

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION, MUMBAI

*Filing No.:* \_\_\_\_\_

*Case No.:* \_\_\_\_\_

IN THE MATTER OF

Petition for Amendment / Modification in FAC Regulations of MERC (Multi Year  
Tariff) Regulations, 2015.

IN THE MATTER OF

Regulation 101 and 102 of MERC (Multi Year Tariff) Regulations, 2015.

AND

IN THE MATTER OF

Maharashtra State Electricity Distribution Co.Ltd. .... Petitioner  
Prakashgad Plot No G-9 Anant Kanekar Marg  
Bandra East Mumbai 400051

**Affidavit on behalf of Maharashtra State Electricity Distribution Company Limited.**

I, Mr. Paresh Bhagawat, aged 44 Years, son of Ramchandra Bhagwat, having my office at  
MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (E), Mumbai-400051 do  
solemnly affirm and say as follows:

I am Chief Engineer (Power Purchase) of Maharashtra State Electricity Distribution Co.  
Ltd., the Petitioner in the above matter and am duly authorized by the said Petitioner to  
make this affidavit.





The statements made in the enclosed petition for Amendment / Modification in FAC Regulations of MERC (Multi Year Tariff) Regulations, 2015 are based on the information received from the concerned officers of the Company and I believe them to be true.

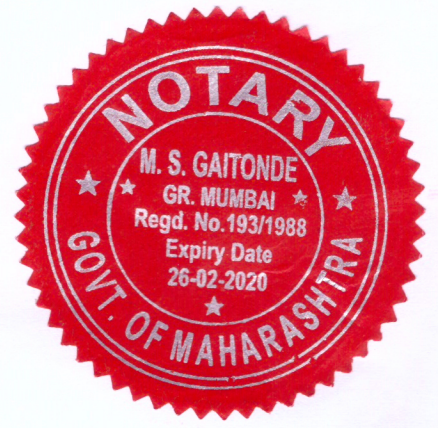
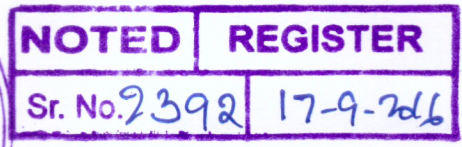
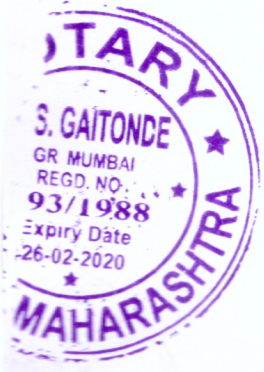
I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Petitioner is a party and where issues arising and /or relief sought are identical or similar to the issues arising in the matter pending before the Commission.

I solemnly affirm at Mumbai on this 17th that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

*[Signature]*  
Deponent

Identified before me  
*[Signature]*  
**P. K. DUBEY**  
B.A.L.L.B.  
ADVOCATE HIGH COURT  
Lawyer's Chamber Bhaskar Bldg.,  
2nd Floor, Bandra Court,  
Bandra (East), Mumbai - 400 051.

BEFORE ME  
*[Signature]* 17/9/2016  
**M. S. GAITONDE**  
B.A.L.L.M  
NOTARY  
GREATER MUMBAI  
GOVT. OF MAHARASHTRA  
INDIA





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**Prakashgad Plot No G-9 Anant Kanekar Marg**  
**Bandra East Mumbai 400051**

The Petitioner most respectfully submits as under;

**1. Background**

Maharashtra State Electricity Distribution Co. Ltd. (hereinafter to be referred to as "MSEDCL" or "the Petitioner") has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra to reorganize erstwhile Maharashtra State Electricity Board (herein after referred to as "MSEB"). The Petitioner submits that 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. The Petitioner has been incorporated on 31.5.2005 with the Registrar of Companies,





Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15th Sep 2005.

- 1.1. MSEDCL is a Company constituted under the provisions of Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005.
- 1.2. MSEDCL is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of the Electricity Act, 2003, in the business of Distribution of Electricity to its consumers situated over the entire State of Maharashtra, except some parts of city of Mumbai.

## 2. Provisions of MYT Regulation 2015 related to Fuel Adjustment Charges (FAC)

- 2.1 The Regulations regarding computation and levy of Fuel Adjustment Charge (FAC) are prescribed under regulation 10 of the MYT Regulations, 2015. The regulation 10.8 states that FAC calculated as per prescribed formula shall be recovered from the **actual sales** in terms of "Rupees per kilowatt-hour".
- 2.2 The regulation is silent about the month in the term 'actual sales'. As per prevailing practice, it is assumed to mean the '**actual sales of the month 'n'** for FAC of 'n-2' month.
- 2.3 Accordingly, MSEDCL calculates FAC for the month 'n-2' and levies and recovers from consumers on the actual sales in the month 'n'. (after a lapse of 2 months).

## 3. Effect on MSEDCL and its consumers due to shifting of HT Industrial consumers

4. 3.1 It is submitted that the petitioner is revenue neutral about recovery of FAC from consumer as it is a pass through for the actual expenditure incurred that originated from power generations which is subsequently reimbursed by the petitioner. However, it has direct impact on the consumers of the petitioner which results in higher effective rate for electricity consumed by the consumers and result in movement of consumers to Open Access.3.2 It has been observed that





levy of FAC for 'n-2' billed in the month 'n' affects MSEDCL and its consumers especially in case of change in consumer mix and consumption. This impact can be seen more prominently in case of HT Industrial Consumers where there is increasing trend of consumers shifting either towards "open access" or to "non-continuous" category from "continuous" category.

3.1 The burden of FAC for the month 'n-2' of those HT consumers who ceases to be 'HT Industrial-continuous' category in the month 'n' due to either shifting towards open access or to 'Non-continuous' category, is being passed on the other HT Industrial continuous consumers through increased FAC rate.

3.2 Due to such shifting, -

- (i) the effective FAC rate levied on remaining consumers is increasing;
- (ii) sometimes it may reach to its maximum cap limit and thereby giving rise to under recovery of FAC.

3.3 It is submitted that, due to increased energy rate because of higher FAC, the HT consumers again tend to move either towards open access or Non-continuous category making it a vicious cycle resulting into further increasing of FAC on remaining consumers.

#### **5. Example with relevant data**

The Petitioner humbly submits that, this can be explained with example based on the real data relating to HT Industrial -continuous category for last few months as per Annexure 1.

5.1. It can be seen from the Annex 1, Jun 15 to Aug 15 as FAC months with its corresponding billing months, Sept 15 to Nov 15, that the consumption of 'HT Industries - Continuous' category for Jun 15 is dropped by 65.32 MUs in Sept 2015 due to shifting of category. Out of which 43 MUs have been dropped due to 51 consumers shifted to "non-continuous" category, 21 MUs have been dropped due to 19 consumers shifted to "open access" and 1 MU have been dropped due to 21 consumers shifted to other category. Similarly the consumption for July 15 is dropped by 133.84 MUs in Oct 2015 due to shifting of category, out of which 105 MUs have been dropped due to 116 consumers shifted to "non-continuous" category, 27 MUs have been dropped due to 19 consumers shifted to "open access" and 1 MU have been dropped due to 17 consumers shifted to other category. Likewise, the consumption for Aug 15 is dropped by 93.55 MUs in Nov





2015, due to shifting of category, out of which 68 MUs have been dropped due to 87 consumers shifted to “non-continuous”, 25 MUs have been dropped due to 17 consumers shifted to “open access” and 1 MU have been dropped due to 8 consumers shifted to other category.

- 5.2. The Petitioner humbly submits that, Since, amount actually billed in ‘n-2’ is less than the amount actually calculated in ‘n-4’, the under recovery amount is added in the FAC month ‘n-2’ and eventually the FAC rate to be levied for month ‘n’ increases. This can be seen from the above table that the FAC rate for the month of June 15 is calculated at 79.89 paise which has been levied on the actual sales of Sept 15. Due to drop in sales in Sept 15, it has given rise to under recovery of Rs.25.48 crs. In result, the FAC rate for Sept 15 to be billed in Dec 15 has gone up to 139.69 paise. Had there not been any under recovery, the FAC rate would have been 82.61 paise. Thus, there is rise in FAC by 57.08 paise due to under recovery out of which 2.00 paise and 6.23 paise is the impact of shifting of consumers to “non-continuous” category and “open access” respectively.
- 5.3. It can also be seen that FAC rate of “non-continuous category is always lower than that of ‘continuous’ category due to lower energy rate. Also, for most of the months, the percentage change in FAC rate is lower for ‘non-continuous’ category which attracts consumers of ‘continuous’ category to shift to ‘non-continuous’.
6. The Petitioner humbly submits that, if FAC for the month exceeds the ceiling of that category, the differential amount cannot be billed and is carried forward to the next month which in turn increases the FAC of that month and so on. As such, it may be seen that the effective FAC rate for the month of Aug 15 FAC has reached to its maximum cap limit of 144.20 paise per unit leaving Rs.19.07 crs. of FAC unrecovered and carried forward to next month.
7. This scenario is worsening day by day because of shifting of consumers to Open Access or changing the category and it is apprehended that this trend will further aggravate.





8. Besides, burdening on HT Continuous industrial consumers, it blocks the revenue of petitioner in case of exceeding CAP and therefore is a matter of concern for Petitioner.

**9. Request Letter to Hon'able Commission regarding suggestion in modification in FAC mechanism.**

In view of the above facts, Petitioner had requested Hon'able Commission to allow MSEDCL to amend the present mechanism of calculation and levy of FAC by charging it to consumers of the month for which FAC is levied with following suggestions vide letter No CE/PP/FAC/777 dated 04.07.2016;

9.1 The FAC to be recovered in 'n' month from consumers in 'n-2' month on the basis of actual sales in that month i.e. the month for which FAC actually is. This will ensure full recovery of FAC that too from the legitimate consumers who consumed that energy and avoid the situation of over / under recovery of FAC.

9.2 In case of HT Industrial category, those consumers who shift to open access or change from continuous to non-continuous category and vice-versa will continue to be charged FAC of the category of the month of FAC. The new HT Industrial consumer shall not be burdened with FAC for first two months as there is lag of 2 months to recover FAC.

9.3 In case Residential, Commercial and other categories, clause 8.2 above may or may not be applied since the number of consumers entering and leaving this pool remains more or less same.

**10. Reply from Hon'ble Commission**

The Hon'ble Commission vide letter No MERC/FAC/20162017/100607 dated 26.08.2016 has rejected the suggestion of modification in FAC mechanism and directed to follow the regulations of MYT regulation meticulously. The para wise submissions of MSEDCL to the said letter is as follows-

10.1 *MERC (Multi Year Tariff) Regulation 2015 specify the determination and levy of FAC. Regulations 10.2 to 10.9 read together provide that FAC for nth month is determined on the month of variation on power purchase cost, over/under recovery and carrying cost of n-2 th month. This is as per the basic principle of FAC i.e. to allow pass through of only the actual variation on Power purchase cost.*





*Such category wise FAC determined in n th month is levied to the consumers in n+2 th month.*

**Petitioner's Submission-**

Petitioner respectfully submits that the Hon'ble Commission has not addressed the main issue raised by MSEDCL that in the present mechanism consumers who have consumed electricity in a particular month and are not paying FAC of that month in case they move away in open access.

*10.2 MSEDCL's request to levy FAC determined in 'n'th month on the consumption of n-2 th month is not in accordance with provisions of MYT regulation and hence, cannot be allowed. Further MSEDCL has proposed that the new HT industrial consumers will not be subjected to the FAC for first two months. Such discrimination's among the consumers is contradictory to Sec 62 (3) of the Electricity Act 2003, and hence cannot be allowed.*

**Petitioner's Submission-**

Petitioner submits that regulation 10.8 of MERC (Multi Year Tariff) Regulations, 2015 states that FAC calculated as per prescribed formula shall be recovered from the **actual sales** in terms of "Rupees per kilowatt-hour". The regulation is silent about the month of the term 'actual sales' used here.

Further, MSEDCL submits that Section 62 of Electricity Act, 2003 deals with the Determination of tariff :

- (1).
- (2).
- (3) The Appropriate Commission **shall not**, while determining the tariff under this Act, **show undue preference to any consumer** of electricity *but may differentiate* according to the consumer's load factor, power factor, voltage, *total consumption of electricity during any specified period* or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

In this context it is submitted that the Petitioner in its request letter had proposed that new HT industrial consumers shall not be burdened with FAC for first two month as there is a lag of 2 months to recovered FAC. Upon this the Hon'ble Commission stated that such discrimination among the consumers is contradictory to Section 63 of the Electricity Act 2003. Taking cogligence of this observation by the Commission the petititoner





now propose that any new consumers shall not be burden with FAC for first two months. The rationale behind this is that in the month 'n-2' for which FAC is calculated the new consumers was not consumes any electricity. As per the present mechanism for recovery of FAC there occurs a time lag of 2 months to recover the FAC. With this modified proposal the discrimination amongst the consumers is removed. Hence, Petitioner's request is not contradictory to Section 62(3) of the Electricity Act, 2003.

Further Section 45 of Electricity Act 2003 provides as under -

**"45. Power to recover Charges-**

(1) Subject to the provision of this Section, the price to be charged by Distribution Licencee for the supply of Electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2)...

(3) *The Charges of electricity supplied by Distribution Licencee may include -*

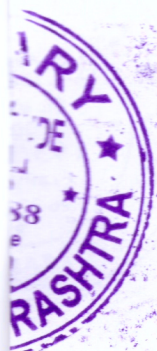
(a) *A fixed charge in addition to the charge for the actual electricity supplied*

(b) *A rent or other charges in respect of any electric meter of electric plant provided by the Distribution licensee"*

The opening words of above sub section (3) "Charges for electricity supplied" itself suggest that the intention of the legislations for levy of charges to the consumer is with relation to actual electricity supplied except fixed charges as specified in (a) above.

Hence, any charges apart from fixed charges and the charges as specified in (b) above have to be levied for the actual consumption of electricity by the consumer. As per the prevailing regulations the FAC charges are recovered from the consumer on account of variations in Fuel and Power Purchase cost that has taken place in the month n-2. As such in case of new consumer the FAC is being levied of the month n-2 in which actual electricity has not been supplied by Distribution Licensee.

However, the prevailing regulations on FAC provide for recovery of FAC from the consumer for the Fuel and Power Purchase Cost variation related to the month n-2. The reason behind such provision might be absence of required system for capturing the data related to the consumption of energy for n-2 month for levy in month n. But with the development in information technology now a days available in MSEDCL, it is possible to track such data of consumers and





consumption easily. The Petitioner is in position to fully implement the provisions of Section 45 of Electricity Act 2003 for FAC also.

*10.3 Electricity, being an ongoing business consumers are also added regularly to the system while some consumers would move away from the system to another licensee area or to the another state/country under" 'business-as-usual', circumstances, regulatory assets as well as the impact of truing up and associate carrying cost as well as FAC are recovered only from the consumers of the only in supply at the time of recovery and not recovered one to one basis from the same set of consumers who were receiving supply at the time of incurring the cost . MSEDCL proposal is against this proposal of electricity business and tariff determination*

**Petitioner's Submission-**

Petitioner submits that its request is not against the basic feature of electricity business. But in view of emergence of Open Access the revenue of MSEDCL from HT Industrial category and the consumer of HT Industrial category *per se* is affected due to vicious circle resulting into higher rate of FAC. Hence, it is time to relook into the prevalent practices with the prime object to have system of charging FAC on the principle of 'equity' in the larger interest of consumers.

**11.** Further, with the advent of latest development in information technology and computerized billing system the business has undergone changes whereby the hurdles in the conventional business model may be removed so as to fully implement the provisions of Electricity Act, 2003. The Hon'ble Commission may please be appreciate the Petitioner's following concerns-

- 11.1. That Hon'ble Commission has not addressed the main issue raised by Petitioner that in the present mechanism consumers who have consumed electricity and not paying FAC and moving away towards open access and enjoying unjust enrichment;
- 11.2. That regulation 10.8 of MERC (Multi Year Tariff) Regulations, 2015 is silent about the month in the term 'actual sales' used here.
- 11.3. That Petitioner's request to Hon'ble Commission insisted to ensure the principle of 'equity' to avoid unjust enrichment of shifting consumers and unjust burden on new/rest of the consumers as it is not justifiable to burden FAC of left out consumers on remaining consumers.





11.4. That Petitioner's request is not against the basic feature/spirit of electricity business. But in view of emergence of Open Access the revenue of Petitioner from HT Industrial category and the consumer of HT Industrial category *per se* are adversely affected due to vicious circle resulting into higher rate of FAC.

12. Petitioner would also like to submit that with advance development in Information Technology that is in place with MSEDCL one to one mapping of consumers in billing program is now possible. As such the required data regarding consumption of a particular consumer pertaining to the month 'n-2' can be captured for levy of FAC in the billing month 'n'.

13. Petitioner submits that considering the above facts and submissions, it is prayed that Hon'ble Commission to make necessary amendments in FAC regulations so as to incorporate the following changes –

- (I) The FAC to be recovered in 'n' month from consumers in 'n-2' month on the basis of actual sales in that month i.e. the month for which FAC actually is.
- (II) In case of HT Industrial category, those consumers who shift to open access or move from continuous to non-continuous category and vice-versa will continue to be charged FAC of the category of the month of FAC.
- (III) The new consumer shall not be burdened with FAC for first two months as there is lag of 2 months to recover FAC.

**14. Hon'ble Commission power to amend the Regulations and to remove difficulties.**

14.1. Regulation 101 of MERC (MYT Regulation 2015) provides that *"the Commission may at any time, vary, alter, modify or amend any provisions of these regulations."*

14.2. Regulation 102 of MERC (MYT Regulation 2015) provides that *"if any difficulties arises in giving effect to the provisions of these regulations the Commission may , by general or specific order, make such provisions not in consistent with the provisions of the Act, as may appear to be necessary for removing the difficulties."*

14.3. In view of these powers vested with Hon'ble Commission, Petitioner prayed to admit the petition considering the interest of consumers and genuine difficulties as described in the present petition.

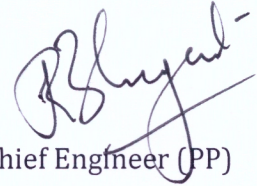




## 15. Prayers

The Petitioner therefore most humbly prays to this Hon'ble Commission as under;

- a) To admit the petition;
- b) To allow the petitioner to recover the FAC calculated for the month 'n-2' from the consumers of 'n-2'th month to be billed in the month 'n' on the basis of their consumption of 'n-2th' month as requested in the petition;;
- c) To make the necessary/appropriate amendments in the present regulations so as to give effect to the submissions of Petitioner as given in para 13;
- d) To pass such order/ orders as Hon'ble commission may deem fit considering Fact and circumstances of the case and in the interest of consumers at large;
- e) To condone any error/omission and to give opportunity to rectify the same.



Chief Engineer (PP)

MSSEDCL





**Annexure - 1**

**Monthwise Sales, FAC rate and Under Recovery amount of HT Industrial-Continuous Category**

FAC month		Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15
Billing month		Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16
Sale in FAC month-MUs		987.81	984.90	954.59	981.69	896.89	812.17	845.31	734.76	762.66
Sale in Billing Month-MUs		981.69	896.89	812.17	845.31	734.76	762.66	711.37	684.51	719.60
Decrease in MUs		6.12	88.21	142.42	136.38	162.13	49.51	133.94	50.25	43.06
Decrease due to Shifting	No.	68	42	91	152	112	64	53	63	59
	MUs	30.18	13.68	65.32	133.84	93.55	48.81	28.69	53.33	53.98
No of Con. shifted to Non Continuous	No.	0	0	51	116	87	40	27	36	36
	MUs	0	0	43.20	105.49	68.37	11.65	7.58	36.14	37.09
No of Con. shifted to Open Access	No.	44	25	19	19	17	13	7	12	12
	MUs	27.84	12.22	20.81	27.68	25.11	36.24	19.61	16.07	16.29
No of Con. shifted to Others	No.	24	17	21	17	8	11	19	15	11
	MUs	2.34	1.46	1.30	0.66	0.70	0.91	1.49	1.12	0.61
FAC with 'K' factor (P/kwh)		57.71	44.89	102.49	93.93	73.93	<b>82.61</b>	46.95	76.21	<b>86.60</b>
Under Recovery in Rs. Crs		-2.22	164.02	-91.73	1.99	82.10	25.48	15.93	59.46	39.35
FAC after adj. of under/over recovery in P/kwh		55.46	140.20	<b>79.89</b>	95.96	144.20	<b>139.69</b>	65.80	144.20	<b>144.20</b>
Carried forward Amt. due to CAP in Rs Crs.		0	70.15	0	0	19.07	0	0	9.52	4.95
Impact of Shifting	Rs. in Crs	1.67	1.92	5.22	12.84	13.50	6.82	1.89	7.69	7.79
	Paise/ Unit	1.70	1.97	5.47	13.08	15.04	8.40	2.23	10.47	10.21
Non Continuous	Rs. in Crs	0	0	3.45	10.12	9.85	1.62	0.49	5.21	5.34
	Paise/ Unit	0	0	3.62	10.31	10.99	2.00	0.59	7.09	7.01
Open Access	Rs. in Crs	1.54	1.71	1.66	2.65	3.62	5.06	1.29	2.31	2.35
	Paise/ Unit	1.56	1.74	1.74	2.71	4.04	6.23	1.53	3.15	3.08
Others	Rs. in Crs	0.12	0.20	0.10	0.06	0.01	0.13	0.09	0.09	0.00
	Paise/ Unit	0.13	0.21	0.11	0.06	0.01	0.16	0.12	0.22	0.11

FAC rate of "Non-conti. category	Paise/ Unit	54.89	126.60	66.47	87.32	134.20	<b>89.02</b>	38.31	122.27	79.03
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