

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 43 of 2012**

**In the matter of**

**Petition filed by MSEDCL seeking review of the Commission's Order dated 30 April, 2012  
in Case No. 12 of 2012 for the recovery of accumulated amount of FAC.**

**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. Ajoy Mehta, Managing Director                MSEDCL  
    Shri S. V Bapat, Superintending Engineer                MSEDCL

**ORDER**

Dated 15 June, 2012

The Petitioner, Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), submitted a Review Petition under affidavit before the Commission on 8 May, 2012 under Section 94 (1) (f) of the Electricity Act 2003, seeking review of the Order of the Commission dated 30 April, 2012 in Case No. 12 of 2012 for the recovery of accumulated amount of fuel adjustment charges (FAC).

The prayers of the Petitioner are as under:

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- a. *To admit the Review Petition under section 94 (f) of the Electricity Act, 2003 read with Regulation 85 (a) of the Maharashtra Electricity Commission (Conduct of Business) Regulations, 2004.*
- b. *To review the Order dated 30<sup>th</sup> April 2012 and examine the concerns expressed by the Review Petitioner for a favourable dispensation.*
- c. *To permit the Review Petitioner to recover unrecovered accumulated FAC amounting to Rs. 1483 Crs. (as on March 2012) in six equal monthly instalments from all the consumers at uniform rate.*
- d. *To approve and permit load management to the extent that money is not available to purchase power, since such approval is necessary in view of the fact that while generation capacity would be available, there would be no money available to pay it.*
- e. *To permit Review Petitioner to recover capacity charges for idle generation arising due to lack of finances to run power plants*
- f. *To grant any other relief as it deems fit in the matter.*
- g. *Condone any inadvertent omissions / errors / short-comings and permit Review Petitioner to add / alter / amend / change this Petition and also to make further submissions as may be required.*
- h. *Pass such further and other orders, as Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case.*

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2. The Petitioner submitted that in its previous Petition, in Case No. 12 of 2012, it had requested the Commission to permit the collection of the accumulated FAC which had at that time reached a figure of Rs. 753.71 crore. The Petitioner submitted that subsequently it filed a miscellaneous application for interim relief on 25 April, 2012 wherein it had submitted that the said accumulated amount had reached a figure Rs 1252 crore. The petitioner had further expressed apprehensions that by the time the ARR Petition for FY 2012-13 is disposed of the accumulated amount of unrecovered FAC may cross the figure of Rs. 1500 crore.

The Petitioner submitted that the FAC account up to March 2012 has been finalized and it is in the process of submission to the Commission. The Petitioner further submitted that the FAC amount accumulated on account of 10% cap on FAC has at present reached Rs 1483 crore.

The Petitioner submitted that the Commission after vetting the submission made by the Petitioner for FAC for November 2011 had granted approval for FAC of Rs. 1013.85 crore, of which Rs. 260.13 crore were charged in the said month and an amount of Rs. 753.71 crore was carried forward for recovery in the future. The Petitioner submitted that in view of the said

approval granted by the Commission after carrying out due prudence check, the Petitioner feels that further scrutiny through the ARR process, as stated by the Commission in the Order in Case 12 of 2012 would not be necessary. The Petitioner, therefore, submitted that the decision of the Commission to carry out a scrutiny on the higher cost of power purchase, which the Commission has already approved in the past, appears to be an error apparent on the face of the record, and therefore, the Petitioner requested the Commission to admit its Review Petition.

**3.** The Petitioner further submitted that as a result of its inability to recover the said overdue amount from its consumers, it has not been able to make payment to Maharashtra State Power Generation Co Ltd (Mahagenco or MSPGCL) for the power procured, and that the overdue amount payable by the Petitioner has reached a value of Rs. 3452 crore.

The Petitioner submitted that a copy of the letter dated 30 April, 2012 received from the Managing Director of MSPGCL is attached along with the Review Petition. The Petitioner submitted that the Mahagenco vide its said letter has stated that on account of a default of Rs 3452 crore by the Petitioner, MSPGCL in turn has defaulted in payment of oil, coal, gas and freight charges to its service providers. It was also indicated that such arrears of payment would result in causing reduction in generation progressively and consequently result in load shedding to the consumers of the State. Thereafter, the Petitioner submitted that the above mentioned letter viz., Exhibit B is a new and important evidence which was not within the knowledge of the Petitioner earlier. Therefore, the Petitioner submitted that the Commission may kindly admit its Review Petition.

**4.** Hearing in the matter was scheduled on 22 May, 2012 and a notice was accordingly sent to the Petitioner and the four authorised consumer representatives, respectively.

## **5. Submission by the Petitioner at the hearing**

**5.1** At the said hearing on 22 May, 2012, the Petitioner was represented by Shri Ajoy Mehta, MD MSEDCL and Shri S.V.Bapat, MSEDCL. The Petitioner submitted that the Commission has already accorded post facto approval for FAC submission for November 2011, vide Letter No. MERC/FAC/20112012/2996 dated 22 March, 2012 (Exhibit-A Attached to the Review Petition), wherein the Commission had approved Rs.1014 crore as being the total FAC. The Petitioner submitted that after considering the recoverable FAC amount for the current month, the Commission had accorded approval to carry forward the FAC of Rs.754 crore for recovery during the future period. The Petitioner submitted that by its action as above the Commission has not only quantified the excess amount but has also given permission to recover the same in future.

The Petitioner submitted that in the absence of actual recovery of the said amount, the Petitioner has been:

- a) unable to recover the actual cost of power procurement
- b) unable to make payment to MSPGCL

**5.2** The Petitioner submitted that its total overdue amount payable to MSPGCL has now reached to a sum total of Rs.3452 crore as on 30 April, 2012 due to which

- a) Borrowings of Mahagenco have reached a level where the Banks are not willing to lend any more funds to them.
- b) If this situation continues further then Mahagenco may default in payment towards coal, oil, freight and gas etc. which may adversely affect the generation of the Power stations.
- c) Mahagenco may require reducing their generation to reduce cash outgo to match the shrinking accruals.

**5.3** In support of its argument, the Petitioner displayed the following table indicating year by year tabulation of over-draft availed, short term loans taken and interest accrued on working capital loans. The Petitioner pointed out that in FY 2011-12, the interest on working capital has reached Rs 311 Crore which amounts to practically Rs 1crore per day.

**Table-1**

Financial Year	Over draft availed in Rs. Crore	Short term loan taken in Rs Crore	Interest on working capital in Rs Crore
2006-07	200	0	3
2007-08	400	0	3
2008-09	567	300	48
2009-10	813	1400	108
2010-11	1200	1900	199
2011-12	1500	1750	311
2012-13 (till April 12)	1500	1750	16

**5.4** The Petitioner submitted that due to the 10% cap imposed through the Tariff Regulations on recovery of FAC, recovery per month is limited to about Rs. 237 to 260 Crore and the remaining amount is carried forward. The Petitioner further submitted that the Tariff structure awarded to the Petitioner was based on the delivered cost of coal fuel procured by MSPGCL, which has substantially increased on account of rise in Coal cost and freight charges. With such

phenomenal increase in input costs, it was inevitable that generation cost would also increase. In the absence of an effective cost recovery mechanism, the unrecovered amount is cumulatively increasing. The Petitioner submitted that immediate relief can only be granted to the Petitioner through a permission to recover the presently accrued amount in a phased manner over a period of 6 months.

## **6. Observations**

### **6.1 Recent Tariff Orders and Review orders of MSEDCL:**

The Commission observed that it had issued the last Tariff Order to MSEDCL on 12 September, 2010 in Case No. 111 of 2009, Truing up thereby, for FY 2008-09, annual performance review (APR) for FY 2009-10 and approval of aggregate revenue requirement and Tariff determination for FY 2010-11.

Subsequently the Commission issued a Review Order on 2 December, 2010 in Case No. 69 of 2010 whereby the Tariff for various categories of consumers were revised.

Further, the Commission issued an Order on 31 October, 2011 in Case No. 100 of 2011 wherein the Petitioner sought final True up for FY 2009 -10, provisional True up for FY 2010-11. The Commission had allowed the Petitioner to levy additional charges on and above the Tariff charged to its consumers with effect from 1 November, 2011.

In the Tariff Order in Case No. 111 of 2009, the Commission had not considered the cost of energy purchased from MSPGCL's Paras Unit 3, Parli Unit 6, NTPC's Korba Unit 3 and Sipat Unit 1, respectively. Hence, in addition to the cost of power procured from independent power producers (IPPs), traders and from the other sources through bilateral contracts, the Petitioner has been allowed to recover through the FAC mechanism the incremental variable cost of power procurement from the above stated units of MSPGCL and NTPC respectively.

### **6.2 ARR Petition filed by MSEDCL:**

The Petitioner has filed a Petition for final True up for FY 2010-11, Aggregate Revenue Requirement (ARR) for FY 2011-12 & FY 2012-13 and Tariff determination for FY 2012-13 on 24 February, 2012 before the Commission.

The technical validation session (TVS) on the Petition was held on 28 March, 2012. Additional data gaps were sent to the Petitioner. A second TVS was held on 12 April, 2012. The Petitioner submitted revised Petitions on 30 April, 2012, which was admitted on 17 May, 2012 by the Commission.

After admitting the Revised Petition, the Petitioner was directed to issue public notices in newspapers and public hearings in respect of the said Tariff Petition are proposed to be held starting from 11 July, 2012 to 27 July, 2012 at the six divisional headquarters of State of Maharashtra.

### 6.3 Progression of accumulated FAC amount:

In the previous years, the Commission had observed that the FAC of the Petitioner had been fluctuating between positive and negative values on a month-on-month basis. It has also been observed by the Commission that at the end of March 2010 and 2011, FAC carried forward by the Petitioner for recovery in future was zero in spite of the 10% cap imposed on FAC collection by Regulations.

However, the Commission has observed that recently the price escalation in fuel cost *per se*, and the supplementary costs such as freight, handling charges, etc., have shown continuous rising trends. Energy charges fixed for the Petitioner and the energy charges payable (normative and actual) over the recent months are tabulated below. From the tabulation, it is evident that accumulated FAC has been continuously rising, and if the graph trends are plotted further it will be observed that these are likely to reach near the value projected by the Petitioner.

**Table-2**

Month	Energy rate approved Rs/kWh	Energy rate payable actual-normative Rs/kWh	% increase	FAC charged Rs crore (rounded off)	FAC carried forward Rs crore (rounded off)	Total FAC (rounded off) Rs crore	Remark
Aug-11	2.0	2.35	17.5	252.41	225.56	478.0	Vetted
Sep-11	2.0	2.60	30.00	259.42	365.47	624.89	Vetted
Oct-11	2.0	2.55	27.50	236.93	529.27	766.19	Vetted
Nov-11	2.0	2.55	27.50	260.13	753.71	1013.85	Vetted
Dec-11	2.0	2.76	38.00	247.00	931.80	1178.80	Under process
Jan-12					1100		Extrapolated
Feb-12					1250		Extrapolated
Mar-12					1425		Extrapolated

In compliance with the Amendment issued in 2011 to the MERC(Terms and Conditions of Tariff), Regulations, 2005 the Petitioner has been charging FAC to its consumers in

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proportion to the categories or the Tariff slabs limited to the 10% cap of the respective category. The Commission has observed that the net chargeable amount of FAC capped to 10% amounts to around Rs.237crore to 260 crore each month based on the consumption mix.

## **7. Ruling**

The Commission reiterates that the purpose of 10% cap on recovery of FAC from the consumers is to safeguard the consumers from facing sudden Tariff shocks. The Commission in Para 12 of the Order in Case No. 12 of 2012 had made the following observations:

*“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.”*

The Commission observed that the unprecedented rise in prices of fuel and freight has resulted in a much higher cost of variable component of Tariff, as allowed to the Petitioner through the Tariff Order issued on 12 September, 2010. The situation is of extraordinary nature as the costs are showing continuous up-trend. As seen from the tabulation in December 2011 there has been a 38% rise in the cost of energy. In such a case, measures such as 10% cap on recovery would not be adequate or appropriate. These would boomerang on the consumers themselves through the financial crippling of both the generating company and the distribution licensee.

Hence, the Commission would like to take a subjective view in the matter. The Commission is of the view that the extraordinary situation that has come to light through the present Review Petition merits revisiting the matter and hence, the Commission has admitted the said Review Petition.

The Commission is of the view that Regulation 82 of the MERC Tariff Regulations 2005 provides the formula and the manner in which FAC is to be charged by the distribution licensees. Regulation 82 of the MERC Tariff Regulations 2005 essentially stipulates that the distribution licensee shall first charge FAC to its consumers. FAC is supposed to be passed on as adjustments due to changes in the cost of power generation and power procured through the fuel adjustment

cost formula, as specified in the Regulation. The FAC charge is to be computed and charged on the basis of actual variation in fuel costs relating to power generated from own generating stations and power procured during any month subsequent to such costs being incurred. After FAC is charged to the consumers, the distribution licensee is supposed to submit details in the stipulated format to the Commission on a quarterly basis for FAC charged, details of FAC incurred for each month in such quarter along with the detailed computations and supporting documents as may be required for verification by the Commission.

In the above conspectus, there is no requirement of seeking approval of the Commission prior to levying a FAC charge except where it is being charged for the first time subsequent to the notification of the MERC Tariff Regulations, 2005. In that sense, there is an error in the impugned Order stipulating approval under the ARR process. Hence, there is an error apparent on the face of the record disallowing the Petitioner to recover FAC amount through bills raised on the consumers as additional FAC. In the prayer clause, the Petitioner has quantified the amount sought as pass through as follows:

*“To permit the review petitioner to recover unrecovered accumulated FAC amounting to Rs. 1483 Crs. (as on March 2012) in six equal monthly installments from all the consumers at uniform rate.”*

The Commission also observes that the large amount of unrecovered FAC is causing very high burden on the distribution licensee, and consequentially on the generating company. Tariff determination process for True up for FY 2010-11, ARR for FY 2011-12 & FY 2012-13 and Tariff determination for FY 2012-13 for the Petitioner is taking much longer time than envisaged and meanwhile, the Petitioner is burdened with excessive charges towards meeting its power procurement expenditures and carrying costs thereof. The Commission is of the view that there are sufficient reasons to grant the present review of the impugned Order

Therefore, the Commission allows the Petitioner to recover an accumulated amount of around Rs. 1483 Crore from its consumers through monthly energy bills in six equal installments, from June 2012 to November 2012. The additional amount as above will be recovered proportionate to the Tariff charged to the consumers as per their respective category and slab in conformity with the principles specified in Regulation 82.10 of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2011.

**Procedure for recovery of unrecovered FAC:**



Total unrecovered FAC amount of Rs 1483 Crore (hereinafter total unrecovered FAC) is to be recovered in 6 equal monthly installments, total monthly recovery amount in such case will be Rs 247 Crore (in each month), (hereinafter, FAC recovery amount).

The Petitioner shall follow the procedure shown below for calculating the category-wise or slab-wise recovery rate:

**Step-1:** Calculate average rate in Rs/kWh for FAC recovery amount (Rs 247 Crore per month), dividing the said amount by total energy sold in the month.

**Step-2:** Calculate the K factor for each category / slab by dividing the energy charge of each category/slab by the approved average cost of supply (ACOS) (already known).

**Step-3 :** Calculate rate of recovery for each Tariff category by multiplying the average rate of FAC recovery amount by the respective K factor.

With the above, the present Review Petition stands disposed of.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V.P. Raja)  
Chairman