

**Maharashtra State Electricity Distribution Co. Ltd.**

Commercial Section, Prakashgad, Plot No.G-9, Bandra (East), Mumbai – 400 051

☎ (P) 26474753, (O) 26474211 / 26472131, Fax- 26472366, E-Mail: [cecomm@mahadiscom.in](mailto:cecomm@mahadiscom.in)

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COMMERCIAL CIRCULAR NO.: 219

**Sub:** Guidelines for converting Single point supply consumers to Distribution Franchisee through MOU Route.

- Ref.:** 1) MERC (Distribution Open Access) Regulations, 2005.  
2) MERC Order in case no.75 of 2007 dtd.01.06.2010 and Order dtd. 24.05.10 in Case no.62 of 2009.  
3) APTEL's Order in Appeal No.155 of 2010 & 156 of 2010 dtd.11.07.2011.  
4) COMMERCIAL CIRCULAR NO.143 dated 16/09/2011  
5) T.O.Lr.no. No: CE/Comm/19022 dtd.06/07/13.  
6) MERC Order dtd.16/01/13 in case no. 135 of 2013 and 152 of 2013.

It is observed that, owners/ developers of large buildings/complexes being HT industrial/ commercial/other consumers were supplying electricity to innumerable occupiers of such buildings/complexes in unauthorized way and arbitrarily billing such occupants after installation of separate meters for such occupants. The Commission by order dated 3.10.2006 in case No. 25 of 2005 and case No. 53 of 2005 for the first time directed that HT industrial and commercial category consumers undertaking sub-distribution to mixed loads would have to either operate through a franchisee route or take individual connections under relevant category. Again, in case No. 26 of 2009 the Commission reiterated its earlier order by the order dated 24.5.2010.

The Sub-distribution by any consumer without a license/ franchisee under Section 12 of the Act is not in consonance with the Act, 2003. It is the mandate of the Act that no person shall 'distribute' electricity without a licence, unless he is exempted under section 13. It is the illegal practice of commercial buildings/towers, multiplexes, malls, IT parks, old commercial houses and others, to source power at a single point of supply and then resale/ sub-distribute to end-users residing in such complexes in different capacities. The owner of the premises who is HT consumer collects consumption charges. Such developer/ owner has number of users under him with whom the distribution licensee has no agreement. The owner resale power to different persons under him through sub-metering without any authority and thereby engages himself in the business of resale of electricity to such end-users, who are not the consumers of MSEDCL. **Where sub-distribution is undertaken by any category consumer without a licence/ franchisee as per E.A., such unauthorized sale or trading of electricity is illegal and therefore such consumer is liable for action u/s 126 of EA -2003.**

The Commission addressed the issue of Distribution Franchisee with specific guidelines in its order dated 24<sup>th</sup> May, 2010 in case no. 62 of 2009. The Commission further directs that the dispensation to become a Franchisee of the Distribution Licensee in the State will be available to categories like a) Residential colonies b) Commercial complexes / buildings c) Multiplexes and malls d) Townships e) IT Parks f) SEZ / Industrial Complexes g) Other single point consumers etc.

Considering the technical and legal complications involved in releasing individual connections to the consumers in various complexes and multi storey buildings, the Commission directed that all distribution licensees in the State should enter into Franchise agreement with single point consumers through MOU Route. Further the Commission also directed that the above directive does not dilute the rights of individual owners or occupiers of the premises. This means even if the franchisee model is adopted for single point supply to a premise, then also an independent connection may be given to a owner or occupier of a unit in the said premises of DF. The APTEL also directed to enforce the Commission's order within a period of six months from the date of its order dtd.01/06/10 in case no. 75 of 2007.

“The Hon'ble Supreme Court of India has decided in case of “The Executive Engineer vs M/S Sri Seetaram Ricemill” on dtd.20 October 2011, **Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act, such consumer would be “in blame and under liability” within the ambit and scope of Section 126 of the 2003 Act.** The expression 'unauthorized use of electricity means' as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation.”

In view of above, it is mandatory to the single point consumers distributing energy to different individuals either to operate through Distribution Franchisee (MOU Route) or to take separate connections in relevant category for different individuals. Those consumers, who are distributing energy to different individuals and not applied for Franchisee route and also not applied for individual connections in relevant category for different individuals, such consumers are liable for action u/s 126 of Electricity Act-2003. The field officers are hereby directed to take action u/s 126 against such consumers immediately.

The eligibility criteria for Distribution Franchisee through MOU route is as below.:

- 1) **Minimum Contact Demand:-** The applicant should be a HT Consumer having minimum Sanctioned Contract Demand of 2 MVA for application for Distribution Franchisee through MOU route with minimum 50% utilization of Contract Demand. Those consumers having sanctioned contract demand less than 2 MVA shall take individual connections under relevant categories.
- 2) **Infrastructure :-** Those Developers, who have fully developed the Electrical Infrastructure at their own cost and also who undertake to develop additional infrastructure in future are only eligible for Distribution Franchisee through MOU route. The Distribution Franchisee should develop and maintain an efficient electricity distribution system at its own cost to supply electricity. The complete cost of the infrastructure to be borne by the said Franchisee. All the provisions of Electricity Act, 2003, Electricity Rules- 1956 and 2005, Regulations framed by MERC as amended from time to time, various orders issued by APTEL and MERC and guidelines issued by MSEDCL are to be observed and followed by Distribution Franchisee while developing and maintaining the infrastructure. The Distribution Franchisee should have all the required expertise and infrastructure including Distribution Network concerning Distribution Franchisee Area and the required competent personal to undertake the obligations as per DF agreement and EA -2003.



- 3) **DF Network:-** The Distribution Franchisee should have its own feasible and capable Distribution Franchisee Network within the Distribution Franchisee Area, which shall be used for distributing and supplying electricity to the individual consumers within the Distribution Franchisee Area by the Distribution Franchisee on behalf of MSEDCL. The Distribution Franchisee at its cost shall effect all the changes to suit the statutory requirements or requirement of MSEDCL from time to time. The Distribution Franchisee Network which meets with the requisite statutory obligations and standards under the applicable legislation, rules and regulations framed from time to time and shall strive to comply with all future requirements introduced from time to time at its costs. The Distribution Franchisee shall install the Distribution Transformers of approved rating of MSEDCL in their Franchisee Area.
- 4) **Voltage Level:-** The MSEDCL shall provide power supply to DF only at HV/EHV level as a single point supply.
- 5) **Open Access:-** The consumers within the Distribution Franchisee Area shall be the consumers of MSEDCL. The MSEDCL at all times shall have overriding powers with regard to decisions / steps to be taken in regards to power supply. The Dist. Franchisee shall provide the power supply to consumers within DF area as per MERC tariff rates only. The individual eligible consumer in the Distribution Franchisee area may apply to MSEDCL in prescribed format for Open Access permission, if he is eligible as per MERC (Open Access) Regulations -2005. Further, the existing HT Consumer, who is required to operate as Distribution Franchisee through MOU route or liable to take individual connection for each user by segregating the composite load of existing consumer is not eligible to apply for open access permission, but the individual user may apply to MSEDCL in prescribed format for open access permission, if he is eligible as per MERC (Open Access) Regulations -2005. The individual eligible consumer must have separate electrical infrastructure and metering equipments as per MSEDCL norms for Open Access permission.
- 6) **Standards:-** The Distribution Franchisee should have its own distribution system to meet the standards that may be prescribed by MERC and MSEDCL. The distribution system should be as per relevant provisions of Electricity Act and Electricity Rules.
- 7) **General Responsibilities of Distribution Franchisee:-**  
The Distribution Franchisee shall be responsible for carrying out following activities in the Distribution Franchisee Area:
- a) Undertaking all the liabilities and meet all obligations of MSEDCL as stipulated in Electricity Act, 2003 and corresponding regulations.
  - b) Discharging all duties and responsibilities as applicable, on behalf of MSEDCL as per the terms and conditions of the License given by Maharashtra Electricity Regulatory Commission (MERC);
  - c) Undertaking any other activity as may be notified from time to time by MERC to Distribution Licensee;
  - d) Complying with all the directives issued by MERC from time to time and directives issued by the MSEDCL for compliance of the same.
  - e) Undertaking to supply the power supplied to it at the Input Point, only to the consumers of MSEDCL who are within the Distribution Franchisee Area.


**8) General Terms and Conditions:-**

- a) Any losses beyond the allowable losses will be recovered from the Distribution Franchisee at the tariff rate, which will be decided by MSEDCL.
- b) The meters and metering equipments shall be as per MSEDCL norms for DF.
- c) The connections in DF area should be released with prior approval of MSEDCL, the terms and conditions imposed by MSEDCL at the time of release of connections should be observed by DF and consumers in DF area.
- d) There should not be any kind of arrears or outstanding dues pending in the premises of prospective Distribution Franchisee/ Applicant.

**9) Other terms and conditions:-**

The other terms and conditions of supply will be as per Distribution Franchisee agreement as prescribed by MSEDCL and additional guidelines issued by MSEDCL on above subject. The Draft of Distribution Franchisee (MOU) route is displayed on MSEDCL website ie. [www.mahadiscom.in](http://www.mahadiscom.in).

As states hereinabove, all field officers are directed to take further needful action as per above guidelines and guidelines issued time to time. The Circle Offices shall scrutinize the applications for DF through MOU route and applications those fulfill eligibility criteria as stipulated above shall be forwarded to Commercial Section for further action.

  
**Chief Engineer (Commercial)**

Copy s.w.r.s.to :

- 1) The Director (Operations) MSEDCL, Mumbai.
- 2) The Director (Finance) MSEDCL, Mumbai.
- 3) The Executive Director (Commercial), MSEDCL, Mumbai.
- 4) The Regional Executive Director-I/II/III, MSEDCL, Kalyan / Pune / Nagpur.

Copy f.w.c.s.to:

- 1) The OSD to MD, MSEDCL, Mumbai
- 2) The Chief General Manager (IT), MSEDCL, Mumbai.
- 3) The Chief Legal Adviser, MSEDCL, Mumbai.
- 4) All Chief Engineers, O&M Zones, MSEDCL.

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