

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 103 of 2008

In the matter of
Petition filed by M/s. Maharashtra State Electricity Distribution Company Ltd.
(MSEDCL) for levy of Fuel Adjustment Cost (FAC) charge proportionate to the
base tariff.

Shri. V. P. Raja, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: April 2, 2009.

The Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) submitted a Petition under affidavit, before the Maharashtra Electricity Regulatory Commission (hereinafter referred as the Commission or MERC) on November 24, 2008, seeking approval for levy of Fuel Adjustment Cost (FAC) charge proportionate to the base tariff.

2. The prayers made by MSEDCL in the Petition are as under:

- a. *“In view of the submissions made in the foregoing paragraphs, the Petitioner, Maharashtra State Electricity Distribution Company Ltd; hereby makes a humble request to this Hon’ble Commission to consider and approve the following prayer:*
- b. *This Hon’ble Commission may please approve to modify the existing provisions of Regulation No. 82 of the Maharashtra Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2005 and may please permit the Petitioner to pass on adjustments due to changes in the cost of power procurement to the consumers, excluding the consumers belonging to BPL Domestic, LT & HT Agricultural and LT & HT Public Water Works category consumers and may please further permit the Petitioner to levy FAC on remaining categories of consumers in proportion to the base tariff as may be applicable to respective consumer category;*
- c. *In case this Commission is not inclined to exempt the categories of consumers as proposed, this Hon’ble Commission may please permit the Petitioner to pass on adjustments due to changes in the cost of power*



procurement to the consumers in proportion to the base tariff as may be applicable to respective consumer category

d. This Hon'ble Commission may condone any inadvertent errors / omissions and also permit the Petitioner to alter / modify / amend this Petition, if required and also to make additional submissions during the proceedings in support of the prayer."

3. MSEDCL submitted that there was an acute power shortage at the national as well as State level. As a consequence of limited availability of power throughout the country, the cost of power has increased significantly. MSEDCL submitted that in its efforts to restrict the load shedding in the State of Maharashtra, MSEDCL attempted to procure available power from the market, grid, etc., at a very high cost, without considering its financial limitations.

4. MSEDCL further submitted that procurement of such costly power has resulted in increase in the power purchase cost, thereby exceeding the power purchase cost as approved by the Commission in its Order dated June 20, 2008 in Case No. 72 of 2007 in the matter of Annual Performance Review (APR) for FY 2007-08 and tariff determination for FY 2008-09.

5. MSEDCL submitted that in accordance with Regulation 82 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, it is entitled to pass on adjustments due to change in the cost of power procured to the consumers through "Fuel Adjustment Cost" formula.

6. MSEDCL further submitted that the said Regulation 82 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 inter-alia stipulates that FAC charge shall be computed and charged on the basis of actual variation in the fuel costs corresponding to power procured during any month subsequent to such costs being incurred, and such FAC charge shall be applicable at an uniform rate on the entire sale of the Distribution Licensee without any exemption to any consumer.

7. MSEDCL submitted that the Commission, in its various Tariff Orders, has prescribed differential tariff for different consumer categories on the basis of certain rationale as elaborated in such Tariff Orders; however, the Commission, in its Multi-Year Tariff Order dated May 18, 2007 in Case No. 72 of 2007 for MSEDCL for the Control Period from FY 2007-08 to FY 2009-10, retained LT agricultural tariff at the then existing level, on account of the fact that the severe load shedding of 12 to 15 hours for this category was expected to prevail for some more time.

8. MSEDCL, in its Petition, submitted that the quality of power supply to different consumer categories varies on account of excessive power shortage. MSEDCL submitted that as per the present load shedding protocol, some categories, in particular rural and agricultural consumers experience more load shedding as compared to other consumer categories. MSEDCL added that though it procures power at a very high cost, the benefit of such procurement to rural and agricultural consumers is thus, not so significant.



9. MSEDCL submitted that it expected the impact of costly power purchase to be very high (in the range of 60 paise per kWh to 80 paise per kWh in terms of FAC charge) in the coming months; however, MSEDCL would be required to recover the same from all the consumers equally in terms of paise per kWh.

10. MSEDCL further submitted that if the concept of prescribing differential tariff for different consumer categories is also extended for levying of FAC charge, the consequential burden on different consumer categories would be proportionate to the base tariff of respective consumer category. MSEDCL submitted that if all the consumers irrespective of category, are charged FAC charge at an uniform rate in paise per kWh in accordance with the provisions of the MERC (Terms and Conditions of Tariff) Regulations, 2005, then a Below Poverty Line (BPL) domestic consumer may be required to pay 200% FAC charge as compared to its base (variable component) tariff and LT agricultural consumer may be levied FAC charge equivalent to about 75% of base tariff.

11. MSEDCL submitted that if it would have been possible to accurately estimate the entire variation in the power procurement cost over a given year, the Commission would have considered such variation in power procurement cost for determination of ARR as well as tariff applicable to different consumer categories during the said year. MSEDCL submitted that under such circumstances, the Commission would have adopted the same principle and would have determined differential tariff based on enhanced cost of supply, without any change in the concept of cross-subsidy.

12. MSEDCL submitted that the prevailing provisions of levying FAC charge at an uniform rate in absolute terms of paise per kWh may sometimes entirely defeat the principle so far adopted by the Commission while prescribing differential tariff for different consumer categories. Under the prevailing mechanism, there would be a possibility that certain consumer categories mainly agriculture, which otherwise is a subsidized category, may end up sharing the burden of costly power, without deriving any benefit from the same.

13. MSEDCL further submitted that the Commission has also considered the paying capacity of consumers (domestic, agricultural, etc.) as well as the purpose of power supply (Public Water Works, Street Light, etc.) and accordingly the tariff for these consumer categories has generally been approved below the average cost of supply. The uniform levy of FAC charge results in reduction in the cross-subsidy inbuilt in the tariff to these categories, whereas the other cross-subsidizing categories are benefited.

14. MSEDCL submitted that FAC is a component of “energy charge” and the energy charge being different for different consumer categories, FAC charge also needs to be levied on the different consumer categories in proportion to the energy charge as applicable to the respective category.

15. MSEDCL added that it experiences hardship in recovering even the regular (base tariff) energy bill from certain consumer categories, viz., domestic, agricultural, public water works, street light, etc.. MSEDCL submitted that levy of FAC charge at an uniform



rate to these consumer categories does not really serve the intended purpose, and may further worsen MSEDCL's cash flow position.

16. MSEDCL also submitted that the concept of FAC is to provide set off to the Distribution Licensee for increased expenses on account of fuel/power purchase, which are beyond the control of the Distribution Licensee and are within the efficiency parameters as laid down by the Commission. FAC mechanism therefore envisages revenue neutrality to the Distribution Licensee, which is extremely important for the Distribution Licensee, since any short recovery will have an adverse cascading effect on its cash flow.

17. MSEDCL submitted that in case the present practice of levying FAC charge at uniform rate is continued, the consumers of the above specified categories might find it extremely difficult to pay FAC charge, which is expected to increase substantially in the coming months and therefore, may not serve the purpose envisaged in FAC mechanism.

18. MSEDCL submitted that few States such as Jharkhand, Andhra Pradesh, Chhattisgarh, etc., have already considered such situation of impact of levying FAC charge at a very high rate and have decided to either exempt certain subsidized consumer categories from levy of FAC charge or to apportion the additional expenditure on power procurement on limited consumer categories on proportionate basis.

19. MSEDCL submitted that the Jharkhand Electricity Regulatory Commission (JERC) vide its Order dated July 15, 2006, in the matter of approval of formula for recovery of Fuel Price and Power Purchase Cost Adjustment (FPPCA) charges, exempted the agricultural and rural domestic consumers from levy of FAC charge and the total variation in cost was distributed amongst the remaining consumer categories in proportion to the revenue contribution of the consumer category as a percentage of the total revenue considered in the Tariff Order, excluding revenue from rural domestic and agricultural consumer categories.

20. MSEDCL added that the Chhattisgarh State Electricity Regulatory Commission (CSERC) vide its Order dated October 22, 2007, in the matter of Determination of ARR and retail supply tariff for FY 2007-08 for Chhattisgarh State Electricity Board, approved Variable Cost Adjustment (VCA) charge to all categories except agricultural and BPL domestic consumers. Similarly, the Andhra Pradesh Electricity Regulatory Commission (APEREC) in its Tariff Order dated March 20, 2007 on retail supply business for FY 2007-08 exempted the agricultural category from levy of Fuel Cost Adjustment (FCA).

21. Accordingly, MSEDCL requested the Commission to exempt BPL domestic, LT and HT agricultural and LT and HT Public Water Works consumers from levy of FAC charge and to levy FAC charge in proportion to the base tariff as may be applicable to the remaining consumer categories. MSEDCL also submitted that if the Commission is not inclined to completely exempt certain consumer categories from levy of FAC charge, the Commission may allow MSEDCL to levy FAC charge in proportion to the base tariff of respective categories.



22. MSEDCL added that under Regulation 84.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, the Commission is empowered to vary, alter, modify or amend any provisions stipulated in the said Regulations.

23. MSEDCL submitted that in accordance with Regulation 85.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, the Commission is empowered to issue general or specific order to include such provision in the said Regulations as may be necessary to remove the difficulty arising in giving effect to any of the provisions of the said Regulations.

24. MSEDCL submitted that the said Regulations leave the financial problems of Distribution Licensees unattended by restricting the recovery of legitimate cost from subsidized categories, and accordingly requested the Commission to reconsider the applicability of FAC charge to these consumers.

25. The Commission, vide its notice dated December 12, 2008 scheduled the admissibility hearing in the matter on January 14, 2009, and directed MSEDCL to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

26. One Intervener, namely Shri. N Ponrathnam, filed an application dated January 12, 2009 on affidavit in accordance with the provisions under the MERC (Conduct of Business) Regulations, 2004.

27. During the hearing held in the matter on January 14, 2009, Shri. Vijay L. Sonavane representing MSEDCL reiterated the submissions made in the Petition as discussed above. He added that the proportionate FAC charge may be introduced with retrospective effect, i.e., from June 2008.

28. During the hearing, Shri. Ponrantham, Intervener, submitted that MSEDCL's proposal to levy proportionate FAC to all consumers in the ratio of the base tariff of such consumer categories is against the provisions of the Electricity Act, 2003 which stipulates that Commission should not differentiate between the consumers. Shri. Ponrantham submitted that as per the provisions of the Electricity Act, 2003, electricity tariff has to be charged based on cost to serve. Shri. Ponrantham submitted that subsidy, if any, has to be given directly by the Government of Maharashtra. He submitted that there has been no such notification from the State Government stating that such subsidy amount has been provided. He submitted that the cross-subsidy is supposed to be eliminated as per the provisions of the Electricity Act, 2003 and Tariff Policy. He submitted that as per the provisions of the Tariff Policy, a road map for reduction of cross-subsidy should be notified such that latest by the year 2010-11, tariffs are within $\pm 20\%$ of the average cost of supply. He submitted that the Government of Maharashtra should also be made a party while hearing the matter as it is the State Government, which is supposed to provide subsidy to the agriculture or BPL or domestic consumer categories. He submitted that even in the next exercise of tariff determination, the basic price for such consumers should be same and any subsidy should be provided only based on the funds provided by the State Government.



29. Shri. Ponrathnam further requested the Commission that MSEDCL should elaborate this particular issue in its Petition for approval of the APR for FY 2008-09 and tariff determination for FY 2009-10 so that the public would have the opportunity to provide comments and suggestions on such proposal.

30. Having heard MSEDCL and other stakeholders, and after considering the material placed on record, the Commission is of the view as under:

31. Regulation 82 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 clearly stipulate that FAC charge will be applicable for all consumers, without any exception. Further, the Regulations provide for uniform charging of FAC for all consumers, as is evident from the formula specified for computation of FAC on per kWh basis, as reproduced below:

“82.2 The FAC charge shall be applicable on the entire sale of the Distribution Licensee without any exemption to any consumer.

...

82.6 The monthly FAC charge shall not exceed 10% of the variable component of tariff, or such other ceiling as may be stipulated by the Commission from time to time:

82.9 The total FAC recoverable, as per the formula specified above, shall be recovered from the actual sales in “Rupees per kilowatt-hour” terms:

....

82.10 Calculation of FAC per kWh shall be as per the following formula:

*FAC Rs./kWh = (FAC / (Metered sales + Unmetered consumption estimates + Excess distribution losses)) * 10”*

32. The FAC of all distribution licensees, which is approved by the Commission on a post-facto basis periodically, is being charged in accordance with the above provisions of the Regulations, without any exception.

33. As regards MSEDCL’s prayer for amending the MERC (Terms and Conditions of Tariff) Regulations, 2005, the amendment, if done, can be undertaken only after following the due regulatory process of prior publication and inviting public comments.

34. As regards MSEDCL’s first prayer to exempt certain consumer categories from levy of FAC charge and to levy FAC charge in proportion to the respective base tariff of the remaining consumer categories, it should be noted that the Commission, in its Tariff Orders, has determined the tariff based on the tariff philosophy adopted in the respective Tariff Orders and the provisions of law. The tariffs and tariff categorisation have been determined so that the cross-subsidy is reduced without subjecting any consumer category to a tariff shock to the extent possible, and also to consolidate the movement towards uniform tariff categorisation throughout the State of Maharashtra.

35. The FAC charge is being levied on the consumer categories on account of the change in the cost of power generation and power procured due to change in fuel cost, which comprises almost 70 to 80% of the Distribution Licensee’s Aggregate Revenue Requirement, and any expense pertaining to the regulated business of the Distribution



Licensee has to be recovered from all consumers in some manner. Since no consumer is given electricity free of cost, if any category is exempted from levy of FAC charges, it would amount to that category not having to share the incremental cost of fuel for own generation and power purchase. Moreover, it should be appreciated that prior to the approval of the FAC Formula by the Commission, in case of the erstwhile MSEB, the agricultural consumers were exempted from paying FAC charges, and the Commission has ruled that all consumers should pay the FAC charges without exception, after a lot of deliberation on this issue. Therefore, it will not be appropriate to exempt certain categories while levying FAC charge.

36. As regards MSEDCL's second prayer to levy FAC charges in proportion to the base tariff of the respective consumer category and the contentions put forth by MSEDCL to justify this prayer, the Commission's views are as under. Contrary to the interpretation of MSEDCL that uniform FAC charge amounts to cross-subsidy being given by the normally subsidised consumers to the subsidising consumers, the levy of uniform FAC charge to all consumer categories actually results in reducing the cross-subsidy to some extent, since the difference between the effective tariff of the subsidised and subsidising consumer categories is reduced vis-à-vis the average cost of supply. The reduction of cross-subsidy is in accordance with the provisions of the Electricity Act, 2003 and the Tariff Policy notified by the Government of India, which requires the cross-subsidy to be reduced progressively to $\pm 20\%$ of the average cost of supply by the year 2010-11. Also, since the tariff of the subsidised consumer categories, viz., agricultural and BPL category, is significantly lower than the average cost of supply, there is no question of these categories cross-subsidising the subsidising categories due to the levy of uniform FAC charge. The issue of prevalent cross-subsidy has to be resolved by reducing the cross-subsidy in the base tariffs, rather than by increasing the cross-subsidy further by levying FAC charges in proportion to the base tariff applicable to the respective consumer category, as proposed by MSEDCL.

37. The argument that the effective tariff increase would have been proportional to the respective base tariff had the rise in fuel prices been envisaged while determining the ARR and tariff, is a theoretical one, since the ARR and tariff are determined based on the best estimates of expenses and revenue based on the data submitted by the distribution licensee and data available with the Commission at that point in time. Any projection, by its very nature, is bound to differ from the actual amount, which is known only after the event has occurred, and hence, there is a provision for truing up of the expenses and revenue based on audited expenses, subject to prudence check. In case of variation in fuel expenses, the same is allowed to be passed through to the consumers with a gap of two months, whether upward or downward, in accordance with the provisions of the Electricity Act, 2003 and Tariff Policy, which specify that uncontrollable costs should be passed through at the earliest. Moreover, the tariff of agricultural and BPL category consumers has not been revised in the last two Tariff Orders, even though the overall ARR has increased in these years, in accordance with the tariff philosophy adopted by the Commission in these Orders.

38. As regards the contention that proportionate FAC is in vogue in other States in the country, based on data submitted by MSEDCL, it is clear that the same has been adopted only in Jharkhand, since, in Chhattisgarh and Andhra Pradesh, the agricultural and BPL



category are only exempted from paying FAC charges and there is no proportionate FAC charge. Thus, there is no clear regulatory precedence in the matter, even though the same would not be binding on MERC.

39. As regards MSEDCL's contention that the FAC charges should be levied in proportion to the respective base tariff since the already low collection efficiency would reduce further, the same is not substantiated by the data submitted by MSEDCL in this regard. MSEDCL's overall collection efficiency in FY 2007-08 has been around 96%, which is not too low. Moreover, if MSEDCL's rationale is to be accepted, then even the base tariff for the subsidized categories should not be increased, which will result in further increase in cross-subsidy, which is against the principles specified in the EA 2003. Further, any inefficiency of MSEDCL in collecting its bills from its consumers cannot be a reason either for changing the present dispensation or charging the regularly paying consumer categories.

40. Accordingly, both the prayers of MSEDCL in this Petition are rejected.

With the above observations, MSEDCL's Petition in Case No. 103 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC