Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 92 of 2010

In the matter of
Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2010

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

STATEMENTS OF REASONS

Dated: January 27, 2011

The Commission vide notification dated 26th August, 2005 notified the MERC (Terms and Conditions of Tariff) Regulations, 2005. Regulation 82 of the said Regulations stipulates levying of Fuel Adjustment Charge (FAC) at uniform level across all categories on the entire sale of Distribution Licensee.

2. MSEDCL in its ARR Petition in Case No. 111 of 2009, prayed for allowing levy of proportionate FAC to the Consumers. The Commission in its Tariff Order dated 12th September, 2010 in Case No. 111 of 2010, ruled, regarding levy of proportionate FAC as follows:

   "…………… the Commission is inclined to accept this proposal. However, since this would involve amendment of Regulations, the Commission would initiate suo-motu the process of amending the MERC Tariff Regulations, within one month of the issue of this Order, …"

3. In accordance with above Ruling, the Commission in exercise of powers conferred under Section 181 read with Section 61 of Electricity Act, 2003 (EA 2003), had made the draft regulations, namely the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2010 to incorporate provisions for levying proportionate FAC. The same was posted on the website of the Commission on 12th October 2010. The Commission invited suggestions and objections from the stakeholders vide Public Notice dated 12th October 2010. The last date of submission of comments was 3rd November, 2010.

4. Fifteen stakeholders including Distribution Licensees, authorized Consumers Representatives and others individuals / organizations filed written submissions pursuant to the aforesaid notice inviting suggestions and objections.

5. Levying of proportionate FAC instead of existing uniform FAC will have different financial impact on different Tariff categories of Consumers. Therefore, before finalizing draft MERC (Terms and Conditions of Tariff) (Amendment) Regulations, 2010, the Commission decided to schedule a Public Hearing in the matter on 7th January 2011 and accordingly the Public Notice dated 13th December 2010 was issued.

6. Public Hearing was held on 7th January 2011 at MERC. During the hearing, various Distribution Licensees, authorized Consumers Representatives and other individuals / organizations submitted their suggestions and objections on the draft Regulations.

7. The Commission considered the comments of the stakeholders on the draft Regulations for proportionate FAC and also the views of the participants in the public hearing as well as the written submissions received during the public hearing. The Regulations are required to be finalized after consideration of the various suggestions and objections that have been made. The analysis of the important issues and findings of the Commission thereon, are discussed in the subsequent paragraphs. While an attempt has been made to consider all the comments, the names of all the stakeholders may not appear here. However, the names of all the stakeholders from whom the comments were received are enclosed as Annexure-I.

8. **Issue wise consideration of suggestions and objections of stakeholders and Findings of the Commission:**

8.1 Statutory provision for Levying of FAC and contradiction of proposed methodology with the Commission's earlier philosophy:

Comments of Stakeholders:

a. Shri. N. Ponrathnam submitted that, the concept of levying FAC should be abolished altogether. The levy of FAC became a back door entry to enhance tariff. The existing mechanism charges FAC equally to all consumers without considering cost of supply or cross subsidy. The proposed mechanism of charging FAC increases the cross subsidy instead of reducing the cross subsidy.

b. TPC submitted that, applying the concept of variable FAC in proportion to the ratio of ABR and Average Cost will be in contradiction with the earlier philosophy adopted by the Commission.

Order / Analysis:

a. Section 62 (4) of the Electricity Act 2003 expressly provides for levy of fuel surcharge / FAC. The said Section is reproduced below:

> *"No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any charges expressly permitted under the terms of any fuel surcharge formula as may be specified."*

Therefore there is no merit in the suggestion that FAC should be abolished.

b. As regards TPC's contention that the Commission is changing its earlier philosophy. The Commission has already ruled on this matter in MSEDCL Tariff Order dated 12th September, 2010. The relevant abstract of the said order is reproduced below:

> *" **As regards the levy of proportionate FAC, MSEDCL had filed a Petition in this regard in Case No. 103 of 2008**, wherein MSEDCL sought to exempt the above-mentioned categories from levy of FAC, and levy of FAC in proportion to the base tariff for the remaining consumer categories. **In this Order, the Commission rejected MSEDCL's request,** and ruled as under………………….*
>
> *………………………………………………………………………………………………..*

The Commission has thus, already ruled in the matter. However, during the public hearing, there has been a persistent demand from the consumers all over the State in this regard. Hence, the Commission is inclined to accept this proposal. However, since this would involve amendment of Regulations, the Commission would initiate suo-motu the process of amending the MERC Tariff Regulations, within one month of the issue of this Order*, during which, consultation will be done with other stakeholders, such as other distribution licensees in the State, and their consumers, consumer bodies, etc., as they will also be affected by the amendment of the Tariff Regulations."* ***(emphasis added)***

As the Commission has already ruled as above on the methodology of levying of FAC from uniform rate to proportionate basis, the said decision is a conscious decision based on suggestions of consumers. As regards the contention raised by TPC, the Commission clarifies that it was entitled to arrive at the said decision even though in the past, the method of levying uniform FAC was adopted. The Commission is of the view that, levying of Proportionate FAC is the more appropriate method for the reasons mentioned below.

8.2 Levying of Proportionate FAC:

Comments of Stakeholders:

a. MSEDCL, BEST, RInfra-D and Prayas supported for levying proportionate FAC proposal.

b. Maharashtra Veej Grahak Sanghatana (MVGS), Maharashtra Rajya Irrigation Federation and other organizations and individuals supported proportionate FAC proposal.

c. TPC, Thane Belapur Industrial Association, Vidharbha Industrial Association, Thane Small Scale Industries Association, Chamber of Small Scale Industries, Thane submitted that, applying concept of proportionate FAC will lead to increase in cross subsidy level and in-turn increase in Tariff for Subsidizing Categories.

Order / Analysis:

a. Impact of proposed levy of proportionate FAC on existing Cross-Subsidy level for different distribution licensees in the State is tabulated below:

Consumer Category	Existing Tariff without FAC				Tariff with Proportionate FAC (Assuming max. limit of 10%)			
	ACOS (Rs/kWh)	ABR (Rs/kWh)	% of ACOS	%Cross-subsidy	ACOS (Rs/kWh)	ABR (Rs/kWh)	% of ACOS	%Cross-subsidy
MSEDCL (as per Tariff Order dtd 12th Sep 10 in Case No. 111 of 2009 and Review Order dtd. 2nd Dec 10)								
BPL	4.55	0.95	21%	-79%	4.99	1.03	21%	-79%
Metered Ag		1.77	39%	-61%		1.93	39%	-61%
HT Industry		5.71	125%	+25%		6.30	126%	+26%
LT Non Domestic		6.93	152%	+52%		7.53	151%	51%
BEST (as per Tariff Order dated 12th Sep 2010 in Case No. 95 of 2009)								
BPL	5.75	0.49	9%	-91%	6.28	0.53	8%	-92%
LT Resid (0–100 units)		1.66	29%	-71%		1.82	29%	-71%
LT Comm. (>20 kW to < 50 kW)		8.25	143%	+43%		8.98	143%	+43%
LT Add. & Hoardings		12.1	210%	+110%		13.24	211%	+111%
TPC-D (as per Tariff Order dated 12th Sep 2010 in Case No. 98 of 2009)								
LT Resid. (0–100 units)	5.20	1.76	34%	-66%	5.70	1.87	33%	-67%
HT Group Housing		4.37	84%	-16%		4.78	84%	-16%
HT Comm.		5.51	106%	+6%		6.03	106%	+6%
LT Add. & Hoardings		14.09	270%	+170%		15.45	271%	+171%
Note: In case of % Cross-subsidy, (-) means availing cross-subsidy and (+) means paying cross-subsidy.								

From above table, it is seen that, applying concept of proportionate levy of FAC will maintain the Cross Subsidy level as approved in Tariff Order and there is no increase in Cross –subsidy level.

b. Further, FAC is a component of variable charges of power procurement. In case, during the Tariff Determination process, variable charges of power procurement are accurately projected, then there will be lesser impact of FAC charges during implementation of Tariff Order and all variable charges projected at the time of Tariff Determination process are divided into different Tariff Categories, as per their respective cross-subsidy levels.

In view of above, even though in the past, method of levying uniform FAC was adopted, the Commission is of the view that, levying of Proportionate FAC is the more appropriate method for the reasons mentioned in a & b above.

8.3 Removal of 10% FAC Cap

Comments of Stakeholders:

a. MSEDCL submitted that, since the category-wise proportionate FAC is now linked with the 'k' factor, hence it would be more appropriate to do away with the cap of 10%.

Order / Analysis:

As regards the request for removal of FAC cap, MSEDCL had filed a Petition in this regard in Case No. 102 of 2008, wherein MSEDCL sought removal of the FAC cap on account of expected under-recovery of FAC due to the presence of the cap on FAC recovery. In this Order, the Commission rejected MSEDCL's request for removal of cap on FAC recovery, and ruled as under:

> *"41. On the issue of removal of FAC cap on the basis of projected FAC under-recovery for the period from November 2008 to March 2009, the Commission is of the view that it may not be appropriate to remove the ceiling on FAC recovery on the basis of projected data and permit MSEDCL to levy a substantially high FAC charge to consumers without prior approval of the Commission as that may lead to a huge tariff shock*

for the consumers. ***Since, the objective of having a cap on FAC recovery is to avoid automatic pass through of such expenses without prior approval and hence, avoid the causing of tariff shock to the consumers, the Commission is not inclined to amend or vary the present FAC cap which is 10% of the variable component of tariff.*** *However, taking into account the proviso to Regulation 82.6 which permits that any excess in the FAC charge over the above ceiling shall be carried forward by the Distribution Licensee and shall be recovered over such future period as may be directed by the Commission, the Commission will approve the FAC to be recovered by MSEDCL in excess of existing ceiling on recovery through FAC charge, i.e., 30.9 paise/kWh, after a detailed vetting of the actual FAC data on case-to-case basis.*

... In this view of the matter, and taking into account similar directions issued by the Commission in similar petitions filed by MSEDCL, Regulation 82.6 of the Tariff Regulations is not being varied or amended. Accordingly, MSEDCL‟s present Petition in Case No. 102 of 2008 stands dismissed, ***with liberty to MSEDCL to submit the details of FAC Computations in the formats prescribed by the Commission for vetting for the period November 2008 to February 2009 based on actual data, if MSEDCL wishes to recover any excess in the FAC charge over the above ceiling of 10% of the variable component of tariff."***

As the Commission has already held that a Distribution Licensee can levy FAC more than the 10% ceiling with prior approval of the Commission, the Commission is therefore of the view that it is not necessary to remove the 10% cap.

8.4 Removal of 'Excess Distribution Losses' from formula:

Comments of Stakeholders:

a. MSEDCL submitted that, consideration of excess distribution losses at the time of determination of FAC and again at the end of the year for determination of efficiency gain / loss inter-alia amounts to double accounting of excess distribution losses, which unnecessarily burdens the distribution licensees such as MSEDCL.

Order / Analysis:

a. The Commission sets the target Distribution Losses for the Distribution Licensee. The Power Procurement considering these target losses are allowed in the Tariff Order. FAC is additional fuel cost, so additional Power Procurement cost needs to be allowed as per targeted Distribution Losses and not as per actual Distribution Losses.

In view of the above, the Commission is of the view that, considering target Distribution Losses while allowing FAC, is correct.

5.4 Proportionate recovery of unrecovered part of FAC due to Cap :

Comments of Stakeholders:

a. MSEDCL submitted that, there being no specific provision in the proposed amendment which would ensure that the burden of under / over recovery of FAC is appropriately passed on to each respective tariff category depending upon its share in over / under recovery; the Commission may please consider to suitably modify the draft amendment accordingly.

Order / Analysis:

a. After going through the working model for calculation of proportionate FAC, it is observed that at a certain value of total FAC cost, under recovery of FAC due to FAC Cap is not uniform throughout all the categories.

b. This anomaly is due to the fact that, FAC cap is linked to variable Tariff i.e Energy Charge of a particular category, whereas 'K' factor which is used for calculation of proportionate FAC is linked to Average Billing Rate (ABR). ABR has two components i.e. Fixed Cost and Variable Cost. Due to the Fixed Cost component of ABR, the proportion of which varies for each consumers category, disallowance of FAC recovery due to FAC cap is not uniform throughout all the categories

c. Therefore, it is required to change the formula for 'K' factor and instead of ABR link it to the variable tariff for a particular Tariff category. The modified formula for 'K' factor will be as follows:

K = (Energy Charge) / (ACOS)

Where,

Energy Charge = Energy Charge for a particular tariff category / sub-category/ consumption slab under consideration in 'Rupees per kWh' as approved by the Commission in Tariff Order.

ACOS = Average Cost of Supply in 'Rupees per kWh' as approved for recovery by the Commission in Tariff Order.

The Commission directs that, the above modifications should be made in Amendment Regulations at appropriate place.

5.5 Exemption of BPL and Agricultural category from levy of FAC :

Comments of Stakeholders:

a. Various organizations have requested for exemption to BPL and Agricultural Category from levy of FAC.

Order / Analysis:

a. Regulation 82.2 of MERC (Terms and Conditions of Tariff) Regulations, 2005 is reproduced below:

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

As per the above Regulation, FAC charges are to be levied to all consumers without any exemption. Exempting BPL and Agricultural categories from levy of FAC charges, will mean a change in the Cross-subsidy balance.

b. Comparative statement showing impact of change in methodology of levying FAC charges on BPL and Agricultural category of MSEDCL is shown in table below:

Category	ABR as per Tariff Order (Paisa)	Uniform FAC (assuming max ceiling 10%)		Proportionate FAC (assuming max ceiling 10%)	
		Revised ABR (Paisa)	% increase in ABR	Revised ABR (Paisa)	% increase in ABR
BPL	95	133	40%	103	8%
Agricultural (Metered)	177	215	21%	193	9%

From the above table, it can be seen that, impact of FAC on BPL and Agricultural categories will be reduced after implementing methodology of levying proportionate FAC.

In view of the above, the Commission is not inclined to exempt BPL and Agricultural categories from levying of FAC charges.

9. In view of the above discussions, the Commission directs its staff that the MERC (Terms and Conditions of Tariff) (Amendment) Regulations, 2010 which were published in draft form be finalized and notified in the Official Gazette after incorporating the changes as directed in the forgoing paragraphs.

Sd/-

(Vijay L. Sonavane)
Member

Sd/-

(V. P. Raja)
Chairman

(K. N. Khawarey)
Secretary, MERC