Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 162 of 2011

In the matter of

Petition of BEST undertaking of the Municipal Corporation of Greater Mumbai seeking permission to recover FAC for the period from April, 2011 to October, 2011 incurred by BEST in excess of 10% cap and to allow recovery of FAC levied by TPC.

Shri V.P. Raja, Chairman

Shri Vijay L. Sonavane, Member

Municipal Corporation of Greater Mumbai
Brihanmumbai Electric Supply & Transport Undertaking (BEST)
BEST Undertaking, BEST Bhawan
BEST Marg, Colaba,
Mumbai-400001

…. Petitioner

For the Petitioner: Shri O. P Gupta, General Manager.

ORDER

Dated: February 8, 2012

The Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 as in force, lays down a Fuel Adjustment Cost (FAC) charge formula under Regulation 82 thereof in terms of which Distribution Licensees are required to pass on adjustments due to changes in the variable cost of power procured and variable cost of power generation due to changes in fuel cost. However, as per Regulation 82.6 of the said Regulations, (Amendment, 2011), the monthly FAC charges of a particular tariff category/sub-category/consumption slab shall not exceed 10% of the variable component of tariff of that tariff category/sub-category/consumption slab, or such other ceiling as may be stipulated by the Commission from time to time. 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. In case of un-metered consumers, ceiling of FAC charges shall be calculated by multiplying the ceiling of FAC charges of metered sub-category by the ratio of Average Billing Rate (ABR) of respective un-metered sub-category to ABR of metered sub-category within the same tariff category.

2. Brihanmumbai Electric Supply & Transport Undertaking (BEST) of the Municipal Corporation of Greater Mumbai, submitted a Petition under affidavit before the Commission on November 22, 2011, seeking permission to recover FAC for the period from April, 2011 to October, 2011 incurred by the Petitioner in excess of the aforesaid 10% cap as specified in Regulation 82.6 and to allow the recovery of FAC levied by TPC. The following are the prayers of the Petitioner:-

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a) *Allow BEST to recover the under recovery of Rs. 84.97 Crores due from consumers towards FAC for the month of April-11 to Octoer-11 by way of additional charge of Rs. 0.65 per unit on consumption during December-2011 to March-2012.*

b) *Allow BEST to recover the interest cost of unrecovered FAC as approved by the Hon'ble Commission.*

c) *Allow BEST to recover actual FAC amount levied by TPC-G in their bills with postfacto approval of Hon'ble Commission, in addition to the above on a monthly basis, till the tariff order is issued by the Honourable Commission.*

d) *Increase the cap on FAC for the year 2011-12 to 20% from current cap of 10% as alternative to recovery of actual FAC.*

e) *Consider any inadvertent errors/omissions and permit BEST to add/modify this filing."*

3. The Petitioner submitted that the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 were to be applicable for determination of tariff from April 1, 2011 and onwards up to FY 2015-16.

4. The Petitioner submitted that because of difficulties to implement the said Multi Year Tariff Regulations, 2011, some of the licensees and generating companies were not able to file their respective MYT petitions before 1st April 2011. Recognizing the said difficulties, the Commission notified amendments to the MYT Regulations 2011 by the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) (First Amendment) Regulations, 2011 on October 21, 2011, exempting some of the licensees and generating companies from the determination of tariff under the said Multi Year Tariff Regulations, 2011 in order to enable the continuance of ARR and Tariff filings under the "Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 for the period of exemption under the first proviso to Regulation 4.1 of MYT Regulations 2011.

5. The Petitioner submitted that under these circumstances the existing tariff which was determined by the Commission in the order dated 12.09.2010, in the matter of "Truing Up for FY 2008-09, Annual Review for FY 2009-10 and determination of Annual Revenue Requirement and Tariff for FY 20 I 0-11" (Case No. 95 of 2009), was allowed to be continued. The Petitioner submitted that in the said order the Commission has worked out the ceiling of FAC as 51.77 paise i.e., (10% of average energy cost).

6. The Petitioner further submitted that Regulation 82.6 of MERC (Terms and Conditions of Tariff) Regulations, 2005 specifies as follows:-

> *"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:*
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> *Provided 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.*"

7. The Petitioner further submitted that as per the MERC (Terms and Conditions of Tariff) (Amendment) Regulations, 2011, Regulation 82.6 of Tariff Regulations, 2005 has been substituted by the following regulation:

> *"82.6 The monthly FAC charges of a particular tariff category/sub-category (consumption slab shall not exceed 10% of the variable component of tariff of that tariff category/sub-category) consumption slab, or such other ceiling as may be stipulated by the Commission from time to time.*
>
> *Provided 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. "*

8. The Petitioner further submitted that in view of the above amendment to Regulation 82.6 of "Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 the minimum and maximum permissible Proportionate FAC charge (using 'K' Factor) that can be levied on BEST's consumers based on Tariff Category/Subcategory/Consumption Slab is Rs. 0.04/kWh for BPL Category Consumers and Rs. 1.14/kWh for LT-5 Category Consumers respectively.

9. The Petitioner further submitted that it has purchased a total of 3095.67 MUs from Tata Power Company limited-Generation (TPC-G) during the period from April-2011 to October-2011. The Petitioner submitted that during the above period, the FAC charged by TPC-G amounted to a total of RS.135.37 Crores.

10. The Petitioner submitted that the month wise FAC in Paise/kWh which is due from consumers based on the calculation approved by the Commission for computing FAC to be recovered, is much higher than the maximum permissible FAC which is recoverable from consumers with a Cap of 10% of variable charge fixed by the Commission. The Petitioner submitted that this has resulted in huge under recovery.

11. The Petitioner submitted that FAC charges have increased considerably from April-2011 to October 2011, due to circumstances, beyond the Petitioner's control.

12. The Petitioner further submitted that in the Petitioner's tariff order dated *12/09/2010*, (Case No. 5 of 2009) the Commission had not given the bifurcation of variable charges and fixed charges or power purchase cost from TPC-G. The Petitioner further submitted that, however, in the tariff order for TPC-G (Case No.96 of2009), the Commission had shown recoverable Fixed Costs for unit No. 4 to 7, unit no.8 and hydro-generating stations. The average variable cost of power purchase of Rs. 3.01 per kWh was worked out, with certain assumptions, from the corresponding figures available in the orders issued by the Commission in Case No. 95 and Case No.96 of 2010

13. The Petitioner submitted that the average variable cost of power purchase of Rs. 3.01 per kWh has been considered by the Commission for FAC vetting of the Petitioner's submissions for the Q II -FY 2011 as well as for Q III F 2011.

14. The Petitioner submitted that the average variable cost of power purchase has increased to Rs. 4.43 per kWh in October-2011. Thus, the monthly FAC per unit has risen to Rs. 1.42 in the month of October-2011. The Petitioner submitted that with the FAC Cap of 51.77 Paise per kWh, huge amounts remain unrecovered. The Petitioner submitted that in all there has been a

net estimated under recovery of Rs. 84.97 Crores during the period from April-20l1 to October-20l1.

15. The Petitioner submitted that with its estimated monthly sale forecast, the additional average charge to be recovered from consumers in order to recover the unrecovered FAC from April-2011 to October -2011 would come to about Rs. 0.65 per unit over a period of 4 months.

16. Hence, the Petitioner has sought permission to recover the above mentioned under recovery of Rs. 84.97 Crores by way of an additional charge of Rs. 0.65 per kWh on consumption during the months from December 2011 to March-2012.

17. The Petitioner submitted that due to shortfall in FAC recovery, the Petitioner had paid the overdraft interest @ 10.75% p.a. and that the Commission may allow the Petitioner to recover the unrecovered amount of Rs. 84.97 Crores with the interest amount as applicable. The additional charge of Rs. 0.65 per unit given above is without interest charge.

18. The Petitioner submitted that, it recovers from its consumers, the FAC up to the cap of 10% as specified in the relevant regulation of the Commission. Any unrecovered FAC over and above the 10% ceiling remains as outstanding FAC to be collected from its consumers at future date.

19. The Petitioner, in its submission in the present matter has also included the audited details of computation and recovery of FAC on a quarterly basis for post facto approval.

20. The Petitioner submitted that in the meeting of Group of Ministers on Power Sector held under the Chairmanship of Hon'ble Union Minister of Power on 13.07.2011 at New Delhi it is recommended that-

> *"The State Governments should ensure automatic pass through in tariff for any increase in fuel cost by incorporating the same in the regulations, as provided in Section* 62(4) *of the Electricity Act, 2003. (State Governments can issue directions to SERCs under Section 108 of the Electricity Act, 2003). "*

21. The Petitioner submitted that the FAC charged by TPC-G for the power procured by the Petitioner in October-2011 works out to 109 Paise per unit, whereas the cap is 51.77 Paise per unit. With the present Cap, 57.23 Paise per unit remains unrecovered. The Petitioner further submitted that if the variation in power purchase cost including RPS, Bilateral, OLA sale and distribution loss, are considered, the unrecovered FAC will be still higher.

22. The Petitioner submitted that in view of the grave situation faced by Petitioner due to financial crunch because of the unrecovered FAC, the Petitioner prays that the Petitioner be allowed to recover the actual FAC from its consumers as and when it is due, and that, accordingly on a quarterly basis the Petitioner will submit audited details of computation and recovery of FAC to the Commission.

23. The Petitioner submitted that the generating utility is able to recover its power purchase cost immediately, and thus is able to avoid undue financial distress, reduce its working capital requirements and interest expense, which ultimately benefits the consumers. The Petitioner requested for increase in the Cap on FAC from 10% to 20%.

24. The Petitioner submitted that considering the global rise in fuel cost, FAC amount for the Petitioner is likely to remain at the levels, same as in FY 2011-12, resulting in higher FAC (compared to the Cap of 10% of variable charge) to be recovered from the consumers. The Petitioner submitted that limitation on recovery of FAC (Cap of 10% of variable charge) will lead to liquidity crunch and financial crises for the Petitioner as TPC-G from whom it procures power, recovers the entire FAC amount every month from the Petitioner. The Petitioner has therefore prayed that the cap imposed on it be raised from the existing level of 10% in order to allow full recovery of the FAC.

25. Hearing in the matter was scheduled on December 7, 2011 at the Commission's office and the notice was accordingly sent to the Petitioner and the Consumer Representatives, authorised under Section 94(3) of the Electricity Act, 2003.

26. At the hearing held as above on December 7, 2011, Shri O. P Gupta, General Manager of BEST appeared on behalf of the Petitioner, and made a presentation to the Commission explaining that on account of the 10% cap on recovery of FAC, the unrecovered amount of FAC to date is approximately Rs. 84.97 Crore, which may be allowed to be carried over for recovery in future. The Petitioner further requested the Commission to allow it to recover the said amount from the consumers .in a period of 3-4 months.

27. The Commission directed the Petitioner to nominate two representatives of the Petitioner to assist the Commission's staff to facilitate the vetting process of the FAC submission. The Commission further directed that vetting report after its finalisation as above should be submitted by the said committee to the Commission for further action pertaining to the request of the Petitioner as above, and that, the matter would be heard further, after receipt of the said Report.

28. As directed by the Commission, the Petitioner submitted additional submissions on affidavit on December 13, 2011, comprised of calculations, relevant receipts and documents inclusive of IBSM statements issued by SLDC. The Petitioner also deputed 2 persons to assist the Commission's team to evaluate the said submissions.

29. The Committee of the Commission's staff and the Petitioner's representatives, formed as above, scrutinised the submissions and submitted its report to the Commission on December 16, 2011.

30. In its report, the Committee stated as follows:

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2. **Observations of the Committee**:

2.1 *In terms of the MERC's Conditions of Tariff Regulations, 2005, a Distribution Licensee is required to obtain post facto approval of the Commission on quarterly basis for the FAC charges. After due vetting by the submissions, the utility is permitted to bill the FAC charge to its consumer up to a cap of 10% of its average variable component of tariff.*

BEST is a Power Distribution Utility based in Mumbai and it does not own or operate any power generating stations. The entire power requirement for distribution to its consumers is procured by BEST through,

a) Purchases from Tata Power company Ltd. (TPC-G)
b) Renewable energy procurement (RPS)
c) Bilateral contracts and decrements to the imbalance pool
d) Unscheduled Interchanges (Interstate UI)

2.2 *BEST had submitted its FAC submission for the months April 2011 to October 2011 referred above, under Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 giving details of the Power purchases and sales for the period April 2011 to October 2011, along with the copies of all the supplementary statements, bills etc.*

The Committee has assessed FAC charge of BEST for the said period based on the FAC formula approved in the Tariff Regulations. The methodology adopted for vetting the FAC computations is as follows:

The FAC claim made by BEST is for charging difference in averaged out "change in the variable cost of power" every month, arising out of the difference between the "rate approved by the Commission" in the tariff order applicable for the concerned period and the "rate actually paid by the Utility". The submissions prepared on the above basis have been scrutinized and vetted with due consideration to excessive Distribution loss, if any.

3. *Change in variable cost of power purchase:*

The variable cost of power procurement approved by the Commission for the months April 2011 to October 2011 as per the Tariff Order for FY 2010-11 (in the matter of approval of Truing Up for FY 2008-09, Annual Performance Review for FY 2009-10 and determination of ARR and Tariff for FY 2010-11 – Case 95 of 2009, issued on 12th December 2010), is Rs 3.01 /kWh BEST has submitted that it has incurred additional variable costs towards power procurement, due to which the FAC amount to be recovered is as tabulated below:

Table

Sr. No.	Parameter	Unit	April 2011	May 2011	June 2011	July 2011	August 2011	September 2011	October -2011
1	FAC Charge (FAC_{kWh}) without considering cap on monthly FAC Charge	Paise/ kWh	73.16	-5.38	72.32	99.81	69.76	149.45	276.64
2	Cap on monthly FAC Charge	Paise/ kWh	51.8	51.8	51.8	51.8	51.8	51.8	51.8
3	FAC (A) considering cap on Monthly FAC Charge	Rs Lakh	2005.46	(215.08)	2013.92	1920.66	1970.69	1850.81	1956.17
4	Carried forward FAC (A) for recovery during future period	Rs Lakh	828.76	0.00	799.34	1782.26	684.65	3491.97	8496.95

Conclusion:

The findings of the Committee are as follows:

- *The FAC at the beginning of FY 2011 (1st April 2011) is reset to zero*

- *7.2 FAC payable wef April 2011, FAC allowed to be recovered, subject to 10% cap viz 51.8 paise/kWh and FAC carried forward for recovery in future has been scrutinized*

- *7.3 At the end of October 2011, the FAC carried forward for recovery in future amounts to Rs84.9695 Crores"*

31. The Commission, after receipt of the report, scheduled the next hearing in the matter on January 16, 2012 and notice was accordingly sent to the Petitioner and the Consumer Representatives, authorised under Section 94(3) of the Act.

32. At the hearing held on January 16, 2012, Shri O. P Gupta, General Manager of BEST appeared on behalf of the Petitioner.

33. The Petitioner submitted that it will be subjected to great financial difficulty if accumulated FAC is not allowed to be recovered early and therefore prayed to the Commission to remove the 10% cap or else to increase the cap to 20%. The Petitioner also requested to allow for recovery of the interest applicable on the unrecovered FAC as approved by the Commission. The Petitioner further requested to allow for recovery of actual FAC amount levied by TPC-G in its bills raised on the Petitioner, with post facto approval of Commission, in addition to the FAC recovery on monthly basis, till the tariff order is issued by the Commission.

34. Decision

(i) On the basis of the submissions made by the Petitioner and the Report of the Committee appointed by the Commission to verify the same, the Commission is of the view as follows:-

a) The cost of energy procured by the Petitioner has gone up substantially in the past few months, mainly due to higher tariff charged by TPC on account of increase in cost of fuel.

b) Even after recovering the additional cost from its consumers through the mechanism of FAC charge, the accumulated amount being excess in the FAC charge is Rs 84.97 Crore up to October 2011, as seen from the submissions made by the Petitioner on affidavit.

(ii) Regulation 82.6 of the MERC (Terms and Conditions of Tariff) (Amendment) Regulations, 2011 *inter alia* provides 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.

(iii) Accordingly, the Commission is of the view that the Commission needs to allow the Petitioner to recover the accumulated amount of Rs 84.97 Crore from its consumers during the billing months of March 2012, up to June 2012 (as the billing month of December 2011and January and February 2012 are already over), as per the principles specified in Regulation 82.10 of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2011.

The said recovery permitted as above, shall be over and above the FAC as applicable for these months, which will be subject to 10% cap.

(iv) As regards the prayer to allow the Petitioner to recover the interest cost of unrecovered FAC, the same cannot be granted as there is no provision in the Regulations to allow the same.

(v) The prayer to increase the cap on FAC for the year 2011-12 to 20% from current cap of 10% was made as an alternative to recovery of actual FAC. Since, by this order the accumulated FAC charge is permitted to be recovered during the billing months of March 2012 up to June 2012, there is no need to increase the cap on FAC for the year 2011-12 to 20% from current cap of 10%. Moreover, such a prayer cannot be considered in the present proceedings as the same may require amendments to the regulations. In any case, by an order, regulations providing for a cap of 10% cannot be amended.

With the above, the present petition stands disposed of.

Sd/-	Sd/-
(Vijay Sonavane)	(V.P. Raja)
Member	Chairman