

**RECORD OF PROCEEDINGS**

DATES OF HEARING : September 26, 2007 at 12.45 hrs  
September 28, 2007 at 11.00 hrs

CASE No. : 47 of 2007

PETITIONERS : Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”)

RESPONDENTS : None

MATTER : Petition filed by MSEDCL seeking review and quashing / setting aside / modification of the Order dated August 24, 2007 passed in Case No.s 26 of 2007 and 65 of 2006 read with Order dated March 10, 2004 passed in Case No. 2 of 2003, Order dated October 20, 2006 passed in Case No. 54 of 2005 and Order dated May 18, 2007 passed in Case No. 65 of 2006, to the extent the said Orders relate to the refund of Regulatory Liability Charges (“**RLC**”)

CORAM : Chairman and Members

MSEDCL filed a Petition on September 24, 2007 seeking (i) review and quashing / setting aside / modification of the Order dated August 24, 2007 passed in Case No.s 26 of 2007 and 65 of 2006 read with Order dated March 10, 2004 passed in Case No. 2 of 2003, Order dated October 20, 2006 passed in Case No. 54 of 2005 and Order dated May 18, 2007 passed in Case No. 65 of 2006, to the extent the said Orders relate to the refund of RLC; (ii) and in the alternative of (i), the devising of a mechanism for refunding the amounts collected towards RLC till October 1, 2006 in ensuing tariff dispensation keeping MSEDCL revenue neutral, and further, the linking of the refund of the said amounts to the said recovery mechanism through tariff; and the interim relief of stay on the implementation, operation and execution of the directions of the Commission for refund of Rs. 500 crore as part of the RLC as per the Order dated August 24, 2007 passed in Case Nos. 26 of 2007 and 65 of 2006 read with the aforesaid orders, till disposal of the petition. The Commission scheduled the hearing in the matter for September 26, 2007 in the presence of four consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“**EA 2003**”). Notices were issued accordingly.

2. At the hearing held in the matter on September 26, 2007, Shri. Vikas Singh, Additional Solicitor General of India, appeared on behalf of MSEDCL. Dr. Ashok Pendse, Mumbai Grahak Panchayat, Dr. S.L. Patil, Thane Belapur Industries Association, and Shri. R.B. Goenka, Vidarbha Industries Association were also present as authorized consumer representatives. Shri. Vikas Singh submitted that the concept of RLC has evolved from the T&D loss charges (introduced in FY 2001-02) and introduced vide the

Order dated March 10, 2004 in Case No. 2 of 2003 as a 'notice' to consumers to manage their demand and co-operate in reduction in the high percentage of transmission and distribution loss ("T&D loss") as prevailing in the area of supply of MSEDCL. Consumers were put to notice that the rate of RLC will be reduced on reduction in T&D loss. The whole purpose of introduction of RLC lied in educating consumers on the losses that are caused due to power thefts / line-tapping, and a portion of the bill amount was separately mentioned as 'RLC', reducible on reduction of T&D loss. The Commission enquired of Counsel as to whether the contention of MSEDCL is that the responsibility in causing reduction in T&D loss lies on consumers and not on MSEDCL. Counsel submitted that such is not the contention of MSEDCL. The contention of MSEDCL is that the component of RLC need not have been specified as a separate head in energy bills, considering that the effect of reduction in T&D loss shall automatically reduce the tariff. Appropriate reduction in bills through reduction in T&D loss has been provided by MSEDCL in terms of applicable tariff orders, and there was essentially no requirement for separately denoting a portion of the bill amount as RLC. In this regard Counsel referred to the contentions of MSEDCL under paragraph 7(d) in the Petition at Page No. 20.

3. Counsel Shri. Vikas Singh referred to the following extracts in the Order dated March 10, 2004 passed in Case No. 2 of 2003 (in the matter of Determination of Tariff [2003-04] applicable to various categories of consumers of the Maharashtra State Electricity Board):

*"27. ....It should be noted that T&D loss charge was not an additional charge and was a part of the regular tariff, which the consumers were always paying though the separation of tariff due to excess T&D losses was not indicated explicitly earlier."*

*"35. In future, when the T&D losses are reduced, then the RLC will be returned to these consumer categories through reduction in tariffs. The Commission clarifies that the contribution through RLC will not be recorded and maintained separately for each individual consumer and the category as a whole is expected to get the contribution back."*

***"29.1 Treatment of Excess T&D losses***

*.....In future, when the T&D losses are reduced, then the RLC will be returned to these consumer categories through reduction in tariffs. The Commission clarifies that the contribution through RLC will not be recorded and maintained separately for each individual consumer and the category as a whole is expected to get the contribution back."*

Counsel submitted that the cited portions of the Order dated March 10, 2004 provide that on reduction in T&D losses, RLC shall be returned to respective consumer categories through reduction in tariff. Therefore, as is clear from the said Order, reduction in T&D loss is a pre-condition for the refund of RLC, and the mechanism for refund of RLC was only through reduction in tariff. MSEDCL has not been aggrieved by the said Order

which is a conditional order. Counsel submitted that the said Order did not provide that RLC amounts shall be refunded directly to consumers.

4. Counsel Shri. Vikas Singh submitted that the case of MSEDCL is that subsequent to the issuance of the said Order dated March 10, 2004, MSEDCL has been able to substantially reduce T&D loss to 26.87%, though the merits of the said case/contention are pending disposal before the Appellate Tribunal for Electricity (“ATE”). It was submitted that the approach of the Commission on actual metering in place of sample metering has not been well founded. Counsel submitted that an agricultural consumer will apply for an actual meter only when convinced that his actual consumption (either due to actual energy requirement or energy need) is much less than the average energy that is available for supply to the agricultural sector. The assessment on the basis of sample metering should not have been deviated from as the said sample meters have recorded the actual reduction of T&D loss to 26.87%.

5. On the issue of maintainability of the present petition under Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (“CBR”), Counsel submitted that under the Clarificatory Order dated August 24, 2007 passed in Case Nos. 26 of 2007 and 65 of 2006 (In the matter of determination of Annual Revenue Requirement of MSEDCL for the Control Period from FY 2007-08 to FY 2009-10 and Tariff for FY 2007-08), it has been provided as hereunder:

“9. Specification of Methodology for refund of RLC

**.....MSEDCL will refund the RLC in the following manner, so that the consumers get the refund regularly:**

*The refund is to be made to the category as a whole, and not to the respective consumer. Further, the refund has to be made in the same proportion as the contribution of RLC by the respective consumer category. The Commission has specified below, the amount of RLC refund in paise/kWh for the respective consumer category, to ensure ample clarity on the matter. Further, since the refund in paise/kWh has been computed on the basis of the annual sales projected for FY 2007-08, the actual amount of category-wise refund will have to be trued up at the end of the year, depending on the actual sales to the respective consumer category. The computations are shown below”*

(Rs. Crore)

Sl.	Category	Total	% Contribution	Share of refund (Annual)	Share of refund (monthly)	Monthly sales in MU (Tariff Order)	Monthly RLC Refund per unit billed (paise/kWh) [Sep 07 to March 08]
1	LT Commercial	269.34	8%	41.73	5.96	208.58	28.58
2	Industrial L T	413.67	13%	64.09	9.16	387.83	23.61
3	Industrial H T	2400.22	74%	371.84	53.12	1907.67	27.85
4	Railway Traction HT	144.24	4%	22.35	3.19	102.08	31.27
	Total	3227.47	100%	500.00	71.43	2606.17	27.41

Notes:

1. The refund has to be made in the balance seven month period from September 1, 2007 to March 31, 2008

*Since MSEDCL has not refunded the RLC for the bills issued till date during the period May 2007 to August 2007, the Commission has determined the monthly RLC refund in such a manner that the entire refund of Rs. 500 crores occurs over the balance seven-months of the year, as computed above. This will also enable MSEDCL to overcome any liquidity constraints, which could occur if MSEDCL were directed to combine the refund of past three months with that due in August 2007, and give the balance refund thereafter.”*

Counsel strongly submitted that this direction for refund of RLC to consumers amounts to an ‘error apparent’ as the bill component of RLC being solely notional in nature has undergone actual reduction due to reduction in T&D loss. The said direction is contrary to the Order dated March 10, 2004, so far as refund of RLC is concerned. It was submitted that the said direction is further contrary to the spirit of the concept of RLC as it is logical that reduction in T&D loss would automatically cause reduction in tariff, and reduction in tariff would automatically result into reduction of the RLC component in energy bills. Thus, consumers have been benefited by MSEDCL reducing the prevalent T&D loss through reduction in tariff, and shall continue to be benefited thereon. No separate refund of RLC to consumers is required. It was further submitted that the tariff effect vis-à-vis reduction in T&D loss may be checked by first determining tariff on a base percentage of T&D loss and accounting the decremental revision in tariff together vis-à-vis the reduction in T&D loss. This decremental revision in tariff is the RLC amount that has been effectively passed on to consumers. This has actually been given effect to and the issue of MSEDCL refunding any RLC amount directly to consumers, after a decremental revision in tariff, does not arise at all. In this regard it was submitted that if the consumption norm of operational hours for the agricultural sector is reduced to normality (as was prevalent during the year 2004) the actual reduction in T&D loss shall be ascertainable.

6. Counsel contended that though the factum of actual reduction of T&D loss is subject to proceedings before the ATE, the Commission needs to review the cited portion of the Order dated August 24, 2007 in view of the contradiction created from the earlier Order dated March 10, 2004, which does not contemplate any refund of RLC by MSEDCL directly to consumers. Counsel argued that the source of the direction for refunding RLC to consumers, as provided under the said Order dated August 24, 2007, is the Order dated May 18, 2007 and thereafter the Order dated March 10, 2004. The said Order dated March 10, 2004 does not require the direct refund of RLC. Thus, either the Commission should review the Order dated August 24, 2007 so far as refund of RLC is concerned, or review the earlier stand of non-refund of RLC as contemplated under the Order dated March 10, 2004.

7. Counsel Shri. Vikas Singh, submitted that though MSEDCL has initiated appellate proceedings before the ATE seeking the quashing/setting aside or modification of the Order dated May 18, 2007, it is the Order dated August 24, 2007 (especially the portion as cited above) that has aggrieved MSEDCL. The Order dated August 24, 2007 passed in Case Nos. 26 of 2007 and 65 of 2006, is interrelated with the Order dated March 10, 2004 passed in Case No. 2 of 2003, Order dated October 20, 2006 passed in Case No. 54 of 2005 and Order dated May 18, 2007 passed in Case No. 65 of 2006. Therefore, review of the Order dated August 24, 2007 has been sought with reference to the aforesaid Orders. It was clarified that the present proceedings have not been initiated to seek review of the Order dated May 18, 2007.

8. It was submitted by Counsel that MSEDCL has no immediate financial strength/resource to meet the direction for refund of RLC, and thus an immediate stay on the operation and implementation of the Order dated May 18, 2007 should be granted in terms of Section 94 (2) of the EA, 2003 and Regulation 81 of the CBR. It was further submitted that if the direction to refund RLC to consumers is actually a penalty on MSEDCL, in view of any inactivity or negligence in not reducing the T&D loss, the same should be justified by a finding to that effect by the Commission. It was submitted by Counsel that there is no finding of the Commission that MSEDCL has not given effect to certain measures which resulted in any increase/ prevented any decrease in the percentage of T&D loss. Having no such finding to that effect and keeping in view that the Order dated March 10, 2004 does not contemplate any penalty on MSEDCL or requires MSEDCL to refund RLC to consumers directly, the said direction of the Commission in the Order dated August 24, 2007 ought to be reviewed.

9. Counsel Shri. Vikas Singh submitted that the exercise of reducing tariff with effect to reduction of T&D loss should have been undertaken by the Commission. It was argued by Counsel that on a comparison of the hours of agricultural consumption as on 2004 and as on 2007, it is the case of MSEDCL that the T&D loss has been sufficiently reduced to 26.87%. While the Commission disapproves the said figures of MSEDCL owing to statistical and accountability reasons, no penalty should be levied on MSEDCL owing to the disparity on statistical and accounting procedures, and when beneficial tariff impact has already been provided to consumers. It was vehemently contended that if the introduction of the concept of 'RLC' as a notional charge was the 'brainchild' of the Commission, then the mechanism of refund of the same should also be the 'brainchild' of

the Commission. Counsel contended that the yearly fixation of tariff has sufficiently given credit to the improved efficiency of MSEDCL in reducing T&D loss. It was also submitted that if the Commission has considered 16.5 hours as the base daily consumption hours, in the agricultural sector, during 2004, and thereupon considered 31% as base T&D loss, it would not be correct to assess the reduction in T&D loss percentage during 2006-07 considering 13 hours as base daily consumption hours. The Commission should apply its mind on how reduction in tariff should be provided. If the reduction in T&D loss from 2004 and 2007 is assessed / compared on different bases, the same may not be correct. The present stand of MSEDCL is that T&D loss has been efficiently reduced to 26.87%. In this regard, Counsel Shri. Vikas Singh further submitted that pilferage has been made a cognizable offence only recently, on implementation of the amendment to the EA 2003 in June 2007. MSEDCL has arrested about 500 persons on allegation of pilferage, and the efficiency level of MSEDCL in reducing T&D loss shall further increase. It was contended that such legislative progress, which aids the efficiency of a distribution licensee in reducing T&D loss, is not within the domain of MSEDCL, though the efficiency level in the reduction of T&D loss has been plausible over the last two to three years.

10. Counsel Shri. Vikas Singh, further submitted that post the trifurcation of the erstwhile Maharashtra State Electricity Board, and the issuance of separate tariff Orders for MSEDCL and the Maharashtra State Transmission Company Limited, the Commission has erred in not separating transmission losses from distribution losses, and imposing the burden of reducing both the said losses on MSEDCL.

11. Shri. R.B. Goenka, Vidarbha Industries Association, submitted that on the operation of the Order dated March 10, 2004, MSEDCL should have separately accounted for the recovery of amounts towards RLC, so that refund in terms of the Order dated May 18, 2007 can be provided. Shri. Goenka opposed admission of the present matter contending that the Order dated May 18, 2007 had provided that the refund of the RLC of Rs 500 crore shall be made within one year. Since MSEDCL has not sought review of the said observation of the Commission in the Order dated May 18, 2007, they should not be allowed to seek review of the mechanism in which refund is to be made, on the premise that the direction for refund violates the concept of RLC as introduced in the Order dated March 10, 2004.

12. The Commission observed that as per the submissions of Counsel for MSEDCL, MSEDCL has initiated proceedings before the ATE seeking an appeal from the Order dated May 18, 2007, which had directed refund of Rs 500 crore of RLC in FY 2007-08. MSEDCL, under the present proceedings have sought review of the direction to refund RLC within the balance seven month period in FY 2007-08 (from September 1, 2007 to March 31, 2008). Shri. Goenka submitted that the present proceedings are a tariff matter as it seeks review of an order as passed giving clarifications of a tariff order. The issue in question is not whether RLC is to be refunded within a period of seven months. The actual issue in question is whether RLC is to be refunded in one financial year. These issues were the subject matter of Case No. 65 of 2006 in which an Order has been passed on May 18, 2007. So far as the submissions of MSEDCL relate to their financial constraints in refunding RLC, it was submitted that various commercial options are open

for MSEDCL to generate appropriate funds. The method of generating loans for refund of RLC may be approved post facto. It was submitted that the Commission should note that industrial consumers have already planned their production with the expectation that RLC would be refunded in FY 2007-08, in terms of the Orders dated May 18, 2007 and August 24, 2007. Shri. Goenka further submitted that RLC was recovered from a particular consumer category and reduction in tariff is of general implication. MSEDCL should be required to refund RLC to those consumers from whom RLC was specially recovered.

13. Dr. Ashok Pendse, Mumbai Grahak Panchayat, submitted that issues concerning RLC are totally distinct and separate from issues concerning T&D Loss. Beneficial impact in tariff on account of reduction in T&D loss is not related to refund of RLC. Referring to paragraph 31 and 32 in the Order dated March 10, 2004, it was submitted that the RLC component in energy bills reflects the amount of the loan that was provided to MSEDCL by consumers. Refund of RLC has absolutely no relation with reduction in applicable tariff. It was vehemently submitted that under no circumstances can MSEDCL escape from the duty of refunding RLC which has been provided by consumers as a loan, in full faith and trust. It was submitted that had the said RLC loan been obtained from any bank or financial institution, the stand of financial constraints would have been no valid ground of defense and recovery proceedings would have been initiated by the borrower. Under the present proceedings, MSEDCL has attempted to twist facts and escape from the said duty by contending that reduction in tariff on account of reduction in T&D loss, amounts to refund of RLC. Dr. Pendse further submitted that MSEDCL has always been aware that they would be required to refund the RLC loan. Dr. Pendse opposed the admission of present petition by submitting that the Order dated August 24, 2007 neither suffers from any error apparent, nor any new fact or evidence has been produced by MSEDCL.

14. Dr. S.L. Patil, Thane Belapur Industries Association, refuted the contention of the Counsel for MSEDCL that RLC was only a notional charge. Amounts towards RLC has actually been provided by consumers and actually been collected by MSEDCL. Dr. Patil endorsed the submissions of Dr. Ashok Pendse on the issue that RLC was a loan provided by the consumers to MSEDCL, and is absolutely distinct from the treatment of T&D loss. It was further submitted by Dr. Patil that MSEDCL has actually not reduced the T&D loss percentage to 26.87%.

15. Shri. Vikas Singh, Counsel for MSEDCL, submitted that the charge of RLC was only a break-up of the annual requirement of MSEDCL and a certain percentage of the energy charge was reflected as RLC. Counsel submitted that if RLC is considered as a loan, an appropriate billing mechanism should have been determined to reflect a part of the reduction in tariff as return on loan. However, the intention of the Commission at the time of introducing RLC was only to cause sufficient awareness to cause consumer co-operation in reduction in T&D loss. It was contended that RLC was never intended to be introduced as 'oxygen' or a loan for MSEDCL. Shri. Vikas Singh submitted that the prevalent T&D loss percentage in the area of supply of MSEDCL is less in comparison to the percentage prevailing in the areas of supply of REL, TPC or BEST, considering only metered consumers. The difficulty of MSEDCL is that metering has not been done on a

large sector of consumers in the area of supply of MSEDCL. Counsel vehemently argued that if a particular nomenclature is to be formed and a particular notional charge is fixed with an intention to cause consumer awareness, a contrary stand should not be preferred at a later point of time inasmuch as to consider the said notional charge as a loan.

16. On the issue of assessment of reduction in T&D loss, the Commission enquired of Counsel as to whether MSEDCL prefers a stand that a particular percentage, which is considered as base T&D loss percentage for one particular FY, should be continued for assessing the reduction in tariff for successive FYs, and thereby regularizing T&D loss at the said base percentage. Shri. Vikas Singh submitted that the contention of MSEDCL is that the T&D loss percentage has been actually successively reduced and beneficial impact thereof has been passed on to consumers through actual reduction in tariff. The direction of refund of RLC is a direction propounded on an erroneous footing. At best, the Commission should have directed MSEDCL to adopt an accounting procedure that should correctly reflect the return of RLC through reduction in tariff in energy bills. RLC, as a separate charge has been charged only notionally and refunded notionally, through reduction in tariff.

17. Dr. Ashok Pendse submitted that MSEDCL has not served a copy of their review petition to Mumbai Grahak Panchyat, as directed under Commission's notice. Shri. R.B. Goenka and Dr. S.L. Patil submitted that MSEDCL has also not served Thane Belapur Industries Association or Vidharbha Industries Association copies of their petition. Shri. Vikas Singh requested an adjournment in the matter and undertook to serve copies to all consumer representatives immediately.

On the request of MSEDCL, the Commission adjourned the matter for further hearing on September 28, 2007.

18. At the hearing held in the matter on September 28, 2007, Shri. Vikas Singh, Additional Solicitor General of India, appeared on behalf of MSEDCL. Dr. Ashok Pendse, Mumbai Grahak Panchayat and Dr. S.L. Patil, Thane Belapur Industries Association were also present. Shri. Vikas Singh requested for a typographical amendment in the prayer clause of the Petition of MSEDCL. It was submitted that the words "the Hon'ble Tribunal" should be substituted with the words "the Commission" in the prayer clause (c) and also the words "direct the Commission" in prayer clause (b) be replaced by "the Commission".

19. Counsel Shri. Vikas Singh referred to the Order dated January 10, 2002 in Case No. 1 of 2001 wherein T&D loss charges were introduced as a notional charge only to cause necessary consumer education and awareness, for their co-operation to reduce the prevalent T&D loss. Counsel submitted that the rationale in the said Order dated January 10, 2002 was that benefits in reduction of T&D loss shall be considered through reduction in tariff. Counsel submitted that the intention of the Commission, as per the Order dated March 10, 2004 was never to levy penalty on MSEDCL, should they fail to reduce T&D loss upto a certain percentage. Counsel submitted that much to the contrary, under the Order dated May 18, 2007, the Commission has observed that MSEDCL has commendably reduced T&D losses. Counsel further submitted that the direction to refund



RLC, as per the Order dated August 24, 2007, is violative of Article 300 of the Constitution of India.

20. As against the direction to refund Rs. 500 crore to consumers, Counsel submitted that MSEDCL has in effect returned a total amount of approximately Rs. 650 crore to consumers through beneficial reduction in tariff. Counsel submitted that the Commission is vested with punitive powers only under Section 142 of the EA 2003. Unless the Commission arrives at a finding that MSEDCL has violated any provisions of law, in terms of Section 142 of the EA 2003, MSEDCL cannot be punished and directed to refund any amount of money to consumers. Counsel submitted that the RLC was not recovered from consumers as a loan. It was submitted that attribution of the term 'loan' on the recovery of RLC, does not actually render RLC as a loan. The nomenclature cannot dictate the actual nature of anything and RLC, though much popular among consumers as a 'loan', is actually not a loan *per se*.

21. Dr. Ashok Pendse, Mumbai Grahak Panchayat, opposed the admission of the present petition. Dr. Pendse submitted that under Section 61(b) of the EA 2003, the Commission has powers to specify the terms and conditions of the tariff of MSEDCL on "commercial principles". It was submitted that the introduction of RLC, as a loan by consumers to MSEDCL, was formulated by the Commission on commercial principles. Established commercial principles require MSEDCL to repay (ideally with interest) what has been borrowed by them from consumers. It was submitted that refund of RLC loan shall safeguard the interests of consumers in terms of Section 61(d) of the EA 2003.

22. Dr. Ashok Pendse further submitted that the National Tariff Policy envisages that the State Government may restructure the liability of a distribution licensee and the same shall not be the responsibility of consumers. The creation of a 'regulatory liability' specifically requires that the loan borrower shall refund the loan with interest to the lender. It was strongly submitted that the contentions of MSEDCL that beneficial reduction in tariff amounts to refund of the RLC loan is misleading and misconceived. Dr. Pendse further submitted that the contention of MSEDCL that they have reduced T&D loss percentage to 26.87% is equally misleading. The existing T&D loss percentage is to the tune of 39%. Dr. Pendse also submitted that MSEDCL was unnecessarily mixing up the concept of T&D loss charge (introduced in FY 2001-02 Order) and the concept of RLC (introduced in FY 2003-04 Order).

23. On the issue of the financial constraints of MSEDCL for the refund of RLC, Dr. Pendse submitted that MSEDCL has been continually functioning in financial insecurity and their financial strength has dropped from 'bad to worse'. The submissions of MSEDCL in this regard should be rejected, as otherwise consumers shall never be repaid of RLC. The Commission observed that the books of accounts of MSEDCL need to be perused to ascertain how MSEDCL has treated the recovery of RLC amounts. Dr. Pendse submitted that the recovery of RLC, in effect, has been an equity contribution of the capex of MSEDCL, by the consumers. If the contention of MSEDCL is that refund of RLC cannot be made due to paucity of funds, MSEDCL should re-schedule its funds and refund RLC amounts to consumers, as per the direction of the Commission. Dr. Pendse

added that the Tariff Order for FY 2003-04 did not stipulate that RLC would be refunded when losses were reduced to 26.87%, contrary to MSEDCL's claims in this regard.

24. Dr. Pendse further challenged the admissibility of the present Review Petition in view of the proceedings initiated by MSEDCL before the ATE, in appeal to the direction for refund of Rs. 500 crore in terms of the Order dated August 24, 2007 and the Order dated May 18, 2007.

25. Dr. S.L. Patil, Thane Belapur Industries Association, submitted that MSEDCL should not be allowed to link reduction in tariff with refund of RLC. Dr. Patil refuted the contentions of MSEDCL so far as reduction in T&D loss percentage is concerned. Dr. Patil contended that MSEDCL has grossly failed to reduce T&D loss as per their targets. MSEDCL has failed to control the T&D losses that occur at MIDC feeders. It was submitted that the RLC charge was not a notional charge and the attribution of the term 'loan' on RLC, was not by way of mistaken nomenclature. Dr. Patil contended that recovery of T&D loss is not the licensee's birth right and largely comprised theft of electricity, which should be reduced. He added that if losses had reduced, as contended by MSEDCL, then the sales would also have increased resulting in additional revenue, and there was no question of imputing RLC refund through reduction in T&D losses. It was further submitted that the present proceedings do not merit admission due to the pendency of appellate proceedings before the ATE.

26. Shri. Vikas Singh, Counsel for MSEDCL, refuted the submissions as advanced by Dr. Ashok Pendse and Dr. S.L. Patil. Shri. Vikas Singh submitted that recovery of RLC was not envisaged as the creation of a loan. It was strongly submitted that the submissions as advanced by consumer representatives on the alleged inefficiency of MSEDCL in causing reduction in T&D loss is not supported with evidence. Shri. Vikas Singh submitted that the Commission has not in any order arrived at a finding that MSEDCL has failed to reduce T&D loss. Counsel submitted that post the operation of the amendment to the EA 2003 in 2007, which has made pilferage a cognizable offence, there has been significant efforts at MSEDCL's end to reduce the T&D loss. MSEDCL has filed 50,000 First Information Reports alleging pilferage.

27. Counsel Shri. Vikas Singh submitted that the RLC amount has never been treated as a 'liability' in the Balance Sheets of MSEDCL. The said amount has always accounted under 'Expenses & Revenue'.

28. Counsel further submitted that the objectives of the Commission should be to improve the performance levels of the licensees and not to 'stifle' the licensees. In view thereof, the direction to refund Rs. 500 crore to consumers should be reviewed by the Commission. It was submitted that out of the total 122 capex schemes submitted by MSEDCL, the Commission has only approved 65 such schemes. In the said circumstances, Counsel submitted that the said direction to refund RLC to consumers shall cause adverse financial jeopardy to MSEDCL.

29. The Commission observed that the efforts of MSEDCL to cause AMR metering have been minimal. Considering that individual metering has various operational constraints, MSEDCL should be undertaking AMR metering at feeder level and distribution transformer level, which shall correctly record supply of energy and enable better estimation of distribution loss. Counsel Shri. Vikas Singh undertook to look into the matter of AMR metering personally with the management of MSEDCL, and gave a personal assurance that feeder metering would be done and sought a request to file additional written submissions on this account.

Thereafter, the hearing concluded with the Commission reserving the matter for final Order.

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**List of Persons present at the hearing on September 26, 2007**

1. Shri. Ram Dotonde, MSEDCL.
2. Shri. R.G. Malame, MSEDCL.
3. Shri. R.G. Sonawane, MSEDCL.
4. Shri. M.M. Digraskar, MSEDCL.
5. Shri. D.N. Sangelkar, MSEDCL.
6. Shri. A. J. Deshpande, MSEDCL.
7. Dr. Ashok Pendse, Mumbai Grahak Panchyat.
8. Dr. S. L. Patil, Thane Belapur Industries Association.
9. Shri. R.B. Goenka, Vidarbha Industries Association.
10. Shri. Vikas Singh, Counsel for MSEDCL.
11. Smt. Deepa Chawan, Counsel for MSEDCL.
12. Shri. Ravi Prakash, Advocate for MSEDCL.

**List of Persons present at the hearing on September 28, 2007**

1. Shri. R. G. Malame, MSEDCL.
2. Shri. R.S. Dotonde, MSEDCL.
3. Shri. A.J. Deshpande, MSEDCL.
4. Shri. R.G. Sonawane, MSEDCL.
5. Shri. Amit Multav, ICRA Mangement.
6. Shri. Ravi Sharma, MSEDCL.
7. Shri. A. Khare, MSEDCL.
8. Shri. D.N. Sangelkar, MSEDCL.
9. Shri. Vikas Singh, Counsel for MSEDCL.
10. Smt. Deepa Chawan, Counsel for MSEDCL.
11. Shri. Jayesh Chawhan, M/s. Feedback Ventures.
12. Dr. Ashok Pendse, Mumbai Grahak Panchyat.
- 13..Dr. S.L. Patil, Thane Belapur Industries Association