

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 12 of 2012

In the matter of
Increasing the existing ceiling of 10% (of the variable component of tariff) on levy & recovery of Fuel Adjustment Charge (FAC) and Recovery of unrecovered FAC accumulated during the period April 2011 to October 2011 beyond the 10% ceiling amounting to Rs. 753.71 crs.

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane , Member

Maharashtra State Electricity Distribution Company Limited Petitioner

Present during the hearing:

For the Petitioner: Shri. S. V Bapat, MSEDCL and Shri A S Chavan,
MSEDCL.

Consumer Representative/s: Shri Pratap Hogade, Chairman Maharashtra Veej Grahak
Sanghatana.

ORDER

Dated: 30th April, 2012

Maharashtra State Electricity Distribution Company Ltd (MSEDCL) has submitted a petition, under affidavit, on February 7, 2012 under Regulations 82, 84 and 85 of MERC (Terms and Conditions of Tariff) Regulations, 2005 and MERC (Multi Year Tariff) Regulations, 2011, for increasing the existing ceiling of 10% (of the variable

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component of tariff) on levy & recovery of Fuel Adjustment Charges (FAC) and Recovery of unrecovered FAC accumulated during the period April 2011 to October 2011 beyond the 10% ceiling amounting to Rs.753.71 Crores. Following are the prayers of the Petitioner -

- “ a) *Hon’ble Commission may be pleased to consider to review & revisit the provisions of Regulation 82 of the Maharashtra Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2005 and may be further pleased to either withdraw the 10% (of variable component of tariff) ceiling on levy & recovery of FAC or may consider to enhance the said ceiling limit up to 25%;*
- b) *As an interim arrangement and till such time the provisions of above mentioned Regulation 82 are amended as prayed for, Hon’ble Commission may be pleased to permit MSEDCL to levy & recover FAC as per actual without any ceiling thereof, subject to post facto approval of the Commission;*
- c) *As an interim relief, the Hon’ble Commission may also be pleased to approve recovery of the accumulated amount of FAC amounting to Rs. 753.71 cr in favour of equal installments from all the consumers at uniform rate, as an additional charge/ Extra FAC;*
- d) *The Hon’ble Commission may kindly consider this Petition expeditiously due to the severe liquidity problems being faced by MSEDCL so as to ensure that MSEDCL mitigates the load shedding problem in that state to the extent possible.”*

2. The Petitioner has submitted that Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as “MSEDCL”) has been incorporated under the Companies Act, 1956 pursuant to the decision of Government of Maharashtra to reorganize the erstwhile Maharashtra State Electricity Board (herein after referred to as “MSEB”). The said reorganization of the MSEB has been done by Government of Maharashtra pursuant to “Part XIII – Reorganization of Board” read with section 131 of the Electricity Act 2003 (“EA 2003”). MSEDCL has been incorporated on 31st May 2005 with the Registrar of Companies, Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15th September 2005. MSEDCL is a Distribution Licensee under the provisions of the Electricity Act, 2003 having license to supply electricity in the State of Maharashtra except some parts of the city of Mumbai.

3. In its submission, the Petitioner submitted as follows :

3.1 The Petitioner has submitted that in accordance with the provisions of Regulation 82 of Maharashtra Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2005 as amended by Maharashtra Electricity Regulatory Commission (Terms & Conditions of Tariff) (Amendment) Regulations, 2011, the Petitioner has been levying and recovering FAC from the consumers belonging to different categories, subject to post facto approval of the Commission.

3.2 Explaining the modality, the Petitioner submitted that as per the practice in vogue, the Petitioner first determines the FAC to be charged to the consumers and submits the proposal to the Commission for post-facto approval.

3.3 The Petitioner submitted that in FY 2011 – 12, the Petitioner has accordingly levied FAC to consumers and has submitted the proposal for post-facto approval of the Commission. The Petitioner submitted that it has received post-facto approval from the Commission for the FAC levied up to the month of September 2011 and submission for post facto approval of FAC for October 2011 is being submitted to the Commission. The Petitioner further stated that in the process, due to 10% (of the variable component of tariff) ceiling on the FAC to be levied, unrecovered FAC has accumulated to the tune of Rs. 753.71 Crores. The Petitioner further submitted that a detailed statement about the FAC to be levied and FAC levied up to the month of October 2011 in year FY 2011 – 12 has been annexed to its said Petition and marked as Exhibit B.

3.4 The Petitioner, in its submission further explained that the basic tariff to be charged by the Petitioner to its consumers during FY 2011 – 12 could not be determined by the Commission till the date of its Petition, since the issue of deferment of implementation of MERC (MYT) Regulations, 2011 was under consideration and the amendment to the said Regulations permitting the Petitioner to proceed with determination of Aggregate Revenue Requirement for FY 2011 – 12 as per previously existing MERC (Terms & Conditions of Tariff) Regulations, 2005 has been notified by the Commission only in the month of October 2011.

3.5 The Petitioner further explained that in such circumstances, the Petitioner has continued with the tariff as has been determined by the Commission by its Order dated 12th September 2010, followed by the Order dated 2nd December 2010, which is based on the power purchase cost as has been approved by the Commission for the year FY 2010 – 11.

3.6 The Petitioner further submitted that the situation as above, has resulted in wide difference between the power purchase cost approved by the Commission for FY 2010 – 11 and actual power purchase cost incurred by the Petitioner in the year FY 2011 – 12, which is not reflecting in the basic tariff being levied / charged to the consumers. The Petitioner is thus recovering such differential amount as a resultant of increase in the cost of power purchase through the process of FAC.

3.7 The Petitioner submitted that it has planned to reduce the load shedding duration and as a step towards this, has minimised the load shedding since January 2011. However, due to certain incidences beyond the control of the Petitioner, planned availability of power has reduced since October 2011 compelling the Petitioner to either resort to increased hours of load shedding or to procure power at higher cost to meet the demand of power. The Petitioner submitted that during such power crisis situation, the grid frequency was also low, which compelled the Petitioner to overdraw power at higher rate around Rs. 8 per unit, which could not be anticipated by the Petitioner while submitting ARR, and as such, the same could not be considered by the Commission while determining the tariff as per Order dated 12th September 2010.

3.8 The Petitioner further submitted that various other reasons, like coal shortage, gas shortage etc, have resulted in imposing additional burden on the Petitioner.

3.9 The Petitioner further submitted that, the tariff for power procured from the Central Sector Power Stations (mainly NTPC) has been revised by the Central Electricity Regulatory Commission in the months of July 2011 and August 2011, whereas the tariff as determined by the Commission by its Order dated 12th September 2010 is based on the tariff of this source as was prevailing at that time i.e. FY 2008-09. The Petitioner explained

that the differential amount has been claimed by the Petitioner through FAC mechanism, resulting in increase in FAC.

3.10 The Petitioner submitted that the Commission has so far not determined the tariff for FY 2011 – 12 for MSPGCL power stations also. However MSPGCL is claiming FAC for difference between the actual normative rate for FY 2011–12 and the rate as has been approved by the Commission for MSPGCL for FY 2010 –11 by its Order dated 12th September 2010 (Case No. 111 of 2009). MSEDCL further submitted that due to increase in coal prices during 2010-11 and 2011-12 and due to wet coal problem, FAC amount claimed by MSPGCL for the year FY 2011–12 has increased considerably, which has further increased due to recent amendment in methodology of FAC calculation (coal & secondary fuel separate formula).

3.11 The Petitioner submitted that, due to certain unforeseen circumstances explained above, the availability of power to the Petitioner from long term purchase viz, MSPGCL, NTPC etc, has considerably been reduced and as such, the Petitioner had to resort to load shedding as a temporary measure. As a result of this, to cater to the demand of the consumers and to mitigate load shedding up to some extent, the Petitioner has to procure short term power through transparent competitive bidding from other sources including traders at prevailing market rates, which is not covered in the power purchase cost as approved by the Commission by its Order dated 12th September 2010.

3.12 The Petitioner further submitted that, due to devaluation of the Rupee in the international financial market, the rate of gas and imported coal has increased, resulting in increased FAC.

3.13 The Petitioner further submitted that a comparative statement of source-wise power purchase cost (variable component) as approved by the Commission by its Order dated 12th September 2010 and actual power purchase cost (variable component) incurred by the Petitioner during the year FY 2011 – 12 (upto October 2011) was also annexed with its Petition and marked as Exhibit C).

3.14 While explaining the impact of 10% cap (limitation) on FAC as specified in the MERC Tariff Regulations, the Petitioner submitted that the FAC is meant to defray the expenses relating to any fuel /power purchase increases beyond the reasonable control of the Petitioner and within the efficiency parameters laid down by the Commission. However, over a period, since the fuel prices are continuously increasing, as a consequence, the un-recoverable portion is also continuously increasing. In such circumstances, the Petitioner submitted that the 10% ceiling (of the variable component of tariff) on levy and recovery of FAC does not really serve the purpose for which it is intended, as the consumers are subsequently required to share such additional burden of unrecovered FAC either as regular FAC or in energy charge in subsequent truing up. The Petitioner submitted that, in the process such ceiling only adds to the liquidity problems and makes the working of the Petitioner financially unviable.

3.15 The Petitioner further submitted that though recovery of interest on working capital towards un-recovered FAC amount is permissible under the said Regulation, such recovery of interest only increases the un-recovered amount and the same becomes a notional relief for the Petitioner, since fuel prices seldom show a declining trend due to inflation.

3.16 The Petitioner further submitted that the Petitioner is presently passing through a precarious financial situation, and has hardly been able to generate revenue sufficient even to meet the cost of power purchase and employees. The Petitioner further submitted that it has made the working capital arrangement with the consortium bankers using overdraft of Rs 1200 Crores and in addition to that by availing the Short Term loans to the tune of Rs 2000 Crores from various bankers. The Petitioner further submitted that though it is drawing short term loans from the financial institutions to meet the working capital demand, this is leading to a high interest burden. The Petitioner further submitted that it has now reached the limits of short term loans which can be granted by the financial institutions and it is most likely that the financial institutions may not entertain its request for further loans, which will mean the Petitioner is facing a critical liquidity problem, resulting in adverse impact of developmental activities, capital expenditure, services to the consumers, and reduction / stoppage of Power Purchase.

3.17 The Petitioner further submitted that in case such additional financial expenses are considered as part of the “truing up” during the APR process, the recovery of unrecovered FAC would be further prolonged as the APR submission and its approval normally takes about 5-6 months. The Petitioner further submitted that such situation leads to further precarious cash situation and finds it extremely difficult to finance the necessary power purchase requirements.

3.18 The Petitioner further submitted that in compliance with Section 3 of EA 2003, the Central Government has notified the National Tariff Policy on 6th January 2006, which is in continuation of the National Electricity Policy (NEP) notified on 12th February 2005. The Petitioner further submitted that the National Tariff Policy under the heading of Multi Year Tariff provides that “Uncontrollable cost should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable cost would include (but not limited to) fuel costs, cost on account of inflation, taxes and cess, variation in power purchase unit costs including those on account of hydro thermal mix in case of adverse natural events.”

3.19 The Petitioner further submitted that accumulation of unrecovered FAC as a result of 10% ceiling on the amount of FAC, is thus in contravention of the above referred provision of National Tariff Policy and therefore needs to be reconsidered.

4. Hearing in the matter was scheduled by the Commission on March 21, 2012 and notice was accordingly sent to the Petitioner and the Consumer Representatives authorized by the Commission under Section 94(3) of the Electricity Act 2003. During the hearing, held on March 21, 2012, the Petitioner made a short presentation, reiterating the prayers as above, along with the back-up information in support of its Petition as above.

5. Shri Pratap Hogade, Consumer Representative, submitted that the Petitioner MSEDCL should be allowed to recover Rs 753.71 Crore being the FAC amount, by the methodology of carry forward “for recovery at future date” . Shri. Hogade submitted that as per the provisions of EA 2003, the tariff has to be determined once in a year, and therefore, admitting the petition of the Petitioner to allow increase of tariff

frequently, was neither reasonable, not justifiable under the Act. Shri Hogade further pointed out that the ARR process for True-up for 2010-11 and determination of tariff for 2011-12 and 2012-13 was already in progress and the said unrecovered amount could easily be scrutinized and allowed through the True-up process.

6. Shri Hogade further pointed out that MSEDCL has a huge backlog of arrears in bill collection and even if 20% of these arrears are collected, the Petitioner will have no need to take bank loan of Rs 3200 Crore as mentioned in the Petition.

7. Shri Hogade pointed out that in the month of October 2011, the PLF of all the thermal power stations of MSPGCL was lower than 80% and therefore, MSEDCL had to procure electricity from the Traders in the short term market at the prevalent prices.

8. Shri Hogade also objected to the practice of adding HT consumer losses to the LT consumer losses and presenting the sum as a composite distribution loss. During the hearing though, it was pointed out by the Commission that the said practice was perfectly legitimate.

9. Shri Hogade, finally prayed to the Commission as follows:-

- a) *Not to allow the Petitioner to recover the petitioned amount of Rs 753.71 Crores in a phased manner through the bills and to allow adjustment only through the True-up mechanism*
- b) *Not to review the provisions on Regulation No. 82 of MERC Tariff Regulations 2005 and not to withdraw the 10% ceiling on levy and recovery of FAC*
- c) *Direct MSEDCL not to make any interim claims in the middle of the year and submit APR and tariff determination Petitions in time and claim all arrears only once in the year.*
- d) *To examine whether MSEDCL has added FAC amounts and other amounts collected through various orders of the Commission in the FY 2009-10, Fy 2010-11, FY 2011-12 and take appropriate measures on the findings*
- e) *To direct the Petitioner to address vigorously, the issue of collection of billing arrears*

10. Thane Belapur Industries Association, another Consumer Representative authorized by the Commission under section 94(3) of the Electricity Act 2003, filed its submissions through email dated March 21, 2012 and prayed that the same may be taken on record. In its submissions, the Thane Belapur Industries Association prayed to the Commission, as follows :

1. *Hon'ble Commission not to entertain such Petitions resulting increase in tariff frequently while the Tariff has to be fixed once a year.*

2. *There are many calculations in FAC which require prudence check and scrutiny on the performance of MSEDCL in terms compliances with MERC Orders relevant to the subject without which the calculations will be misleading.*

3. *Time and again we are insisting on the compulsory metering of all the consumers of the Electricity DTC, Transformers including Agriculture other wise the Power purchase and Sale will not reconcile leading to serious question of perennial Financial Crisis for MSEDCL as well as to consumers who are constantly bearing the brunt of ever increasing tariff due to the inefficiencies of MSEDCL on various fronts.*

Till such time these petitions should not be admitted.

4. *The serious matter of recovery of arrears to the tune of Rs.15468.59 Crores. This should be recovered. Till such period no such petitions should be allowed.*

5. *Already APR has been filed by MSEDCL on 24.02.2012 and as per the stipulations MERC will finalise the Order. The actual FAC after prudence check could be added to APR review and Validation.*

6. *There is much ambiguity about the Distribution Losses and Transmission losses and actual values of sales and purchases of power/electricity. These need to be seriously examined to validate the facts.*

We request the Hon'ble Commission to direct MSEDCL to comply with point No.3 and Point No.4 on war footing to get over their financial crisis

11. A comparative statement, as submitted by the Petitioner, giving source-wise power purchase cost (variable component) as approved by the Commission by its Order dated 12th September 2010 and actual power purchase cost (variable component) incurred by the Petitioner during the year FY 2011 – 12 (upto October 2011) is provided in Annexure to this Order. The Commission is of the view that the amount of Rs 753.71 Crores as is sought under the petition for recovery though FAC requires to be scrutinized and adequately addressed through the on-going ARR process. Hence, the Petitioner cannot be allowed to recover the said amount through bills raised on the Consumers as “additional FAC”, at this stage and in the manner sought for.

12. The Petitioner has also sought that this Commission may be pleased to consider to review and revisit the provisions of Regulation 82 of the Maharashtra Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2005 and may be further pleased to either withdraw the 10% (of variable component of tariff) ceiling on levy and recovery of FAC or may consider to enhance the said ceiling limit up to 25%. The Commission is of the view that the subject regulations cannot be amended on receipt of the present petition. Regulations are binding on all Distribution Licensees and consumers, and hence any amendatory process has to follow the well known public process and previous publication. Quite apart, the Commission is of the view that there is no strong case for initiating such an amendatory process because if a Distribution Licensee takes timely steps to procure long term and Medium term power at competitive rates instead of making need-based procurements through short term markets, the need for removing or enhancing the cap on the FAC would not arise. The cap on FAC is to protect the exposure of the consumers.

13. The Petitioner has prayed that as an interim arrangement and till such time the provisions of above mentioned Regulation 82 are amended as prayed for, the Commission may be pleased to permit MSEDCL to levy and recover FAC as per actual without any ceiling thereof (including considering equal installments from all the consumers at

uniform rate, as an additional charge/ Extra FAC), subject to post facto approval of the Commission. As already discussed above, the cap on FAC is to protect the exposure of the consumers. Moreover, the claim of the Petitioner towards higher costs of power purchase would be scrutinized and considered as part of the ensuing annual revenue requirement and tariff petitions. The cost prudently incurred is to be recovered after truing up exercise by loading it in the tariff of the next year. Hence, the question of permitting recovery by interim arrangement is inappropriate.

Accordingly, Case 12 of 2012 is hereby disposed of.

Sd/-
(Vijay L Sonavane)
Member

Sd/-
(V P Raja)
Chairman

Annexure

		Variable Rate		
Sr.No	Sources	MERC Approved order no 111 of 2009 dt 12.9.2010	Actual Power Purchase cost up to Oct 2011	Difference
		Rs/KWH	Rs/KWH	Rs/KWH
1	2	3	4	5=(4-3)
1	MSPGCL	1.76	2.15	0.40
2	NTPC	1.25	1.45	0.20
3	NPCIL	2.05	2.18	0.13
4	SSP	2.05	2.05	0.00
5	PENCH	2.05	2.05	0.00
6	RGPPL	2.88	2.09	-0.78
7	TRADERS	0.00	3.92	3.92
8	DODSON	1.81	2.05	0.24
9	UI CHARGE /FBSM	0.00	2.59	2.59
10	NCE(incl ONGC)	4.88	4.18	-0.71
11	JSWL	2.70	1.50	-1.20
12	Midium Term	0.00	4.06	4.06
	Average	2.01	2.31	0.30