing the demand with MSEDCL since his OA source is infirm RE power. It is true that when RE source is not available then the demand is met by MSEDCL and MSEDCL is paying LFIs on such power supplied by MSEDCL. It is not the case that MSEDCL is denying LFI on the demand met by it. In view of the above, the Petitioner’s

ground for getting LFI on gross consumption including OA consumption and MSEDCL demand as it is maintaining the CD with Distribution Licensee is without any merit. Further, the Petitioner on the one hand is saying that the power from RE source is infirm and on other hand is taking a contrary stance that such power is helping MSEDCL in terms of grid stability.

34. In view of the foregoing discussions, submission of the parties, provisions of the Regulations and Commission's Order as referred above, the Commission is not inclined to grant the prayer of the Petitioner to direct MSEDCL to correct the billing methodology so as to pass the benefits of LFI on actual CD for OA consumers sourcing infirm power. The prayer of the Petitioner is not in accordance with the provisions of the Regulations/Commission's Order and hence is devoid of merit.

35. **Hence the following Order:**

ORDER

Case No. 152 of 2021 is dismissed.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

