CONSUMER GRIEVANCE REDRESSAL FORUM

(Established under the section 42 (5) of the Electricity Act, 2003)

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.

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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./C.No.37 to 39/16-17/ Date: 24/01/2017

(BY R.P.A.D.)

Date of Submission : 02/12/2016
Date of Decision :24/01/2017

1. M/s.Fast Track Packers Pvt. Ltd. ,
   Kasara Dumala, Tq. Sangamner ,
   Dist. Ahmednagar 422605
   (Con. No. 155049006680)

Complainant

2. Nodal Officer ,
   Maharashtra State Electricity Distribution Com. Ltd.,
   Circle office, Ahmednagar
3. Executive Engineer,
   Maharashtra State Electricity Distribution Com. Ltd.
   Sangamner Divn. Office
   Dist. Ahmednagar.

Distribution Company

COMMON ORDER FOR

Case No. 37/ 2016-17
In the matter of
Refund of AEC (AEC-1 to AEC-4) and Additional FAC

Case No. 38/ 2016-17
In the matter of
Refund of Excess recovered Addl. FAC for May 2012
and

Case No. 39/ 2016-17
In the matter of
Excess Collected FAC from the Billing Month Of Dec. 2013 To Dec. 2014

DECISION

M/s.Fast Track Packers Pvt. Ltd. (hereafter referred as the Complainant). Sangamner is the HT industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievances against MSEDCL for refund of AEC , excess charged Additional FAC, Refund of Excess recovered Addl. FAC for May 2012 and Excess Collected FAC for December 2013 to December 2014.

The Complainant filed complaints regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But IGRC did not take any decision for more than 2 months . Hence , the consumer has submitted

representations to the Consumer Grievance Redressal Forum in Schedule "A". The representations are registered on 02 /12/2016.

The Forum in its meeting on 02/12/2016, decided to admit this case for hearing on 23/12/2016 at 11.00 am in the Ahmednagar Circle Office.. A notice dated 5/12/2016 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer , Shri. V. S. Nirvan, Manager F&A, Shri. S.A. Jaibhaye Asstt. Auditor represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

All these matters have been raised by the same complainant.. Hence the Forum has clubbed them and proposed to decide them by a common order.

Consumers Representation in brief :

Issue 1 : Refund of AEC (AEC-1 to AEC-4) and Additional FAC :

A. Regarding AEC -1 and AEC-2 charges:

1. The Commission issued suo-moto Order on 5 September, 2013 in Case No. 95 of 2013 and allowed MSEDCL to recover accumulated under recovery of Rs. 2037.78 crore occurred till the month of August, 2013 for the period of 6 months with effect from September, 2013 till the month of February, 2014 as Additional Energy Charge (AEC-1).
2. The Commission further allowed MSEDCL to recover monthly fix expenses of Rs. 235.39 crore from its Consumers starting from the month of September, 2013 till the further Tariff determination for MSEDCL as Additional Energy Charge (AEC-2).

B. Regarding AEC-3 and AEC-4 charges:

1. The Commission issued the Order in Case No. 28 of 2013 on 3 September, 2013 and allowed MSPGCL to recover the amount of Rs. 628.9 crore. (Including carrying cost) from the MSEDCL in six equal monthly instalments starting from October, 2013. The Commission further allowed the Respondent MSEDCL to recover the variation in fixed cost component of the Consumers. The Commission further said that the variation in the cost of generation is to be passed through FAC mechanism as additional energy charge (AEC-3)
2. The Commission in its Order dated 4 September, 2013 allowed fix charges of Rs. 596.12 crore, to be paid by Respondent MSEDCL to MSPGCL for FY 2012-13 in six equal monthly instalments from October, 2013 onwards as additional energy charge (AEC-4).

C. Regarding Addl. FAC charges:

1. The Commission vide its order dated 04/09/2013 in case no.44 of 2013, observed that MSPPGCL has capitalised the amount of fuel cost less revenue, on account of infirm generation of power. However, as fuel cost is a revenue expense, whether incurred during infirm generation or firm generation, the same needs to be recovered directly for the power supplied during the period instead of capitalising it as a part of Capital Cost. Accordingly, MERC has allowed MSPGCL to recover the under recovered fuel cost, i.e. Rs. 28.05 Crore for infirm power supplied to MSEDCL in three monthly instalments after issue of this order and MSEDCL can recover this cost through FAC mechanism.

D. MERC order dated 26/06/2015 in Case No.95 of 2013 and M.A. no.187 of 2014:

1. Shri Sanjay Gupta, Ashok Hotel, Nagpur submitted objection that MSEDCL had levied AEC-1, AEC-2, AEC-3, AEC-4 between August to November, 2013. These charges were to be collected from September, 2013 onwards in six monthly instalments, but MSEDCL collected them in August as well, which is illegal. The Commission should direct MSEDCL to refund the excess amount to consumers along with interest.

2. As regards for above objection, Commission has clearly given the guidelines in para 13.25. "In these Petitions, it was submitted that, on the basis of the Order in Case No. 95 of 2013, MSEDCL should have started levying AEC only from the month of September, 2013. However, MSEDCL started recovery from August, 2013 itself, thereby violating the Commission's directives under that Order. During the proceedings of those Cases, MSEDCL submitted that it had rectified the error in levy of AEC, and refunded the amount erroneously charged to consumers during August, 2013 in the billing month of February, 2014. That has been reflected in the Commission's Orders dated 27 March, 2014 on those Petitions. However, during the present proceedings, Shri Sanjay Gupta, Ashok Hotel, Nagpur has raised the matter of refund of the excess amount recovered by MSEDCL due to early billing. Therefore, the Commission directs MSEDCL to review the refunds made by it so far on account of wrongful premature billing, and to make any remaining refunds due to consumers in the next billing cycle."

3. MERC has directed vide this order to refund the excess collected due to premature billing and under recovery of the cost by MSEDCL will be dealt with in its MYT petition in Case No.121 of 2014.

E. Definition of Premature:

Meaning of Premature: means occurring or done before the usual or proper time; too early.
Premature means: Untimely, early, too soon, before time.
Premature means "not yet ready". Something that is premature arrives early, like premature baby birth before her due date, or the soggy cake you took out of the oven prematurely.

F. Tariff Philosophy of Commission:

1. Hon'ble Commission has never approved any levy on retrospective basis.
2. Pl. refers the Case no.71 of 2009 (2% voltage surcharge case). In this order recovery should be from the date of order i.e from 05/03/2010. In this case MSEDCL shall raise the bill for the unit consumption from 05/03/2010. MSEDCL cannot raise the 2% voltage surcharge for the bill date issue from 05/03/2010. The bill for the consumption from 05/03/2010 will be reflected from billed month of April 2010 i.e. billing month of March 2010. MSEDCL has calculated the pro-rata from unit consumption from 05/03/2010 and levied to consumer.
3. Hon'ble Commission in its tariff order dated 16/02/2012, defined the applicability of order in section 8.1 reads as below:
   "Revised tariff shall be applicable from 01/08/2012. In case, where there is a billing cycle difference for a consumer with respect to the date of applicability of the revised tariffs, then the revised tariff should be made applicable on pro-rata basis for the consumption. The bills for the respective periods as per existing tariff and revised tariffs shall be calculated based on pro-rata consumption (units consumed during respective period arrived at on the basis of average unit consumption per day multiplied by number of days in the respective period falling under the billing cycle)."

   In this order, tariff will be applicable date is mentioned. In this case MSEDCL shall raise bills as per revised tariff from the date of tariff applicability date in respect to consumption date. MERC has not allowed recovering the bills issued with revised tariff rates for earlier date consumption after issue of tariff order applicability date.

Main Base points of Grievance:

1. Commission has allowed AEC 1 +AEC 2 from the month of September,2013 that means MSEDCL has to charge the same from unit consumption from September months itself i.e from the billing period 01/09/2013. But MSEDCL has charged for unit consumption from August month i.e. from billing period 31/07/2013.
2. Commission has allowed AEC 3 +AEC 4 from the month of October, 2013 that means MSEDCL has to charge the same from unit consumption from October months itself i.e from the billing period 01/10/2013. But MSEDCL has charged for unit consumption from August month i.e. from billing period 31/07/2013.

3. Commission has allowed Additional FAC from the month of September,2013 for the period of three months that means MSEDCL has to charge the same from unit consumption from September months itself i.e. from the billing period 01/09/2013. But MSEDCL has charged for unit consumption from August month i.e. from billing period 31/07/2013 and continue up to December, 2013 billing month i.e. up to 31/12/2013. Thus MSEDCL has billed the same in five months instead of three months.
4. As per direction of Commission vide order dated 26/06/2015, to refund excess collected amount on account of wrongful premature billing.
5. AEC is the part of Tariff and Tariff is being determined by the MERC. The methodology of AEC calculation and recovery thereof has to be approved from the Commission in the order. Without change in Order or without approval /sanction of MERC, the AEC methodology could not be changed or altered. MSEDCL has changed levy of AEC recovery methodology for charging for earlier period consumption i.e. from the month of Aug.2013 instead of Sept.2013 thereby violating the principles of Commission's directions. This has clarified by the Commission vide order dated 26/06/2014 and instructed to make any remaining refunds on **account of wrongful premature billing** in next billing cycle.
6. In view of the provisions of the MERC 1999 Act, Electricity Act, 2003 and various Supreme Court orders, in one of M/s. LML Ltd. (supra), Court proceeded on the basis that it was the Commission alone who had the exclusive jurisdiction to determine the tariff. In view of the provisions of the 1999 Act as also the regulations framed there under, as the law stands now, there cannot be any doubt or dispute that the Commission alone has the exclusive jurisdiction and even for the purpose of modification and / or alteration of tariff, the Commission must be approached. We are submitting herewith order of Supreme Court in Civil Appeal No.7433 of 2008 dated 19/12/2008.
7. Nobody has power to change the Commission's orders for methodology of AEC calculation and recovery schedule approved. If not agreed, consumer and Licensee can apply for review or apply against the order to APTEAL.
8. MSEDCL has not taken the permission from Commission for charging of AEC 1,2,3&4 under one head and recovery from the month of August,2013 instead of Sept.,2013. Also, Commission has not approved the MSEDCL request in the same matter or not revised its original orders, as per letter No.PR-3 date 23/09/2013 submitted to commission.
9. MSEDCL has not filed review petition or not challenged the same order of Commission to appropriate authority. MSEDCL has duty to comply the Commission's direction in right sprit.
10. From the above, it seems that MSEDCL has wrongly collected following AEC and Additional FAC charges before the usual or proper time: too early and not as per order of Commission and recovery also not as per MSEDCL letter dated 23/09/2013 submitted to Commission.

    AEC 1+AEC 2 .... Wrongly recovered in the billing month of August, 2013.

    AEC3 + AEC4 .... Wrongly recovered in the billing month of August & September, 2013

    Addl. FAC ..... Wrongly recovered in the billing month of August & December, 2013.

Issue 2: Refund of Excess recovered Addl. FAC for May 2012

1. The Commission has issued the order in Case No. 43 of 2012 on 15th June, 2012 and permitted to MSEDCL to recover the un-recovered FAC amount of Rs.1483 Crore from its consumers through monthly bills in 6 equal installments starting from the month of June 2012 to November 2012. The amount of Rs. 247 Crore per month was to be recovered proportionately from the consumers as per their respective category and slab in conformity with the principle specified in Regulation 82.10 of the Maharashtra Electricity Regulatory Commission (Terms and Condition of Tariff) (Amendment) Regulations, 2011.

2. MSEDCL accordingly issued Circular No.162 dated 19th June, 2012 for recovery of the additional FAC to be levied in the billing month June, 2012 and the remaining was to be recovered in the bills for the month of July, August, September, October and November of 2012.

3. As per the order of the MERC, the recovery was to be made only in 6 equal monthly installments starting from June, 2012 to November, 2012, i.e. from 1st June, 2012 to 30th November, 2012.

MSEDCL has recovered additional FAC for more than 6½ months for the period from 08th May, 2012 to 30 Nov. 2012. MSEDCL has shifted the billing period during the FAC recovery and as a result recovery is made for more than six months. As per the Circular dated 13th April 2012, the auto reset was to be done from 1st May, 2012 and accordingly the billing period for June 2012 would have been from 1st June to 30th June, 2012.

Issue 3: Excess collected FAC over and above rates approved by MERC

1. It is noticed that MSEDCL has not charged FAC as per MERC post facto approval given as per billing month.
2. FAC is the part of Tariff and Tariff is being determined by the MERC. The methodology of FAC calculation and recovery thereof has to be approved from the Commission in the tariff order. Without change in Tariff Order or without approval /sanction of MERC, the FAC methodology could not be changed or altered. MSEDCL has changed levy of FAC methodology with gap of three months to two months from the billing month of Dec. 2013. FAC has wrongly charged due to interpretation of word "In the billing month and to be billed month".
3. The Commission has given post facto approval for charging of FAC for the respective billing month wide order dated 18/12/2014; 11/02/2016; 16/02/2016.
4. As per Commission post facto approval, MSEDCL should rework the calculation of FAC from the billing month of Dec.13 to Dec.14, and refund the excess collected amount with interest @9% p.a. from the date of deposit to till date of refund.

Billing	**FAC levied**	**FAC**	**Diff.**	**Units**	**Amount**
Month	**MSEDCL**	**MERC**			
Dec.13	-7.97	-28.06	20.09	45396	9120.0564
Jan.14	0	0	0	53789	0
Feb.14	4.74	0	4.74	41450	1964.73
Mar.14	17.11	4.74	0	49324	0
Apr. 14	3.64	17.11	0	49424	0
May 14	14.77	3.64	0	50776	0
Jun.14	38.98	14.77	24.21	54620	13223.502
Jul.14	13.01	38.98	0	62352	0
Aug,14	36.64	13.01	0	56908	0
Sept.14	60.43	36.64	0	48430	0
Oct.14	21.22	60.43	-39.21	45512	-17845.2552
Nov. 14	51.92	21.22	30.7	34316	10535.012
Dec.14	90.52	51.92	38.6	51674	19946.164
			79.13		**36994.2092**
			ED	9%	3324.978828
			Total FAC	**Refund**	40269.18803

Demands of the Consumer :

1. MSEDCL has wrongly collected the AEC and Additional FAC charges before the usual or proper time: too early and not as per order of Commission.
2. MSEDCL has Excess Collected FAC from the Billing Month Of Dec. 2013 To Dec. 2014
3. The additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012 to be refunded with interest at the rate of 9 % per annum.
4. So collection of amount due to premature should be refunded with interest as per EA, 2003.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 19/12/2016 from the Manager F & A Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. At the outset it is here to submitted that, the grievance filed by the consumer is beyond two years from the date of cause of action & is not within limitation. In view of Regulation 6.2 of CGRF & EO Regulations 2006, which creates express bar for admitting the grievance filed beyond two years from the date of cause of action, grievance of the consumer is not maintainable & therefore may kindly be not entertained.
2. Consumer is raising dispute in respect of FAC charged in the billing month of Dec-13, Feb-14 & May 14 & AEC recovered in the bill of Sept 2013. Thus, cause of action in the matter even lastly arises on May 2014, which is beyond two years. In this context kind, attention is invited to the prescribed Form "Schedule A" i.e. Grievance submitted by Consumer to CGRF on 30/11/2016. Clause 6 said form, which is in respect of date of original intimation to the Distribution Licensee, shows that even first intimation to Office in respect of alleged dispute is made on 31/08/2016. Thus, by all means grievance filed by consumer is not within limitation.
3. Billing component FAC is charged to the consumers in accordance with approval accorded by Hon'ble MERC from time to time.
4. Reliance placed by consumer on the order dt 26/06/2015 of Hon'ble MERC in Case No. 95 of 2013 & M.A. No. 187 of 2014, while claiming the refund of AEC recovered in the electricity bill of Sept.2013is totally misplaced reliance. Therefore, order dt. 26/06/2015 its Origin, consequences, subsequent orders of Hon'ble MERC, Electricity Ombudsman & subsequent developments in respect of issue of AEC needs to be thoroughly verified, since there is no violation of any of the direction or the order of the Hon'ble MERC.
5. Hon'ble Commission in Case NO. 95 of 2013 in the matter of sou-moto determination of supplemental charges of MSEDCL , to give effect to other Orders, while considering the impact of the earlier Orders in Para 17 of its Order has made following observations.

" 17. It is imperative that the Commission will allow MSEDCL to recover the costs identified in the foregoing paragraphs while determining its tariff. But, as it is evident now, the MYT tariff order of MSEDCL will take some time to get notified. It is almost one year now since the tariff for supply of electricity of MSEDCL was determined by the Commission. Already the accumulated under recovery has been quite high and it will continue to accumulate further at least at the rate of Rs. 235.39 Crore per month culminating into a huge amount of under recovery and financial problems for MSEDCL. Also huge amount of under recovery may accumulate a substantial amount of avoidable carrying cost be MSEDCL as it may need to borrow higher working capital to tide over the under recovery, Continuity of such a situation may result into serious ramifications on the financial health of MSEDCL. It will also lead to abrupt and very high increase in retail tariff in future and will create undesirable tariff shock to the consumer of MSEDCL which consumers may not able to absorb."

Further in Para 18 of its Order Hon'ble Commission has observed that,

"*18. In the considered opinion of the Commission in situation requires the Commission's suo-motu intervention and MSEDCL should be able to start recovering these amounts till the next tariff order is issued by the commission upon receipt of a petition from MSEDCL."*

With such observations HOn'ble Commission is pleased to pass following ruling on 05/09/2016 in the Case no. 95 of 2013.

Commission's Ruling.

22. In view of the above, the Commission direct MSEDCL to recover two additional charges from its consumers, in the form of additional energy charge:

a To recover the accumulated under-recovery of Rs. 2017.78 Crore accrued till the month of August 2013, which shall be levied by MSEDCL for a period of six (6) months with effect from the month of September 2013 till the month of February 2014 Category wise Additional Energy Charge (AEC-1) to be levied to all consumer categories in the proportion to the approved Average billing Rate of respective consumer categories , ***under intimation to the Commission****.*

b. To recover monthly fixed expense of Rs. 235.39 Crore. This shall be le vied by MSEDCL from the month of September 2013 to its consumers on a monthly basis till further determination of MSEDCL t6ariff by the Commission. Category wise Additional Energy Charge (AEC-2) to be levied to all consumer categories in the proportion to the approved Average Billing Rate of respective consumer categories , ***under intimation to the Commission.***

c. Further, the Commission hereby rules that from this order onwards MSEDCL will recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, the Commission allows MSEDCL to recover the variation in fixed charge component of the amount billed by MSPGCL and amount billed by MSETCL to MSEDCL as approved by the Commission from the consumer in proportion to the approved Average Billing Rate of respective consumer categories, ***under intimation to the Commission****.*

6. It may kindly considered that, for relevant period tariff Order was already issued on 16 Aug. 2013 in case No. 19 of 2012, where **in Applicability of the order was specified as 1 August 2012.** Subsequent to this, in order to giv e effect to earlier Orders on 05/09/2013in case No. 95 of 2013 Hon'ble Commission is pleased to direct MSEDCL to recover the accumulated under recovery by levying AEC from Sept. 2013.

   It is here submitted that, Hon'ble Commission in its own wisdom instead of specifying for the applicability of the order dt. 05/09/2013., which is eventually specified in every tariff order, has directed MSEDCL to levy AEC from Sept. 2013, under intimation to the Commission. Thus, it becomes amply clear that order in Case No. 95 of 2013 is only an executional order passed in pursuance of earlier Order of the Commission. It was only a consequential Order to formalize the recovery of amounts already approved to MSPGCL & MSETCL.
7. Accordingly MSEDCL vide its Circular No. 209 dt. 07/09/2013 has duly implemented the order dt. 05/09/2013 of Hon'ble Commission in Case No. 95 of 2013 & has started charging AEC from Sept. 2013(August billed in September). Further, in view of the direction to levy AEC under intimation to the Commission, MSEDCL vide letter No. PR-3/Tariff/26517 dt. 23/09/2013 has appraised this to Hon'ble Commission and the recovery mechanism mentioned therein. In the said letter MSEDCL had also categorically stated that in order to avoid complications in implementation of Order dated 3rd , 4th & 5th September, 2013, MSEDCL will be levying all AEC (i.e. 1 to 4) under one head of AEC as well as also merged the additional FAC 1 & FAC 2 under one head.

   Order of Hon'ble MERC in Case No. 95-2013, Commercial Circular No. 209 & letter No. PR-3/Tariff/26517 dt. 23/09/2013 is enclosed herewith for ready reference & kind consideration.

8. Subsequently, Government of Maharashtra vide GR No. Sankirna/2013/C.No.278(Part-1)/ERG-5 dt. 29/01/2014 has declared concessional energy charges for Residential (up to 0 to 300 units), Commercial, Industrial and Agricultural category consumers, which is effective from February 2014. Due to enforcement of GoM's concessional rate from February 2014, MSEDCL did not recover 6th instalment of AEC(1-4) from consumers.
9. It is further brought to notice that, in respect of identical of Refund of AEC 19 Nos. Of HT consumers filed individual Petitions under Section 142 of the Electricity Act. , 2003 before Hon'ble Commission for alleged violation of the MERC's Order dated 5 September, 2013 in case no 95 of 2013. Prayers made by those petitioners are reproduced here for ready reference.
   - *A. that the Hon'ble Commission be please to direct the Respondent to give full effect to the tariff order as modified by the MERC vide order dated 5 September 2013 and Additional Electricity Charges be calculated and levied only from the billing month of September 2013.*
   - *B. hat the hon'ble Commission be please to direct the Respondent not to levy Additional Electricity Charges-1 for the billing month of August 2013.*
   - *C. that the Hon'ble Commission be please to direct the Respondent not to levy Additional Electricity Charges -2 for the billing month of August 2013.*
   - *D. that the Hon'ble Commission be pleased to quash and set aside the said Commercial Circular of the Respondent bearing No. 209 dated 7th September 2013.*
   - *E. that the Hon'ble Commission be pleased to directthe Respondent to Refund forthwith and/ or adjust the amount of Rs. *** /: on account of Additional Electricity Charges other incidental charges collected from the Petitioner on the basis of the said Commercial Circular"*

10. Hon'ble Commission is pleased to dismiss all the petitions by its order dated 27/03/2014. Order of the Hon'ble MERC is enclosed herewith for ready reference & kind consideration.

    Attention is invited to Para 6 of the order dt. 27/03/2014, which refers to first hearing held in matter & background of interim directives issued to MSEDCL to rectify bills & submit the status report. Hon'ble MERC has observed that, during hearing, Advocate of petitioners also brought to the notice of the Commission that the respondent MSEDCL issued wrong bills to some consumers in the state of Maharashtra for the consumption in the month of July 2013. In that context, Hon,ble Commission directed the MSEDCL to take necessary action & rectify such bills & submit status report.

    Accordingly in compliance of the Commission's directions in the first hearing, the MSEDCL vide letter dated 3 March, 2014 submitted that, the MSEDCL refunded the one month AEC and FAC , of all such 1198 consumers (for those consumer whose 6th installments for AEC charges recovered before issue of concessional GR dt. 29/01/2014) amounting Rs. 2461.22 lakh in the billing month of February, 2014. The relevant extract of letter dtd. 03/03/3014 is reproduced as below:

    MSEDCL specifically verified queries raised by petitioner M/s. Eurotex Industries & Export Ltd. MSEDCL, realized that such consumers are billed with AEC and add FAC for sixth months in the billing month of Jan.2014. In order to have uniformity MSEDCL has now decided to refund one month AFC and Add FAC, of all such 1198 consumers amounting Rs. 2461.22 lakhs in the billing month of Feb. 2014. The effect has been given in the bills issued around 20 Feb. 2014.

    Copy of letter No. PR-3/TRAIFF No. 07318 dtd. 03/03/3014 is enclosed herewith for ready reference & kind consideration.

11. Taking into consideration of all the submission, the Hon'ble Commission pleased to dismiss the all petitions with observation that, there is no need to invoke provisions of of Section 142 and Section 146 of the Electricity Act, 2003 in this matter as the issues of applicability of Additional Energy Charges (AEC) as per the Commission's order had been followed by the MSEDCL.

    It is worthwhile to mention here that, in spite of specific prayer of all 19 petitioners in aforesaid matters to quash and set aside the said Commercial Circular No. 209 dated 7th Sept. 2013. Hon'ble Commission has not quashed the Commercial Circular No. 209. It is here specifically submitted that, till today said Circular has been not quashed & set aside by Hon'ble Commission or Court.

12. Even in the Order dt 26th June of Hon'ble MERC in case No. 95 of 2013 Commercial Circular No. 209 is maintained by Hon'ble Commission. In this behalf attention is invited to the observations of Hon'ble MERC at Para 13.13 of said Order. While answering to issue No-3 i.e. Validation of the AEC rates determined by MSEDCL and their Computation, in its very first findings has recorded following observations.

    "c. Issue-3 : Validation of the AEC rates determined by MSEDCL, and their re-computation:

    *13.13 Vide its order dated 5 september, 2013, the commission had allowed MSEDCL to levy category-wise AEC-1 & AEC-2 from all consumer categories in proportion to the approved Average Billing Rate (ABR) of the respective consumer categories. In view of this, MSEDCL determined the category-wise rates of AEC-1 & AEC-2, P**ublished them vide Circular No. 209, and started levying the same from consumers.***

    Aforesaid observations of Hon'ble MERC in respect of Commercial Circular No. 209 makes it crystal clear that, said Circular is not quashed & set aside by Hon'ble MERC. In fact it is upheld

by Hon'ble MERC. Therefore, it is needless to submit here that recovery of AEC made by virtue of said Circular cannot be treated as illegal & in violation of direction of Hon'ble MERC.

Similarly while answering to all issues framed by Hon'ble MERC while passing Order dt 26 June 2015, Hon'ble MERC has held that, recovery of AEC is justifiable & in Para 13.26 has clarified that there is no over recovery on account of AEC.

13. It is further submitted that, Hon'ble Commission has also dealt with issue of alleged non-compliance of the Order, which was arisen by 19 consumers in petitions filed U/sec 142. Hon'ble Commission has specifically observed that, error in levy of AEC is rectified by MSEDCL & same is reflected in order dated 27 March 2014. It is in this context Hon'ble Commission is pleased pass order to review the refunds made by it so far on account of wrongful premature billing, and make any remaining refunds due to the consumers in next billing cycle.

    It is here submitted that, Hon'ble Commission has not issued any new direction in respect of billing month to charge AEC, but has ordered to take review of refunds for same billing month (i.e. For those consumer whose 6th installments for AEC charges recovered before issue of concessional GR dt. 29/01/2014)

    In present Case it is evident that, although there was order of Hon'ble MERC to recover AEC in six installments only five installments are recovered from the consumer. As such absolutely there is no over recovery in present case. Order of Hon'ble MERC cannot be misconstrued to give un-just benefit of again one installment.

    Submission made in this behalf in foregoing para 9 may kindly be considered here same are not repeated here for sake of brevity.

14. Aforesaid submission particularly those made in Para-13 are again fortified in order dated 09/08/2016 in identical case before Hon'ble Electricity Ombudsman in Representation No. 54 of 2016 & further Order dt. 03/11/2016 in Representation No. 95 of 2016 where in Review of the order in Representation No. 54 of 2016 was sought by the consumer. While giving reasoning on the merits of the case in para-8 of its order dt. 03/11/2016 in Representation No. 95 of 2016 Hon'ble Electricity Ombudsman has recorded following findings.

    8. It is the case of the Appellant that the order dated 5th September, 2013 of the Commission has been set aside by the APTEL by its order dated 22nd August, 2014. The Case No. 110 of 2013 filed by the Appellant M/s. Balbir Alloy Pvt. Ltd. And others was however decided by the Commission on 27th March, 2014 as per its order dated 5th September, 2013. The Commission has passed revised order on 26th June 2015 and therefore, the order dated 9th August, 2016 passed in Representation No. 54 of 2016 deserves to be reviewed. It is pertinent to note that the forum, while passing the order on 11th April ,2016 on the grievance filed by the Appellant had already considered the order of the Commission dated 26th June, 2015. Similarly, while deciding the representation by the order dated 9th August, 2016, the orders dated 5th September, 2013 and 26th June 2015 of the Commission were part of the proceedings. ***Moreover, the Commission while passing order dated 26th June 2015, has not altered the mechanism for recovery of the AEC and FAC. There is, thus, no change in the situation even after passing of the order dated 26th June, 2015 by the Commission. The review sought on this ground is, therefore, not tenable.***

    Further Hon'ble Electricity Ombudsman while dismissing the review has observed that all the above orders of the commission and the aspects raised by the Appellant in the representation were kept in view while rejecting the representation order dt. 26/06/2015 of Hon'ble MERC order of Hon'ble Electricity Ombudsman in Representation No. 54 & 95 of 2016 is enclosed herewith for ready reference & kind consideration.

15. Lastly it is submitted that, issue of refund of AEC is heard & decided on Merits by Hon'ble MERC & Hon'ble Electricity Ombudsman, further consumer himself has brought on record Daily order of Hon'ble Commission dated 15/11/2016 in Case No. 78 of 2016, which shows that case is reserved for orders.

When identical issue of refund of AEC or violation of order of Commission is determined by Hon'ble MERC & some petitions on identically same issue if are still pending before Hon'ble, then Hon'ble CGRF hardly gets jurisdiction to entertain & decide the grievance in respect of the same issue.

It is not every grievance in respect of non-compliance of any order of the Commission, that comes within jurisdiction of Hon'ble CGRF. There is no any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which has been undertaken to be performed by MSEDCL as contemplated by Regulation 2.1(C) of the CGRF & EO Regulations 2006. Therefore, in aforesaid view of the matter it is submitted that, grievance in respect of refund of AEC is not within scope of the jurisdiction of Hon'ble CGRF.

Aforesaid all submissions would amply demonstrate that, consumer is not entitled to refund of AEC as claimed, Although there was order of Hon'ble MERC to recover AEC in Six installments, only five installments are recovered from the consumer, no prejudice is caused to the consumer, absolutely there is no over recovery in present case. Order on Hon'ble MERC cannot be misconstrued to give unjust benefit of again one installment. Consumer is not entitled for any refund of AEC. Therefore grievance of consumer deserves to be dismissed.

Action by IGRC :

The complainant submitted grievances to the IGRC , Ahmednagar Circle on 08/09/2016 . However IGRC did not take any decision as yet.

Observations by the Forum:

1. As per the regulation 6.12 of the CGRF & EO Regulations , 2006 the Nodal Officer who is not below the rank of the Executive Engineer " *shall act as the co-ordinator for filing of reply, making submissions, providing issue-wise comments on the Grievance..... etc*" before the Forum and / or the Electricity Ombudsman. But the Forum has noted in this case that , the Manager (F & A) ,who has no authority to file a reply , has directly submitted the reply to the Forum. <u>This is against the regulation 6.12. This matter is brought to the notice of the Nodal Officer and Superintending Engineer, Ahmednagar for future compliance.</u>

2. The representative of the Distribution Company verbally stated during the course of hearing that , the excess amounts have been already adjusted in the bills of the complainant. The representative of the complainant however countered this statement . The Forum therefore directed the Distribution Company to submit to the Forum with a copy to the complainant , the details of any such adjustments done by 31/12/2016 . The complainant was asked to submit his say on this information. However the Nodal Officer , Distribution Company has not submitted the desired information and informed the Forum by a letter dated 27/12/2016 that the reply dated 23/12/2016 by the Manager (F & A) should be treated as final.

3. The Distribution Company has pleaded that "the grievance filed by the consumer is beyond two years from the date of cause of action & is not within limitation in view of Regulation 6.2 of CGRF & EO Regulations 2006"
The regulation 6.6 of the CGRF & EO Regulations ,2006 mandates as under:

"The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

The Hon'ble Bombay High Court has mandated on the limitation factor for approaching the Grievance mechanism vide order dated 19/01/2012 in the matter of M/s. Hindustan Petroleum Corporation Ltd v/s MSEDCL in W.P.No.9455 of 2011. The Hon'ble High Court has given following ruling in this regard :

"15 A perusal of the impugned order shows that the CGRF and the Ombudsman have proceeded on an erroneous assumption that cause of action has arisen on 1st July, 2008 and, hence, the grievance filed before the Forum at Sangli on 14th October, 2010 is beyond two years. Thus reasoning clearly over looks the definition of the word "Grievance" as provided under Regulation 2 (c) of the 2006 Regulations. Though time spent by the Petitioner before the Consumer Court cannot be excluded, one cannot lose sight of the fact that the Petitioner approached the Internal Consumer Grievances Cell for the first time on 14th October, 2010 and that grievance was rejected by the Internal Consumer Grievances Cell on 27th October, 2010. This, according to me is the date on which the cause of action for filing a complaint or Grievance before the Forum as defined under Regulation 2(c) really arose. ....."

Hence , "cause of action of submitting grievance to the forum arises when IGRC does not redress the grievance. In other words, the cause of action starts after the decision of IGRC."

In these cases , the complainant submitted grievance to the IGRC , Ahmednagar Circle on 08/09/2016 . However IGRC did not take any decision for more than 2 months . Hence they submitted grievances to the Forum 02/12/2016 . As such in this case, the cause of action arose on 08/11/2016. Hence the Forum can admit these case as the grievance is submitted within 2 years in terms of the regulation 6.6 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 and the interpretation by the Hon'ble Bombay High Court in the above referred order dated 19/01/2012.

The point raised by the Distribution Company is therefore not valid and tenable .

4. While going through the contents of the reply by the Distribution Company it is seen that , the orders have been superficially quoted and used without going into their spirit and background as elaborated below:

- ✓ MERC order dated 27/03/2014 in a petition filed by M/s. Balbir alloys Pvt. Ltd. & 18 others:
  - o The MSEDCL agreed that an error has occurred in the applicability of AEC. MSEDCL vide letter dated 3 March, 2014 informed the Commission that the Respondent MSEDCL has refunded one month AEC and additional FAC of 1198 consumers, amounting to Rs. 2461.22 Lakh in the billing month of February 2014, where an error in the applicability of AEC had taken place, and requested to dismiss the cases as nothing survives in the matter.
  - o The cases were disposed off because of the reporting of the rectification of the error and not on the ground that the complaint regarding erroneous recovery of AEC and additional FAC was wrong.
  - o The Distribution Company has stated that it has refunded one month AEC and additional FAC to 1198 consumers. The nodal officer could not confirm to the Forum whether , the said complainant is also included in the list of these 1198 consumers.
- ✓ MERC order dated 26/06/2015 in a petition filed by M/s. Tata Motors Ltd.:
  - o In this order the Commission has directed that "*However, MSEDCL shall review the refunds made by it so far on account of wrongful premature billing, and make any remaining refunds due to consumers in the next billing cycle*"
  - o It means there was "*wrongful premature billing*" on the part of the Distribution Company which was supposed to be refunded.
- ✓ Daily order dated 15/11/2016 in a Petition of M/s Paul Strips and Tubes Pvt. Ltd.:
  - o This petition has been filed for non-compliance of Commission's Order dated 26 June, 2015 regarding levy of Additional Energy Charge (AEC). In that Order, the Commission has directed MSEDCL to take a review of the refunds made by it on account of premature billing of AEC and to make any remaining refund to consumers in the next billing cycle.
  - o In the said order , the Commission directed MSEDCL to submit details as follows:

i. Total number of consumers from whom AEC is recovered for August, 2013 and the relevant period in September, 2013.

ii. Out of 'i)' above how many of them have been refunded the amount that was prematurely recovered.

iii. Reasons for not refunding to balance consumers, if any.

- ✓ It is clear that the Distribution Company has to yet comply fully with the orders of MERC .
- ✓ I this case there is no decision to be taken about the refund. The Commission had already issued clear directives. Hence the matter of refund of AEC is not sub-judice as pleaded by the Distribution Company.

5. The representation is only for premature billing & as per Commission's order dated 26.6.2015 & not in respect of recovery calculation or its recovery mechanism as approved by the Commission.
6. The issues raised by the complainant are related to the "*non-compliance of the order of the Commission*" and hence very much within the jurisdiction of the Forum as per definition of the grievance according to the regulation 2.1(c) (b) of the CGRF & EO Regulations ,2006.
7. The complainant (155049004640) has raised the following issues in its representation to the Forum :

   - ✓ Refund AEC 1+AEC 2, AEC 3+AEC 4, Addl. AFC
   - ✓ Refund of Excess recovered Addl. FAC May. 2012 Excess Collected FAC From The Billing Month Of Dec. 2013 To Dec. 2014

8. After the issuance of tariff order for MSEDCL on 16th August 2012, the MERC has passed orders in relation to the matters of tariff of MSPGCL and intra-state transmission system. The MERC directed vide Order Dt. 05/09/2013 in case No. 95 of 2013, MSEDCL to recover Additional Charges -a) AEC-I Rs. 2037.78 Crs. in 6 equal instalments & b) AEC -2 Rs. 235.39 Crs. On monthly basis till issue of MYT Tariff Order from the consumers, in the form of Additional Energy Charges .
9. MERC had approved the Capital Cost and determined the tariff for Paras Unit# 4 and Parli Unit# 7 for FY 2010-11 .MERC vide order dated 03/09/2013 in Case No. 28 of 2013, has also allowed MSPGCL to recover the total amount of Rs. 628.90 Crs (including carrying cost) on account of impact of Hon'ble ATE Judgment in Appeal No. 47 of 2012 from MSEDCL in 6 equal monthly instalments. <u>The Fixed Charges is to be recovered through AEC 3.</u> MERC has determined the Capital Cost and Tariff of Khaperkheda Unit # 5 for FY 2012-13 vide its order dated 4th September 2013 in Case no. 44 of 2013. <u>The Fixed Charges are to be recovered through AEC 4.</u>
10. All the above Additional Energy Charges (Le AEC 1 to 4) were included and combined under the single head i.e. AEC which is indicated on the energy bill.
11. MERC in the order dated 04/09/2013 in Case No 44 of 2013 has also allowed MSEDCL to recover the <u>Additional Fuel Adjustment Cost</u> (FAC) . The relevant paras are as under:

    4.4.34 The Commission observes that MSPGCL has capitalised the amount of fuel costs less revenue, on account of infirm generation of power. However, as fuel cost is a revenue expense, whether incurred during infirm generation or firm generation, the Commission is of the view that the same needs to be recovered directly for the power supplied during the period instead of capitalising it as a part of Capital Cost. As these expenses have been incurred prior to the COD, the Commission has considered the same as a part of capital cost for the purpose of computation of IDC. However, the Commission has not considered fuel expenses as part of Capital Cost for computing the tariff and the <u>Commission hereby allows MSPGCL to recover the under-recovered fuel cost, i.e., Rs. 28.05 Crore for infirm power supplied to MSEDCL in three monthly instalments after the issue of this Order and MSEDCL</u> can recover this amount through Fuel Adjustment Cost (FAC) mechanism.

    .....

    Summary of Findings:

    .....

    xix) As the variation in cost of generation is ultimately to be passed on to consumers, the Commission hereby allows MSEDCL to recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, <u>the Commission allows MSEDCL to recover the variation in fixed</u>

charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers in proportion to Average Billing Rate of respective consumer categories, under intimation to the Commission.

12. Accordingly the Distribution Company issued Commercial Circular No. 209 dated 07/9/2013 and raised demand for the **AEC** and **Additional FAC** from the Electricity Bill of month of August, 2013.
13. However, the MERC order dated 05/09/2013 in case No. 95 of 2013 was challenged with the Appellate Tribunal of Electricity (ATE) . The ATE by order dated 22.8.2014 directed as under:

    We, therefore, set aside the Impugned Order and remand the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of the Electricity Act and hear the matter in a transparent manner and pass the final order uninfluenced by its earlier findings, as expeditiously as possible. We want to make it clear that we are not giving any opinion on the merits. ...."
14. The matter was remanded to MERC for decision once again. Accordingly the MERC has followed the procedure as laid down in Section 64 of the Electricity Act and recorded following observations as per order dated 26th June 2015 :

    ".....the issue of over-recovery in terms of difference in time period of recovery considered by MSEDCL and that approved by the Commission had come up before the Commission in 19 identical Petitions filed by various consumers. In these Petitions, it was submitted that, on the basis of the Order in Case No. 95 of 2013, MSEDCL should have started levying AEC only from the month of September, 2013. However, MSEDCL started recovery from August, 2013 itself, thereby violating the Commission's directives under that Order. During the proceedings of those Cases, MSEDCL submitted that it had rectified the error in levy of AEC, and refunded the amount erroneously charged to consumers during August, 2013 in the billing month of February, 2014. That has been reflected in the Commission's Orders dated 27 March, 2014 on those Petitions. However, during the present proceedings, Shri Sanjay Gupta, Ashok Hotel, Nagpur has raised the matter of refund of the excess amount recovered by MSEDCL due to early billing. Therefore, the Commission directs MSEDCL to review the refunds made by it so far on account of wrongful premature billing, and to make any remaining refunds due to consumers in the next billing cycle. ...."

    The Hon'ble Commission has finally directed the Distribution Company as under:

    17. However, MSEDCL shall review the refunds made by it so far on account of wrongful premature billing, and make any remaining refunds due to consumers in the next billing cycle.
15. The Commission has allowed AEC recovery from the month of September,2013 but as represented by the complainant the recovery was made from the month of August ,2013 . Similarly Commission has allowed recovery of Additional FAC from the month of September,2013 for the period of three months . But MSEDCL has billed Additional FAC to the complainant for five months from August ,2013 up to December, 2013 instead of three months from September ,2013 up to November, 2013 .

    The MERC orders are clear and the complainant is entitled to the refund of the amount of AEC recovered in August 2013 (***which was a wrongful premature billing***) along with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003. Similarly the Additional FAC should be billed for September ,2013 up to November, 2013 and excess recovered for August ,2013 up to December, 2013 should be refunded with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003.
16. **Second issue is regarding additional FAC recovered for May, 2012 to 31st May, 2012. The Commission in its order dated 15th June, 2012 Case No. 43 of 2012 has directed as under:**

    "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.

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)."

17. However the Distribution Company has recovered additional FAC from the Complainant for the period from 14th May, 2012 to 30th November, 2012. Total period from 14th May, 2012 to 30th November, 2012 exceeds six months of 30 days. A "Month" has been defined under Regulation 2.1 (r) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) [*Supply Code Regulations*] and in relation to billing charges it means English Calendar month or any period of 30 days. As such the Distribution Company has recovered additional FAC from the Complainant for more than six months.
18. As per the instruction No. (iv) of the MSEDCL Circular dated 13th April, 2012 provides as under: -

    The auto reset to be done at the 00 hours at the start of the month i.e. ***on dated 01.05.2012;*** *the verification of the data is to be done from 01st to 4th day of the month and then the bills to be issued on 5th day of every month.*

19. The Complainant is therefore entitled for the refund of the additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012 with interest at bank rate of the Reserve Bank of India till the date of refund .

20. Third issue is regarding charging of <u>Fuel Adjustment Costs (FAC) in excess of the rates approved by the MERC</u>. The Hon'ble Commission has issued post facto approvals for FAC to be charged by the MSEDCL as per letters below:

Letter No.	Dated	Billing Months of :
01469	11th Feb 2016	October 2013 to March 2014
01481	16th Feb 2016	April 2014 to September 2014
00265	3rd June 2016	October 2014 to March 2015

21. According to these letters the FAC approved by the Hon'ble Commission for HT I C is as under :

Billing Month		FAC approved by the MERC
December	2013	-28.06
January	2014	0
February	2014	0
March	2014	4.74
April	2014	17.11
May	2014	3.64
June	2014	14.77
July	2014	38.98
August	2014	13.01
September	2014	36.64
October	2014	60.43
November	2014	21.22
December	2014	51.92

22. Hence, wherever, the Distribution Company has charged the FAC in the bills of the months from December 2013 to December 2014 , over and above the rates as above , the same needs to be refunded to the complainant with interest at bank rate of the Reserve Bank of India till the date of refund .

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and

directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should refund to the Complainant , the amount of AEC recovered in the month of August 2013 . Additional FAC should be billed for September ,2013 up to November, 2013 and excess recovered by billing it for August ,2013 up to December, 2013 should be refunded .
2. The Distribution Company should refund the additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012
3. The Distribution Company should refund whatever, excess FAC charged over and above the MERC approved rates in the bills of the months from December 2013 to December 2014
4. All these refunds should be adjusted in the ensuing bill after the date of this order , and the amounts should be refunded along with the interest till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003
5. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
6. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
7. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)	**(Sandeep D. Darwade)**	**(Suresh P.Wagh)**
Member	Member-Secretary & Executive Engineer	Chairman

Consumer Grievance Redressal Forum, Nashik Zone

Copy for information and necessary action to:

1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Circle office, Ahmednagar .