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PLOT NO. G-9, PRAKASHGAD,
Prof. ANANT KANEKAR MARG,
BANDRA (E), MUMBAI-400 051.

Ref. No.: CE/PP/FAC Petition/

Date:

To,
The Secretary,
Maharashtra Electricity Regulatory Commission,
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade, Mumbai.

Subject: Submission of Petition for Modification in FAC Regulations of MYT Regulation 2015.

Respected Sir,

Maharashtra State Electricity Distribution Company Limited (MSEDCL) is hereby submitting Petition for Modification in FAC Regulations of MYT Regulation 2015 which is enclosed herewith.

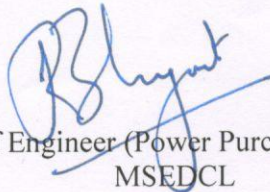
The necessary fees as per MERC (Fees & Charges) Regulations 2017, of Rs. 10,000/- (Ten Thousand only) have already been paid by NEFT vide UTR No. P19030536387298 on 07-03-2018.

This may please be taken on record & be placed before Hon'ble Commission for appraisal.

Thanking you.

Encl: As above

Yours faithfully,


Chief Engineer (Power Purchase)
MSEDCL

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 100, 101 and 102 of Maharashtra Electricity Regulatory Commission (Multi
Year Tariff) Regulations, 2015.

IN THE MATTER OF

Regulation 94 of MERC (Conduct of Business) Regulations, 2004;

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 47 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.

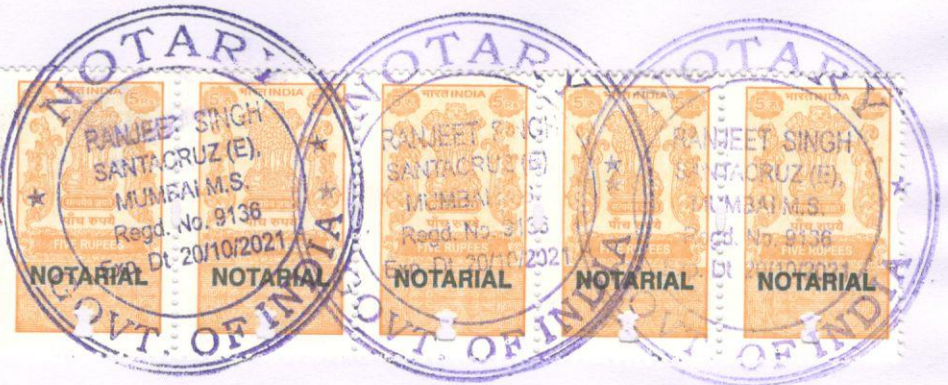
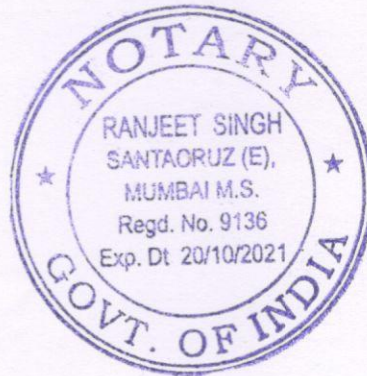
I solemnly affirm at Mumbai on this **11 MAR 2019** that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.


Deponent

Identified before me

BEFORE ME

RANJEET SINGH
M.Sc.LL.B.
NOTARY
MAHARASHTRA
GOVT OF INDIA
11 MAR 2019



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 100, 101 and 102 of MERC (Multi Year Tariff) Regulations, 2015.

IN THE MATTER OF

Regulation 94 of MERC (Conduct of Business) Regulations, 2004;

AND

IN THE MATTER OF

Maharashtra State Electricity Distribution Co.Ltd. Petitioner
Prakashgadh, Plot No G-9, AnantKaneKarMarg,
Bandra East, Mumbai - 400051

The Petitioner most respectfully submits as under;

1. Background

1.1. 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. The Petitioner is a Distribution Licensee under the provisions of the Electricity Act 2003 having license to supply electricity in State of Maharashtra except some parts of Mumbai.

- 1.2. 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.
- 1.3. 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.
- 1.4. It is most respectfully submitted that this Hon'ble Commission has notified "MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (MULTI YEAR TARIFF) REGULATIONS, 2015" and has specified the clauses namely 9.1 and 10, related to Fuel Adjustment Charge (FAC), its calculation and allowed the adjustment of the same on monthly basis.
- 1.5. With regards to the said provisions of FAC, Petitioner is hereby submitting its petition under clause 101 and 102 of MERC (Multi Year Tariff) Regulations, 2015 requesting the Hon'ble Commission to modify/ amend Clause 10 with regards to levy of the Fuel Adjustment Charge (FAC).
- 1.6. It is submitted that the petitioner is revenue neutral entity as 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 through tariff from the consumers. 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.
- 1.7. The specific grounds on which the amendment/ modification of the clause of the MYT Regulations 2015 is being sought have been identified in the subsequent paragraphs.
- 2. Allow the Petitioner to levy FAC to consumers for the period of actual consumption related to calculated FAC**
- 2.1. The Regulations regarding computation and levy of Fuel Adjustment Charge (FAC) are prescribed under regulation 10 of the MYT Regulations, 2015. As per MYT 2015 Regulations, the Fuel Adjustment Charge is allowed to be levied on a monthly basis

as an adjustment in tariff against variation in cost of fuel and power purchase and shall be applicable on the entire sales. The Regulations also clearly states that FAC needs to be computed and charged on the basis of actual variation in cost of fuel and power purchase and not on the basis of estimated or expected variation.

It is submitted that, the basic principle behind the same was that Power Purchase cost being uncontrollable in nature, the same needs to be passed on to consumers on actual basis based on actual cost incurred so as to avoid any undue burden on the consumers.

- 2.3. It is further submitted that, again for recovery of actual variation in the Fuel and power purchase cost, Clause 10.8 of the Regulations clearly states that it needs to be recovered from actual Sales in which case the Petitioner becomes revenue neutral as it is allowed to recover variation in the said cost.

10.8 The total Z_{FAC} recoverable as per the formula specified above shall be recovered from the actual sales in terms of "Rupees per kilowatt-hour":

- 2.4. It is submitted that the said clause of the regulation is silent about the actual sales to be considered for the month in which the FAC is required to be levied.

- 2.5. As per clause 10.7 of MYT Regulations, 2015, it clearly states that FAC needs to be charge in Month "n" for the variation of Fuel and Power Purchase Cost occurred in "n-2" month. This clause can be explained in a way that any Fuel and Power Purchase Cost variation for the month say October ("n-2" month) will be billed to consumers in the month of January ("n" month). The said clause is stated below for brevity:

10.7 The calculation for FAC to be charged for the month "n" is as follows:

$$Z_{FAC n} (\text{Rscore}) = F_{n-2} + C_{n-2} + B_{n-2}$$

Where,

F_{n-2} = Change in fuel cost of own generation and cost of power purchase for the month "n-2",

- 2.6. Also, in report submitted by Committee formed by MSEB Holding Company Ltd. in relation to the Fuel Adjustment Charges (FAC). In its report, the committee supported the modification stating that, it is realistic, consumption based and doable through IT system.

- 2.7. Presently the Petitioner calculates FAC in the 'n'th month for the variation in power purchase of month 'n-2' and levies and recovers from consumers on the consumption of 'n'th month. In clause 10.8 of MYT Regulations, 2015 it is not clearly mentioned about the sales of the month on which FAC to be calculated. Therefore the Petitioner presently calculating FAC on the consumption of month 'n', since FAC is being calculated in 'n'th month.

2.8. It has been observed that computation of FAC in the 'n' month for the month 'n-2' based on the energy sales of month 'n-2' affects Petitioner by way of total recovery which depends on the sales for the respective month in which FAC is levied and its consumers due to change in mix of consumers and energy consumption in the nth month as compared to 'n-2'th month.

2.9. The Petitioner proposes to levy FAC on the actual sales of the consumers corresponding to the FAC calculated for the respective month due to variation in fuel and power purchase cost i.e. say FAC of October month to be charged on the consumption of consumers of October month though billed in January.

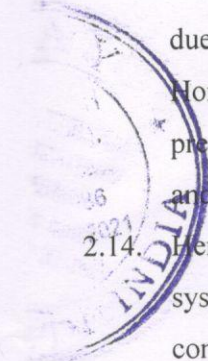
2.10. In view of the above facts, Petitioner had requested Hon'ble Commission to allow MSEDCL to amend the present mechanism of calculation and levy of FAC by charging it to consumers of the month for which FAC is levied with following suggestions vide letter No CE/PP/FAC/777 dated 04.07.2016 as it will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

2.11. Also, the Hon'ble Commission in its Order dated 3rd November 2016 in Case No. 48 of 2016 has stated as follows:

Regarding changing the current methodology and allowing billing of FAC determined for the "nth" month on the consumption of the "n-2th" month, electricity supply being an ongoing business, consumers are regularly both added and exit from the system. Under the principles of ongoing business in the electricity sector, the impact of true-up and associated carrying costs as well as FAC is recovered only from consumers who are receiving supply at the time of such recovery, and is not recovered on a one-to-one basis from the same consumers as were receiving supply at the time the costs were incurred. Therefore, such change in the methodology for billing FAC is not tenable.

2.12. Upon above directives of Hon'ble Commission, MSEDCL submits that MYT/ MTR order takes place in 5/2 years. On the other hand FAC is being charged on monthly basis. Hence, the concept of applying true up cost to contemporary consumers cannot be applied to FAC mechanism which is billed on monthly basis.

2.13. 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. It is submitted that, the 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 are enjoying unjust enrichment.

2.14. 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.

2.15. It is submitted that connected consumers in 'n'th month presently being charged FAC for the consumption actually occurred in the 'n-2'th month. This methodology basically defeats the principle of Equality which aims to eliminate unjust inequalities and to promote full and effective equality. But in the given case, the inequalities increases by following way:

- a. Levying FAC to the consumers who might have consumed low electricity in n-2 month (esp. seasonal consumers or consumers who bank energy), OR
- b. Penalizing the consumers of Distribution Licensee with the power consumption made by the Open Access Consumers who was the consumers of Distribution Licensee in n-2 month. Impact of the same can be seen more prominently in case of HT Industrial Consumers where there is increasing trend of consumers shifting towards "open access".

2.16. Burden of FAC for the month 'n-2' of those HT consumers who ceases to be 'HT Industrial' category in the month 'n' due to shifting towards open access, is being passed on to the other remaining HT Industrial consumers through increased FAC rate which results into defeating the objective of Principle of Equality.

2.17. Due to such shifting of consumers, the following impact can be envisages:

- 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.

2.18. The Petitioner humbly submits that, in case sales in the month of billing is lower than the sales of n-2 month due to seasonal variation or open access or consumption mix, it is possible that FAC for the month exceeds the ceiling of that category and therefore the differential amount cannot be billed in the same month resulting in carry forward to the next month which in turn increases the FAC of the succeeding month and also blocks the revenue of the Petitioner impacting their working capital.

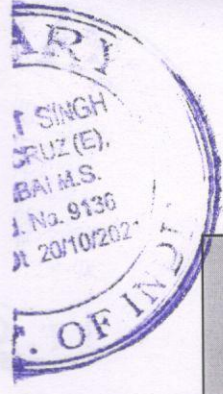
2.19. It is submitted that the Power Purchase quantum varies due to demand by the consumers and are seasonal in nature and also depends on the consumer mix.

Therefore, it is necessary for levying FAC of the power purchase cost variation on the actual consumption which has resulted into such variance.

- 2.20. As per present FAC mechanism, migration of large consumers (in terms of energy sales) to Open Access, burdens the other remaining HT consumers. Circumstances like Open Access in which HT Consumers shifted to Open Access hampers the other remaining consumers to which FAC is being charged for the 'n'th month based on the consumption of consumer who opted for Open Access. Present mechanism is unable to charge the FAC to the consumer who is actually liable to recover variation in power purchase cost. In view of above, the effective FAC rate levied on remaining HT consumers is increasing. Also, sometimes it may reach to its maximum cap limit and thereby giving rise to under recovery of FAC.
- 2.21. The Petitioner further submits that, due to increased energy rate on account of higher FAC, the HT consumer again may tend to move to 'Open Access'. Which makes it vicious cycle resulting in to further increasing FAC on remaining consumers.
- 2.22. It is submitted that, HT Consumers are the major contributor from the subsidizing consumers, shifting of HT consumers to Open Access on account of increasing FAC may lowering the revenue of MSEDCL receiving from the HT consumers. It further impacts the contribution of HT Consumers (subsidizing consumers) under cross subsidy concept. It may results in to increase in tariff for subsidized consumers unreasonably. Due to shifting of HT consumer to Open Access consumers, MSEDCL lose its respective revenue from the HT consumers who opt for Open Access. This impact MSEDCL's financial performance and it aids to worsen the financial position of the MSEDCL and loss of cross subsidy also.
- 2.23. In view of present FAC mechanism of charging FAC to the present consumers based on the variation of power purchase cost of 'n-2' month on the basis of n-2 month consumption, MSEDCL has studied the trend of consumer shifting to Open Access and Permanently disconnected consumers from FY 2016-17 to FY 2018-19 H1 (Up to September 2018).
- 2.24. The Petitioner has further analysed the data for last 2.5 years and computed the quantum of FAC amount which couldn't have been charged/recovered from those HT consumers who have opted for Open Access or shifted to permanently disconnected consumers who were liable to pay FAC amount.

FY 2016-17

| Month | HT Consumers changed from Industrial to Open Access | | | | HT Consumers changed from Industrial to PD | | | |
|--------------|---|--|--------------------------------------|--|--|--|--------------------------------------|--|
| | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) |
| Apr-16 | 5 | 7618791 | 0 | - | 5 | 9 | 0 | - |
| May-16 | 10 | 10455482 | 0.9922 | 1.04 | 9 | 615303 | 0.9922 | 0.06 |
| Jun-16 | 3 | 2051713 | 0.7063 | 0.14 | 5 | 231057 | 0.7063 | 0.02 |
| Jul-16 | 4 | 7018179 | 0.4388 | 0.31 | 8 | 414756 | 0.4388 | 0.02 |
| Aug-16 | 4 | 2975457 | 0.5267 | 0.16 | 8 | 4391 | 0.5267 | 0.00 |
| Sep-16 | 27 | 59322450 | 0.1335 | 0.79 | 3 | 708 | 0.1335 | 0.00 |
| Oct-16 | 3 | 4203870 | 0.2402 | 0.10 | 4 | 8517 | 0.2402 | 0.00 |
| Nov-16 | 34 | 65635810 | 0.5135 | 3.37 | 44 | 3494450 | 0.5135 | 0.18 |
| Dec-16 | 13 | 11565127 | - | - | 30 | 32099 | - | - |
| Jan-17 | 6 | 8617968 | - | - | 44 | 4397088 | - | - |
| Feb-17 | 21 | 53997340 | - | - | 38 | 289616 | - | - |
| Mar-17 | 34 | 84215885 | -0.2000 | -1.68 | 54 | 55884 | -0.2000 | -0.00 |
| Total | 164 | 317678072 | | 4.23 | 252 | 9543878 | | 0.27 |



FY 2017-18

| Month | HT Consumers changed from Industrial to Open Access | | | | HT Consumers changed from Industrial to PD | | | |
|--------------|---|--|---------------------------------------|--|--|--|--------------------------------------|--|
| | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month, Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) |
| Apr-17 | 27 | 47802315 | -0.72 | -3.44 | 48 | 308093 | -0.72 | -0.02 |
| May-17 | 6 | 8415771 | 0.6 | 0.50 | 40 | 1880774 | 0.6 | 0.11 |
| Jun-17 | 12 | 32778706 | 0.32 | 1.05 | 30 | 705415 | 0.32 | 0.02 |
| Jul-17 | 10 | 21321786 | -0.61 | -1.30 | 33 | 252242 | -0.61 | -0.02 |
| Aug-17 | 14 | 17100904 | -0.04 | -0.07 | 40 | 116777 | -0.04 | -0.00 |
| Sep-17 | 3 | 5495346 | -0.42 | -0.23 | 52 | 762577 | -0.42 | -0.03 |
| Oct-17 | 3 | 13756548 | -0.55 | -0.76 | 40 | 71092 | -0.55 | -0.00 |
| Nov-17 | 5 | 15372458 | -0.2800 | -0.43 | 45 | 579617 | -0.2800 | -0.02 |
| Dec-17 | 5 | 12330986 | -0.1900 | -0.23 | 48 | 287704 | -0.1900 | -0.01 |
| Jan-18 | 3 | 8544674 | 0.0900 | 0.08 | 43 | 3492668 | 0.0900 | 0.03 |
| Feb-18 | 3 | 3504833 | 0.1000 | 0.04 | 28 | 719819 | 0.1000 | 0.01 |
| Mar-18 | 6 | 4841856 | -0.0130 | -0.01 | 45 | 222579 | -0.0130 | -0.00 |
| Total | 97 | 191266183 | | -4.80 | 492 | 9399357 | | 0.08 |

FY 2018-19 H1

| Month | HT Consumers changed from Industrial to Open Access | | | | HT Consumers changed from Industrial to PD | | | |
|--------------|---|--|--------------------------------------|--|--|--|--------------------------------------|--|
| | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) | No of consumers | Last month consumption before change (kWh) | FAC charges of billing month Rs./KWh | FAC Amt attributable to consumers if they were continued with MSEDCL (Rs. Crs) |
| Apr-18 | 4 | 3632815 | 0.12 | 0.04 | 47 | 870327 | 0.12 | 0.01 |
| May-18 | 9 | 8670454 | 0.21 | 0.18 | 25 | 69593 | 0.21 | 0.00 |
| Jun-18 | 4 | 11676737 | 0.32 | 0.37 | 41 | 104532 | 0.32 | 0.00 |
| Jul-18 | 2 | 3928026 | 0.008 | 0.00 | 25 | 117091 | 0.008 | 0.00 |
| Aug-18 | 2 | 5789729 | 0.14 | 0.08 | 52 | 173002 | 0.14 | 0.00 |
| Sep-18 | 4 | 4764621 | 0.39 | 0.19 | 40 | 530412 | 0.39 | 0.02 |
| Total | 25 | 38462382 | | 0.87 | 230 | 1864957 | | 0.04 |

2.25. From the above detailed analysis, it can be observed that there is trend of shifting consumers to Open Access and permanently disconnected. In such a case, present mechanism is unable to address above cases in order to charge correct FAC to appropriate consumers. Even though impact of FAC is negligible in FY 2017-18 and FY 2018-19 due to lower FAC, the same is on a higher side in FY 2016-17 when FAC was positive and such condition may occur in future also. In view of this, Petitioner request Hon'ble Commission to make necessary changes in present FAC mechanism in order to address above issues.

2.26. Considering 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. 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'.

2.27. In view of the above, Petitioner submits that such discrimination among the consumers may not be allowed and therefore there is a need for review of such clause whereby FAC needs to be levied to consumer for their respective month of consumption though billed in n month i.e. Say FAC is calculated for the month of October then the consumption of respective consumer for the month of October to be billed with FAC in the month of January.

2.28. This method has advantages for consumer and licensee due to following factors:

- a. there will be no under-recovery or over-recovery and also no carrying cost;
- b. the consumer who migrated under OA or gets permanently disconnected in 'n'th month will also require to settle FAC payable for past consumption before settlement of accounts;
- c. a new consumer who has not consumed electricity in the 'N-2'th month will not be required to pay the unjustified FAC in Nth month for the period when he was not a consumer.

2.29. The petitioner also highlights Clause 5.3(h)-4 of the Tariff Policy which states that, uncontrollable cost to be recovered speedily so as to ensure that future consumers are not burdened with past cost and therefore basic objective is to recover the uncontrollable cost from the consumer due to which the same has occurred. The clause is reproduced as under:

"Uncontrollable costs should be recovered speedily to ensure that the future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of adverse natural events."

2.30. It is submitted that, considering the increasing trend for availing open access by the eligible consumers, it becomes more important that the uncontrollable cost should be fully recovered when it is occurred and should not be postponed in different month as some of the consumers, for whom costlier power is purchased in a particular month, may in the subsequent month purchase power under open access from sources other than the distribution licensee. Thus, delaying such recovery would amount to cross subsidization by other consumers by paying higher tariff. In sum and substance, it is in the wider interest of all the consumers to recover the variations in entire power purchase cost as early as possible and preferably for the same consumption for which FAC has occurred.

2.31. Accordingly, Petitioner request the Hon'ble Commission to amend/ modify clause 10

of MYT Regulations 2015 and allow distribution licensee to levy FAC for the actual consumption of “n-2” month though billed in “n” month.

3. Inclusion of transmission charges while determining the monthly FAC

- 3.1. MSEDCL humbly submits that at present, variation in transmission charges approved and payable on the actual power purchase is not allowed to be considered while computing the monthly FAC.
- 3.2. MSEDCL humbly submits that as per clause 9.1 of MERC MYT Regulations, 2015, it has defined uncontrollable factor whereby variation in fuel cost and cost of power purchase is included. The same is outlined as below:

9 Controllable and uncontrollable factors

9.1 The “uncontrollable factors” shall comprise the following factors, which were beyond the control of, and could not be mitigated by the Petitioner, as determined by the Commission:

(c) Variation in fuel cost on account of variation in price of primary and/or secondary fuel prices;

(e) Variation in the cost of power purchase due to variation in the rate of power purchase from approved sources, subject to clauses in the power purchase agreement or arrangement approved by the Commission;

- 3.3. As can be analyzed from the above said regulations, any variation in the fuel cost and Power purchase cost (from approved sources) is considered to be uncontrollable factors. In addition to the same, Clause 10.2 allows distribution licensee to recover FAC on account of variation in cost of fuel and power purchase cost. Accordingly, the regulations clarifies that any variation in fuel and power purchase cost which falls under the approved source is allowed to be consider for calculation of FAC and to be levied to consumers.
- 3.4. Accordingly, Petitioner submits that in MTR Order No. 195 of 2017 dated 12th September 2018, the Hon’ble Commission has approved Power Purchase cost for FY 2018-19 and FY 2019-20 which includes the PGCIL Charge also. The same is highlighted in table below:

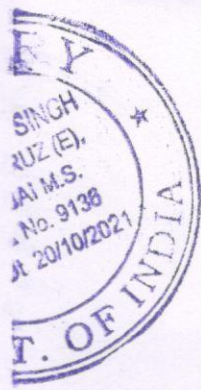


Table 6-41: Approved Power Purchase Cost for FY 2018-19

| Generator Name | Energy Purchase (MU) | Capacity Charges (Rs. Crore) | Variable Cost per unit (Rs/kWh) | Total Variable Charge (Rs. Crore) | Other Charges (incl. suppl. & IT) (Rs. Crore) | Total Cost (Rs. Crore) | Rate per unit of power procured (Rs/kWh) |
|--|----------------------|------------------------------|---------------------------------|-----------------------------------|---|------------------------|--|
| Must Run Plants | 28,397 | 224 | 3.72 | 10,565 | - | 10,789 | 3.80 |
| MSPGCL Total | 43,753 | 8,721 | 2.24 | 9,784 | - | 18,506 | 4.23 |
| NTPC Total | 25,937 | 4,213 | 1.43 | 3,716 | 268 | 8,197 | 3.16 |
| IPP and UMPP Total | 29,113 | 4,252 | 2.08 | 6,062 | 95 | 10,409 | 3.58 |
| PGCIL charge including Reactive energy | - | 2,688 | - | - | - | 2,688 | - |
| Total Power purchase | 1,27,199 | 20,098 | 2.37 | 30,128 | 363 | 50,589 | 3.98 |

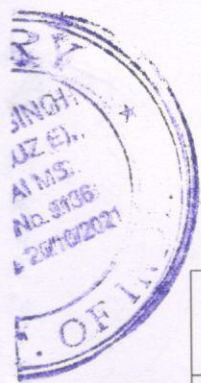
Table 6-42: Approved Power Purchase Cost for FY 2019-20

| Generator Name | Energy Purchase (MU) | Capacity Charges (Rs. Crore) | Variable Cost per unit (Rs/kWh) | Total Variable Charge (Rs. Crore) | Other Charges (incl. suppl. & IT) (Rs. Crore) | Total Cost (Rs. Crore) | Rate per unit of power procured (Rs/kWh) |
|--|----------------------|------------------------------|---------------------------------|-----------------------------------|---|------------------------|--|
| Must Run Plants | 30,537 | 236 | 3.78 | 11,553 | - | 11,789 | 3.86 |
| MSPGCL Total | 43,877 | 8,743 | 2.23 | 9,800 | - | 18,543 | 4.23 |
| NTPC Total | 27,634 | 4,992 | 1.42 | 3,910 | 280 | 9,183 | 3.32 |
| IPP and UMPP Total | 28,585 | 4,247 | 2.08 | 5,951 | 98 | 10,296 | 3.60 |
| PGCIL charge including Reactive energy | - | 2,928 | - | - | - | 2,928 | - |
| Total Power purchase | 1,30,634 | 21,146 | 2.39 | 31,214 | 378 | 52,738 | 4.04 |

- 3.5. As can be outlined in the above table, the approved power purchase cost includes PGCIL charges and is also an approved source by Hon'ble Commission in its tariff order. Therefore, considering clause 9 of MYT Regulations 2015 which allows variation in fuel and power purchase cost from approved source and comparing the same with the power purchase cost approved in MTR Order, MSEDCL feels that PGCIL charges is required to be considered for inclusion in FAC for any variation during the period.
- 3.6. It is further submitted that the Central Electricity Regulatory Commission (CERC) notifies the Point of Connection (POC) Charges on quarterly basis in separate orders and varies according to load, flow and direction of power injected and withdrawn by the beneficiaries. Such Order is purely calculated on the basis of power flow and demand and is beyond the control of MSEDCL and therefore can be considered as uncontrollable.
- 3.7. The variation in POC charges determined by CERC in its various quarterly order in last 2 years i.e. FY 2016-17 and FY 2017-18 has been highlighted below:

| Quarterly Period | POC Rates | Reliability support charges | Total Charges | Quarterly variation |
|------------------------|-----------|-----------------------------|---------------|---------------------|
| Apr 2016 to June 2016 | 320069 | 23671 | 3,43,740 | |
| Jul 2016 to Sep 2016 | 345179 | 26062 | 3,71,241 | 8.00% |
| Oct 2016 to Dec 2016 | 327380 | 25321 | 3,52,701 | -4.99% |
| Jan 2017 to Mar 2017 | 333036 | 26182 | 3,59,218 | 1.85% |
| Apr 2017 to June 2017 | 317357 | 27764 | 3,45,121 | -3.92% |
| July 2017 to Sep 2017 | 366836 | 27284 | 3,94,120 | 14.20% |
| Oct 2017 to Dec 2017 | 293699 | 24271 | 3,17,970 | -19.32% |
| Jan 2018 to March 2018 | 329532 | 25899 | 3,55,431 | 11.78% |

- 3.8. From the above data of POC charges for FY 2016-17 and FY 2017-18, it can be clearly seen that POC charges in Rs/MW/month are varying to great extent. Therefore MSEDCL submits that, such variation in POC charges is vital to address under FAC mechanism in line with submission made in above paragraph.
- 3.9. Since the Point of Connection Charges i.e. transmission charges is part of the power purchase cost, variation in the transmission charges is an 'uncontrollable factor' and cannot be mitigated by MSEDCL. Therefore, MSEDCL submits that any variation in transmission charges should be considered as part of variation in the power purchase cost and hence should be allowed to be included while determining the monthly FAC along with the Z-factor Charge (ZFAC) component.
- 3.10. The petitioner states that the Clause 5.3(h)-4 of the Tariff Policy also allows recovery of uncontrollable cost so that future consumers are not burdened with past costs. The clause is reproduced as under:
- "Uncontrollable costs should be recovered speedily to ensure that the future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of adverse natural events."*
- 3.11. MSEDCL submits that, present FAC mechanism not considers variation in POC charges while determining FAC. whereas variation in actual transmission cost in line with transmission cost approved by Hon'ble Commission is being address in true up exercise, where Hon'ble Commission provides carrying cost on the variation of transmission cost which may impact the tariff. MSEDCL submits that by considering variation in transmission cost under FAC mechanism, it may eliminate the carrying cost which needs to occur presently at the time of True up exercise. By adopting transmission cost under FAC, tariff rate can be reduced/control to that extent.
- 3.12. MSEDCL further submits that variation in transmission charges is being allowed to be recovered under Fuel Adjustment Charge (FAC) / Power Purchase Cost Adjustment



Charges (PPAC) / Fuel Price & Power Purchase Adjustment (FPPPA) and the likewise in other States / Union Territories of India. A list of States and the corresponding regulatory provisions / extracts from SERC Orders that allows recovery of variation in transmission charges has been tabulated below:

| S. No. | State | Regulation / Tariff Order | Relevant Regulation / Order |
|--------|---------|---|---|
| 1 | Delhi | DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 (Annexure A, Page No. 210) | "134. The Distribution Licensee shall be allowed to recover the incremental Power Procurement Cost on quarterly basis, over and above the Power Procurement Cost approved in the Tariff Order of the relevant year, incurred due to the following: (a) Variation in Price of Fuel from long term sources of Generation; (b) Variation in Fixed Cost on account of Regulatory Orders from long term sources of Generation; (c) Variation in Transmission Charges." |
| 2 | Gujarat | GERC Tariff Order on Determination of Tariff of Torrent Power Limited – Distribution Surat for FY 2018-19 (Annexure B, Page No. 95) | FPPPA is determined based on the below formula: $FPPPA = [(PPCA-PPCB)] / [100-Loss \text{ in } \%]$ Where, PPCA - is the average power purchase cost per unit of delivered energy (including transmission cost),.... and transmission charges as approved by the Commission for transmission network.... PPCB - is the approved average base power purchase cost per unit of delivered energy (including transmission cost) for all the generating stations considered by the |



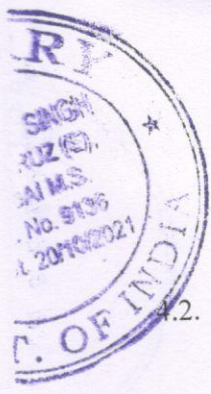
| S. No. | State | Regulation / Tariff Order | Relevant Regulation / Order |
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| | | | Commission..... and transmission charges as approved by the Commission....” |
| 3 | All Union Territories under JERC | JERC Tariff Order on Determination of retail tariff for the FY2018-19 of Chandigarh Electricity Department (CED) (Annexure C, Page No. 145) | Para 9.4.3.2 – New Formula for Fuel and Power Purchase Adjustment Mechanism <i>“The FPPCA formula shall contain the following three components:</i> 2. <i>Transmission cost adjustments which shall contain the following elements:</i> <ul style="list-style-type: none"> • <i>Variation on account of Central Transmission Charges including arrears / revisions.</i> • <i>Variation on account of State Transmission charges including arrears/revisions</i> ” |

3.13. Considering above mentioned provisions available in other states and Union territories and in view of Transmission charges as uncontrollable factor, MSEDCL request the Hon’ble Commission to allow to consider the variation in Transmission charges while calculating FAC.

4. Impact of disallowance of monthly distribution losses above the target loss levels while computing the monthly FAC

4.1. Presently, in accordance with the proviso of the section 10.8 of MERC, MYT Regulations 2015, if actual distribution loss exceed the level approved by the Hon’ble Commission, the amount of Z_{FAC} corresponding to the excess of distribution loss (in kWh terms) is being deducted from the total Z_{FAC} recoverable.

10.8 The total ZFAC recoverable as per the formula specified above shall be recovered from the actual sales in terms of “Rupees per kilowatt-hour”:
Provided that, in case of unmetered consumers, the ZFAC shall be recoverable based on estimated sales to such consumers, computed in accordance with such methodology as may be stipulated by the Commission:



Provided further that, where the actual distribution losses of the Distribution Licensee exceed the level approved by the Commission, the amount of ZFAC corresponding to the excess distribution losses (in kWh terms) shall be deducted from the total ZFAC recoverable.

- 4.2. It is submitted that the FAC calculation being undertaken on monthly basis, the cumulative loss for that month is considered and in case of any excess distribution loss, the same is deducted from FAC recoverable.
- 4.3. However, in case if in next month Distribution loss improves and it maintains cumulative loss below approved level, present mechanism of FAC doesn't allow any recovery which has been deducted in earlier month resulting in revenue loss to distribution licensee for that month.
- 4.4. The Petitioner submits that distribution loss also varies on a monthly basis depending on agriculture consumption, seasonal variation, demand and availability of power, transformer loading, etc. which may result into higher and lower distribution loss in different month. However, the approved distribution loss as provided by the Hon'ble Commission in MTR Order is determined on an annual basis.

Details of variance in distribution loss in last 2 years on a monthly basis

| Financial Year | Distribution Loss (%) | | | | | | | | | | | |
|----------------|-----------------------|-------|------|-------|-------|-------|------|-------|-------|-------|-------|-------|
| | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar |
| FY 2016-17 | 18.41 | 16.29 | 7.43 | 5.43 | 15.96 | 13.91 | 8.48 | 17.81 | 19.83 | 18.82 | 17.20 | 22.20 |
| FY 2017-18 | 22.43 | 20.86 | 6.61 | 13.68 | 17.53 | 8.93 | 6.90 | 16.18 | 17.67 | 15.62 | 10.46 | 19.68 |

- 4.5. Also, as per clause 9.2 (c) of MYT Regulations 2015, Variation in technical and commercial losses is considered as a controllable factor and accordingly, the variation is required to share with consumers at the time of true-up as per Clause 11 of MYT Regulations 2015.

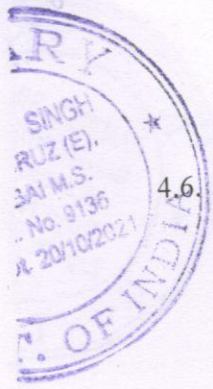
11 Mechanism for sharing of gains or losses on account of controllable factors

11.1 The approved aggregate gain to the Generating Company or Licensee or MSLDC on account of controllable factors shall be dealt with in the following manner:

- (a) Two-third of the amount of such gain shall be passed on as a rebate in Tariff over such period as may be stipulated in the Order of the Commission under Regulation 8.4;
- (b) The balance amount of such gain shall be retained by the Generating Company or Licensee or MSLDC.

11.2 The approved aggregate loss to the Generating Company or Licensee or MSLDC on account of controllable factors shall be dealt with in the following manner:

- (a) One-third of the amount of such loss may be passed on as an additional charge in Tariff over such period as may be stipulated in the Order of the Commission under



Regulation 8.4;

(b) The balance amount of such loss shall be absorbed by the Generating Company or Licensee or MSLDC.

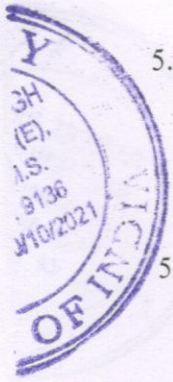
- 4.6. Petitioner submits that on one hand, any excess in the distribution loss as compared to approved loss is deducted from FAC on a monthly basis and on the other hand, at the time of true up exercise actual distribution loss at cumulative level is being considered and again gain/ loss on account of Distribution loss is being shared between Licensee and consumers. Based on the same carrying cost is allowable at the time of True Up.
- 4.7. Accordingly, the impact of distribution loss is provided on twice i.e. on revenue during calculation of FAC and in power purchase cost at the time of true-up of the respective year. This results into lower revenue realized by Distribution Licensee which directly affects the increase in gap and carrying cost. Therefore, MSEDCL proposed that calculation of distribution loss impact may be considered in the True Up only and may not be considered in the FAC. Even in case the same is considered at the time of calculation of FAC, the impact of cumulative distribution loss needs to be considered and in case the same is lower than the approved loss, then FAC disallowed in the earlier month may be added back to FAC amount for recovery from consumers.

5. Fixed FAC for better Projections

- 5.1. It is submitted that present FAC mechanism is creating uncertainty and large variations in FAC charged which varies from positive to negative range and is highlighted in the following table:

Details of Average FAC Rate per unit for last 2.5 years

| Month | FAC Rate Rs./KWh | Month | FAC Rate Rs./KWh | Month | FAC Rate Rs./KWh |
|--------|------------------|--------|------------------|--------|------------------|
| Apr-16 | 0.46 | Apr-17 | -0.430 | Apr-18 | 0.004 |
| May-16 | 0.35 | May-17 | -0.030 | May-18 | 0.100 |
| Jun-16 | 0.09 | Jun-17 | -0.340 | Jun-18 | 0.320 |
| Jul-16 | 0.15 | Jul-17 | -0.440 | Jul-18 | 0.600 |
| Aug-16 | 0.37 | Aug-17 | -0.230 | Aug-18 | 0.230 |
| Sep-16 | 0.03 | Sep-17 | -0.150 | | |
| Oct-16 | 0.11 | Oct-17 | 0.070 | | |
| Nov-16 | -0.24 | Nov-17 | 0.070 | | |
| Dec-16 | -0.15 | Dec-17 | -0.270 | | |
| Jan-17 | -0.49 | Jan-18 | 0.004 | | |
| Feb-17 | 0.41 | Feb-18 | 0.140 | | |
| Mar-17 | 0.23 | Mar-18 | 0.260 | | |



- 5.2. Such variation in FAC certain industries are getting affected adversely as their main cost component is power and therefore proper planning of utilization of power and its cost impact is necessary to determine the value of the product. Therefore, it is necessary to have a mechanism to predict FAC with certainty.
- 5.3. On analysis of the trend of FAC during last 2½ year, the Committee observed that the average rate of FAC varied from 34 paise to 75 paise and -49 paise to 46 paise per unit during the FY 2015-16 and 2016-17 respectively. The same ranges around (-)44paise to 26paise per unit for FY 2017-18, whereas, in FY 2018-19 for the period April 18 to September 18, the range of FAC is around 0.4paise to 60paise.
- 5.4. Accordingly, for better planning by consumers as well as to ensure that there is no sudden hike in tariff due to FAC (cause of any unprecedented moment in the Fuel market or any force majeure events), it is necessary to have a fixed FAC with a rate which shall be based on average of FAC in the past 5 years or considering the base power purchase cost of a specific period and difference to be considered in Additional FAC (the model as adopted in Gujarat)
- 5.5. It is submitted that GERC in Case No. 252/2003 dated 25th June 2004, Fuel and Power Purchase Price Adjustment (FPPPA) formula was approved whereby the base year was considered as FY 2003-04 on the basis of which the fixed FPPPA charges were approved. The Base period has been changed based on change in the power purchase costs and GERC in its Tariff Order issued on 31st March 2017 has revised the base period to FY 2015-16 on the basis of which has approved the fixed FPPPA of 143 paise per unit. The same is stated as below:
- 7.3 Shifting of base Price of Power Purchase (PPCB)*
DGVCL has proposed to shift the base power purchase cost from FY 2012-13 to FY 2015-16 resulting into the revision of FPPPA charges from existing 120 paisa per kWh to 143 paisa per kWh as per the weighted average actual FPPPA charges of FY 2015-16. The Commission verified the actual power purchase cost of FY 2015-16, and after prudence scrutiny approves the shifting of base power purchase cost from FY 2012-13 level to FY 2015-16 level, i.e. Rs. 1.43 per unit.
- 5.6. It is submitted that in past 5 years that FPPPA has been revised from 61 paise per unit to 120 paise per unit and at present has been fixed as 143 paise per unit. Any variance beyond 10 paise per unit in a quarter requires a prior approval of GERC which ensures the transparency and prudence check.
- 5.7. The fixed FPPPA ensures the consumers for proper planning and the estimated impact on their energy bill and may be beneficial for consumers especially industrial consumers.



5.8. Based on the above principle, the Petitioner also proposed to have a fixed FPPPA for a year considering the power purchase cost of any financial year (whereby audited Financial Statement are available) to be based period with difference to be treated as Fixed FAC and any difference between actual and fixed FAC to be billed to consumers with prior approval from consumers.

6. Legal and Regulatory Provisions

6.1. MERC (MYT) Regulations 2015 empowers the Hon'ble Commission to issue the order to amend the Regulations and to remove any difficulties. The relevant proviso of the Regulations are reproduced below:

100 Issue of Practice Directions

Subject to the provisions of the Act, the Commission may, from time to time, issue Practice Directions in regard to implementation of these Regulations.

101 Power to amend

The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

102 Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

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

6.3. 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 –

1. The FAC to be recovered in 'n' month from consumers on the basis of actual sales in *n-2th* month i.e. the month for which FAC actually is calculated.
2. Variation in Transmission cost compared to approved cost to be considered under FAC mechanism.
3. Deduction on account of exceed of Distribution Loss compared to approved Distribution loss may be removed or deduction may be done considering cumulative actual Distribution Loss on yearly basis.
4. To allow Distribution Licensee to recover the fixed FAC as determined by the Hon'ble Commission and any variation in FAC to be appraised on quarterly basis.



7. **Prayers**

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

- a. To admit the present petition as per the provisions of Regulations 100, 101 and 102 of MERC (MYT) Regulations 2015;
- b. To allow the petitioner to recover the FAC calculated for the month 'n-2' from the consumers for consumption in 'n-2'th month to be billed in the month 'n';
- c. To allow to include any variation in the PGCIL transmission Charges under the FAC calculation and to be levied to the consumers;
- d. To remove deduction being made in FAC of nth month on account of exceed of Distribution Losslevel as compared to approved level.
- e. 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.
- f. To condone any error/omission and to give opportunity to rectify the same.

Chief Engineer (PP)
MSEDCL



| S. No. | State | Regulation / Tariff Order | Relevant Regulation / Order |
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11.1 The approved aggregate gain to the Generating Company or Licensee or MSLDC on account of controllable factors shall be dealt with in the following manner:

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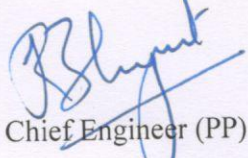
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- c. To allow to include any variation in the PGCIL transmission Charges under the FAC calculation and to be levied to the consumers;
- d. To remove deduction being made in FAC of nth month on account of exceed of Distribution Losslevel as compared to approved level.
- e. 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.
- f. To condone any error/omission and to give opportunity to rectify the same.


Chief Engineer (PP)
MSEDCL

