

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE**

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

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Consumer Grievance Redressal Forum
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**No. / CGRF /Nashik/Nagar circle/Nagar UCR Dn./609/84/2016-17/ Date: 16/05/2017
(BY R.P.A.D.)**

**In the Matter of
Refund of AEC (AEC-1 to AEC-4) and Additional FAC**

Date of Receipt :10/04/2017

Date of Decision :16/05/2017

To.

1. M/s. Ambica Waste Management Pvt. Ltd.
L-154 MIDC
Ahmednagar 4141111
(Con.No. 162019001482)

Complainant

2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar
3 Executive Engineer (UCR)
Maharashtra State Electricity Distribution Com. Ltd.
Ahmednagar

Distribution Company

DECISION

M/s. Ambica Waste Management Pvt. Ltd . (hereafter referred as the Complainant). Ahmednagar is the H.T. industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for excess collected AEC (AEC-1 to AEC-4) and Additional FAC due to premature billing . The Complainant filed a complaint regarding this with the Internal Grievance Redressal Cell (IGRC) of the Maharashtra State Electricity Distribution Company Ltd. But as the IGRC did not provide any remedy for more than 2 months , the consumer has submitted representations to the Forum in Schedule "A". The representations are registered at serial No. 56 Of 2017 on 21 /03/2017.

The Forum in its meeting on 21/03/2015, decided to admit this case for hearing on 11/04/2017 at 12.30 pm in the office of the forum . A notice dated 24/03/2017 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, Ahmednagar Circle Office, 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 represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. As per the order in Case No. 95 of 2013 on 5 September, 2013, Commission has allowed the recovery of AEC-1 +AEC-2 from the month of September, 2013 ; case no. 28 of 2013 dated 03/09/2013 & 44 of 2013 dated 04/09/2013 AEC-3 +AEC-4 from the month of October, 2013 and Additional FAC from the month of September, 2013 for the period of three months. MSEDCL has to charge the same from the respective unit consumption month. But the MSEDCL charged unit consumption from earlier month .i.e. premature billing. Also additional FAC is recovered in five months instead of three months.
2. As per directions of the Commission vide order dated 26/06/2015 in case no. 95 Of 2013 ,MSEDCL has to refund excess collected amount on account of wrongful premature billing . But till date MSEDCL has not refunded the same.

Relief Sought :

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. So collection of amount due to premature and excess collected should be refunded with interest as per EA, 2003.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 18/04/2017 from the Nodal Officer, MSEDCL, Ahmednagar Circle Office and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. At the outset it is here 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 6.6. Of CGRFD & EO Regulation 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 AEC recovered in the bill of Sept 2013. Thus, cause of action in the matter arises on Sept. 2013, 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 21/03/2017. Clause 6 of said Form which is in respect of Date of original intimation to the Distribution Licensee, shows that even first intimation to the office in respect of alleged dispute is made on 21/01/2017 i.e. Beyond more than three years from the date of cause of action. Thus grievance to the Hon'ble Forum grievance filed by consumer is not within limitation.
3. Hon'ble Bombay High Court, Nagpur Bench in WP No. 1650 of 2012 in case of MSEDCL Vs M.R. Salodkar has held that complaint must be filed to the CGRF within two years from the date of cause of action. Judgment of Hon'ble High Court in the aforesaid case is delivered on 10th of the July 2013 & it has even considered the judgment of HPCL Vs. MSEDCL in WP 9455 of 2011 which was delivered on 19th of January 2012. It is the settled law that, latter judgment of equal bench on same issue has to be relied upon. Copy of order of Hon'ble High Court in WP No. 1650 is enclosed herewith for ready reference please
4. Hon'ble Electricity Ombudsman on the issue of limitation in series of its judgment, particularly wherein consumers are seeking very same relief of refund of AEC, has ruled that, complaint to the Forum should be made within two years from the date of cause of action. One of the judgment of Hon'ble Electricity Ombudsman dated 13/02/2017 in Representation No. 157 of 2016 (M/s. CEAT tyres Ltd Vs. MSEDCL) is enclosed herewith for ready reference please.

Needless to state here that, Electricity Ombudsman is a highest Appellate Forum established under section 42(6) EA2003. As a matter of propriety, finds & ruling of the Electricity Ombudsman particularly on issue of limitation, in context with very same relief are binding on the Hon'ble CGRF.

5. Controversy that of " premature billing" raised by the consumer & 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 2013 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, intervention of Government of Maharashtra vide its GR No. Sankirna/2013/C.No.278 (Part-1)/ERG-5 dt. 29/01/2014, its consequences etc.. Needs to be thoroughly verified, since there is not violation of any of the direction or the order of the Hon'ble MERC. Following are the detailed submission in this behalf.

6. Hon'ble MERC vide its Tariff order dt. 16 Aug. 2012 determined the tariff for MSEDCL in case No. 19 of 2012 w.e.f. 1 Aug. 2012. After issuance of the Tariff order for MSEDCL, MERC passed following orders in respect of Maharashtra State Power Generation Company Limited (MSPGCL) whereby power purchase cost of MSEDCL was substantially increased.
 - i) On 8th Feb. 2013 in case No.77of 2012, MERC reviewed the Tariff of the MSPGCL & approved additional amount to MSPGCL, which was to be recovered from MSEDCL.
 - ii) On 13 May 2013 in Case No. 56 of 2012, MERC approved the tariff for the intra State Transmission w.e.f. 1 April 2013 whereby monthly Transmission tariff payable by the MSEDCL to Transmission utility was substantially increased.
 - iii) On 03 Sept 2013 MERC approved amount of Rs. 106.44 Cr. & 628.90 Cr. To MSPGCL in accordance with ATE judgment in Appeal No. 34 & 47 of 2012, these amount was to be recovered by MSPGCL from MSEDCL in six equal instalments starting from Oct. 2013 (AEC-3)
 - iv) On 4th Sept. 2013 MERC determined Tariff of Khaperkheda Unit of MSPGCL. As FY 2012-13 was already completed therefore MERC even ordered MSPGCL to recover the deferential fixed cost from MSEDCL in six equal instalments starting from October 2013. (AEC-4)

Obviously, this subsequent rise in power purchase cost of MSEDCL was not factored in MSEDCL Tariff order, which was already issued on 1 Aug. 2012.

7. Electricity was already supplied to the consumers & until Aug. 2013 there was accumulated under recovery of Rs. 2037.78 Crore. This cost was already incurred & furthermore MSEDCL was required to pay huge incremental amount per months towards transmission costs to transmission utility. MERC would have approved this costs in MYT Tariff Order for MSEDCL, however same was already issued & it would have taken almost one year to get notified next Tariff Order. Continuity of such a situation until next tariff order would have resulted into serious ramifications.

Under such circumstances, MERC sou-moto intervened in the matter vide case No. 95 of 2013 & observed that, as the variation in cost of generation is ultimately to be passed on to consumers 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. BY its order dt 5 Sept 2013 in case No. 95 of 2013 MERC determined supplemental charges of MSEDCL & directed MSEDCL to recover the charges from its consumers in the Form of Additional Energy charges (AEC) & Additional Fuel Adjustment Charges (Addl.FAC).

Following is the ruling of MERC in case NO. 95 of 2013.

Commission's Ruling.

22. In view of the above, the commission directs 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. 2037.78 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. 23.39 crore. This shall be levied by MSEDCL from the month of September 2013 to its consumers on a monthly basis till further determination of MSEDCL tariff by this Commission. Category wise Additional Energy Charge (AEC-2) to be levied to all 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 consumers in proportion to the approved Average Billing Rate of respective consumer categories, Under intimation to the Commission.

Accordingly MSEDCL vide Its Circular NO. 209 dt. 07/09/2013 has duly implemented the order dt. 05/09/2013 of MERC in case No. 95 of 2013 & as per the order started charging AEC from Sept. 2013 (Consumption of August billed in September). Further, in view of the specific direction to levy AEC under intimation to the commission, MSEDCL vide letter No. PR-3/Tariff/26517 dt. 23/09/2013 had appraised this to the MERC with 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 and 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.

Thus MSEDCL strictly in compliance with the order of MERC in case No. 95 of 2013 started levying AEC from Sept. 2013 (consumption of August billed in September) duly under intimation to MERC. It is here specifically mentioned that, in its subsequent orders MERC has in clear words upheld the MSEDCL Circular No. 209 & recovery mechanism mentioned there in. Further one-step ahead MERC has observed that, MSEDCL has duly implemented the Order & there is no over recovery on account of AEC. Copy of order in case no. 95 of 2013 (A-3), commercial Circular No. 209 (A-4) & Ltr PR-3/Tariff/26517 dt. 23/09/2013 (A-5) is enclosed herewith for ready reference please.

8. MSEDCL as per order started levying AEC from Sept. 2013 in six installments. Obviously, there was Huge rise in MSEDCL Tariff. Due to the orders, dated 3rd, 4th & 5th of Sept. 2013 of MERC, there was 20% raise in the electricity charges of MSEDCL, consequently there was discontent amongst the consumers in state & issue of the reduction in tariff by giving concession by way of subsidy was within consideration of the Government of Maharashtra.

Resultantly, Government vide GR. No. Sankirna/2013/C.No.278 (part_1)/ERG-5 dt. 29/01/2014 declared concessional energy charges for Residential (up to 0 to 300 Units), commercial , Industrial and Agricultural category consumers, which is effective from February 2014. Further, in view section 65 of EA 2003, which provides for advance payment for any subsidy granted by Government, Government of Maharashtra approved Rs. 606 Cr. For Feb. 2014 as GR was made effective from Feb. 2014.

It may be noted here that, as per MERC orders six installments of AEC were to be recovered from the consumers & as directed in the order MSEDCL was levying AEC from Sept. 2013 (Consumption of August billed in September.) until aforesaid GR came in effect & operation i.e. Feb. 2014, already five installments were recovered from the consumers & only one installment was left which was to be levied in February 2014 (consumption of January billed in February).

Thus by implications it was very clear the Government was to bear last installment of AEC. Due to enforcement of GoM's concessional rate from February 2014, MSEDCL did not recover 6th installment of AEC (1-4)& addl. FAC from consumers. Copy of GR No. Sankirna/2013/C.No.278 (Part-1)/ERG-5 dt. 29/01/2014 is enclosed herewith for ready reference please.

9. At this place, it is here clarified that, in another proceedings before MERC it came to the notice of the MSEDCL that, before announcement of concessional rate by GoM i.e. w.e.f. 1 Feb. 2014 & its implementation thereof, some consumers were already billed with AEC & Addl. FAC in billing month Jan.2014 & resultantly six installments were recovered from such consumers. Therefore in order to have uniformity MSEDCL decided to refund one month AEC & Addl. FAC of all such 1198 consumers, amounting Rs. 2461.22 Lakhs in billing month of Feb. 2014, throughout Maharashtra. This fact was duly reported to the MERC in compliance with its directives in daily order dated 08/01/2014 copy of Lr. No. PR-3/Tariff/No.7318 dt. 03/03/2014 is enclosed herewith for ready reference please .

This peculiar state of affairs have created impression in the mind of the consumers, that there was some error in the recovery of AEC & Addl. FAC & they are entitled for some kind of refund on account of so called premature recovery of AEC & Addl. FAC. Order of the MERC dated 3rd, 4th . & 5th Sept. 2013 in case No. 28, 44 & 95 of 2013. Its subsequent developments particularly challenge to the order in Case 95 of 2013 preferred by Tata Motors before Appellate Tribunal Electricity (ATE) & Order of ATE remanding matter back to MERC & subsequent order dated 26 June 2015 of MERC in

case No. 95 of 2013 & M.A. No. 187 of 2014 are conveniently misinterpreted by some HT consumers, in an opportunistic way to create impression that, there is premature recovery of AEC & Addl. FAC.

10. In present case, it is the contention of the consumer that, MSEDCL prematurely levied AEC in September 2013 (Aug. billed in Sept.) & MSEDCL ought to have started levying AEC from October 2013 (Consumption of September billed in October). Objective behind such interpretation is that of concessional rate announced rate announced by GoM w.e.f. Feb.2014, Consideration is that, had MSEDCL started levying six installments of AEC from October 2013 (September billed in October) then there would be the benefit of some more installments since GoM has announced concessional rates from February 2014 .

In fact if orders of MERC its background, subsequent developments & implications of Government Resolution dt. 29/01/2014 if considered in proper prospective the controversy of premature billing (August/September) is very meaningless. Whether premature or delayed it is the fact that, five out of six installments are to be recovered from the consumers & so are uniformly recovered from the all consumers throughout state under intimation to the MERC.

Further, it is very important to consider the section 65 of EA 2003 which provides for advance payment for any subsidy granted by Government, Government of Maharashtra approved Rs. 606 Cr. For Feb. 2014 as GR was made effective from Feb. 2014. GoM approves no further advance payment. Under circumstances recovery of five installments is inevitable from the consumer & so are paid by the consumer throughout state. Even from present consumer only five installments & there is no over recovery. This aspect if considered in proper prospective it would make it clear that, controversy of so-called "premature billing" is meaningless. Energy bills of the consumer from August 2013 to Jan 2014 are enclosed herewith are enclosed herewith for ready reference please . Specific endorsement in the bill of Jan 2014 to the effect that, bill is issued on prevailing MERC Tariff less direct subsidy 7802167.19 from GoM given vide GR No. 278 dt. 29/01/2014 would clarify aforesaid position .

11. Recovery of five installments of AEC was strictly in compliance with the orders of MERC dated 3rd, 4th , & 5th September 2013 in case NO. 28, 44 & 95 of 2013, it was ordered to start levying AEC from September & so it was levied under intimation to the MERC. Subsequent order dated 26 June 2015 of MERC in case NO. 95 of 2013 & M.A. No. 187 of 2014 has not issued any new directions in respect of recovery of OR refund of AEC.

Kind attention is invited to the order dated 03/11/2016 of Electricity Ombudsman in Representation No. 54 & 95 of 2016 (M/s. Balbir Alloys Pvt. Ltd. Vs MSEDCL) wherein consumer was claiming very same reliefs which was dismissed by the Electricity Ombudsman. Findings of the Electricity Ombudsman that, MERC 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, fortifies aforesaid submission. Copy of order dt. 03/11/2016 is enclosed herewith (A-9).

12. It is requested to considered that, already Tariff order for MSEDCL in case No. 19 of 2012 was issued on 16 Aug. 2012 in Case No. 19 of 2012, where in Applicability of the order was specified as 1 August 2012. Subsequent to this, in order to give effect to earlier orders on 05/09/2013 in Case No. 95 of 2013 MERC is pleased to direct MSEDCL to recover the accumulated under recovery by levying AEC from Sept. 2013. This recovery was ordered for costs which were already incurred against electricity supplied to & consumed by the consumers as such this order was only a consequential order to formalize the recovery of amounts already approved to MSPGCL & MSETCL.
13. MSEDCL vide its circular No. 209 dt. 07/09/2013 has duly implemented th order dt. 05/09/2013 of MERC in case No. 95 of 2013 & 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 had appraised this to the MERC. 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.
14. Contention of the consumer that, Addl. FAC is recovered for five months instead of three months is totally misconceived. Following is the clarification. Hon'ble MERC vide its order dated 03/09/3013 in case No. 28 & 44 of 2013 & order dated 05/09/2013 in case No. 95 of 2013 has repeatedly passed

rulings that, variation in cost of generation is ultimately to be passed on to consumers. MERC has allowed MSEDCL to recover the variation in energy charge billed by MSPGCL as approved by the Commission through FAC mechanism to the Commission.

In view of this direction of Hon'ble MERC, MSEDCL under intimation to the MERC vide Its letter No. PR-3/Tariff/26517 dt. 23/09/2013 has duly charged Add. FAC to the consumers. At relevant time along with the billing component of fixed charge, obviously there is also variation in energy charges on account of subsequent approval of capital cost of Paras, Parli & Khaperkheda units. As per orders of MERC variation in energy charges are to be recovered in six equal installments.

Additional directions to recover under recovery of Rs. 28.05 crores on account of infirm generation of power, in three installments, cannot be construed for entire recovery of variation in energy charges, which is to be recovered in six installments.

MERC at number of occasions almost in all its subsequent orders has observed that MSEDCL has duly implemented the orders & there is no over recovery on account of AEC.

15. MERC has dealt issue of non-compliance of the order of MERC & refund of AEC allegedly prematurely recovered. There were 19 petitions i.e. case No. 110 to 115, 122 to 127, 131, 136 & 137 of 2013 before MERC on very same issue wherein consumers were specifically claiming to refund AEC billed for the month August 2013 & quash commercial circular No. 209 of MSEDCL. By its order dated 27 March 2014 MERC was pleased to dismiss all the petitions with observation that, there is no need to invoke provisions 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. Copy of order dt. 27/02/2014 of MERC is enclosed herewith for ready reference please (A-10).

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 September 2013. Merc has not quashed the Commercial Circular No. 209.

16. Further in compliance with the interim order of MERC it was reported 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.

It is here specifically stated that, refund was given to those consumers from whom 6th installment of AEC was recovered before GR dt. 29/01/2014 came in operation. Electricity bills from September 2013 to February 2014 of present consumer will show that, last installment of AEC was not at all recovered from the present consumer & therefore present consumer is not entitled for any further refund of again one more installment.

17. Hon'ble MERC has upheld Commercial Circular No. 209 in its order dt. 26 June 2015 in case No. 95 of 2013 & M.A. No. 187 of 2014. In said order it is specifically observed that, in accordance with the orders, MSEDCL determined that category-wise rates of AEC-1 & AEC-2, published them vide circular No. 209, and started levying the same from consumers. Further it is observed that, recovery of AEC is justifiable & in Para 13.26 of its order MERC has clarified that there is no over recovery on account of AEC.

Consumer cannot cite submission advanced during hearing of aforesaid case & seek it to construe that, there is ruling of MERC to refund the amount. Submission were made in context of some of the instances wherein recovery of six installments was done & direction of Hon'ble MERC to review refunds is in respect of refunds already given against sixth installments. There is absolutely no direction of Hon'ble MERC to refund the AEC charged from Sept (Aug. billed in Sept.). Consumer is not entitled for any refund. Order of MERC cannot be selectively construed to give benefit of again one installment for which consumer is not entitled.

18. Lastly it is submitted that, issue of refund of AEC is heard & decided on Merits by Hon'ble MERC & Hon'ble Electricity Ombudsman. When identical issue of refund of AEC or violation of order of commissions is determined by Hon'ble MERC & some petitions on identically same issue if are still pending before Hon'ble MERC, then Hon'ble CGRF hardly gets jurisdiction to entertain & decide the grievance in respect of the same issue. Alleged dispute does not come within cope of the "Grievance" as provided CGRF & EO Regulations 2006.

Present case is not an individual billing complaint, since consumer is claiming refund of the AEC, which was recovered in pursuance of the orders of MERC. Further five installments of AEC are

recovered from the all consumers throughout state & by virtue of concession given by GoM sixth installment is not recovered from any consumer. Had it been the case that there is recovery of more than five installments then it would constitute the individual billing complaint & even it may remotely constitute some sort of non compliance of any order of commission. In present case consumer is seeking to decide the non-compliance of MERC order, which was already dealt by MERC in 19 petitions before it, moreover MERC is pleased to dismiss the all petitions.

It is not every grievance in respect of non-compliance of any order of the commission, which 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© 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. Consumer cannot seek to misconstrue order of Hon'ble MERC to give un-just 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:

- 1 The complainant has submitted grievance to the Internal Grievance Redressal Cell Ahmednagar Circle on 21/01/2017 .
- 2 But the IGRC has not taken any action for more than 2 months.

Observations by the Forum:

1. The Distribution Company has argued 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 6.6 of CGRF & EO Regulation 2006. The Distribution Company has referred to a Judgement dated 10th July 2013 in the WP No. 1650 /2012 in the case of MSEDCL Vs Electricity Ombudsman, Nagpur and Shri Mukund Salodkar by the Hon'ble Nagpur Bench of the Bombay High Court . It has been further argued by the Distribution Company that this Judgement has to be relied upon over the Judgement by the Bombay High Court of HPCL Vs. MSEDCL in WP 9455 of 2011 delivered on 19th of January 2012 being a later judgement of equal bench on same issue. The Forum has studied the Judgement dated 10th July 2013 of the Hon'ble Nagpur Bench in detail. In this judgment the Hon'ble Bench has allowed the appeal of the Distribution Company regarding the period of limitation. But the plain reading of above judgement reveal that background of this case is different elaborated as under :
 - ✓ In this case the consumer was given the electric supply prior to 2003 to his agricultural field where he had a pump set and motor. In 2003, there occurred an accident, due to which the electric supply was disrupted. The consumer complained about this to the then Junior Engineer of the Distribution Company. On 15th January, 2004, the consumer made a complaint in writing regarding disruption of electricity supply. No action was taken by the Distribution Company for restoring electricity supply . Thereafter, he kept on making complaints after complaints, but did not take this matter to any redressal cell or forum nor he indicated any legal action.
 - ✓ In June, 2010, the electricity line was restored by the Distribution Company and the then Engineer of the Distribution Company demanded 'test report' from the consumer . But the consumer did not submit such test report and thereby indicated that the installations at his end were not ready for receiving electric supply. Despite of this, the consumer for the first time approached the internal grievance redressal Cell on 3rd May, 2011. The Cell did not accept his complaint and therefore, he went before the Forum for redressal of the consumer grievances, by filing a complaint on 4th August, 2011. This complaint was dismissed. It was

held by the forum that the complaint was barred by limitation. The consumer then went to the Electricity Ombudsman by filing Representation No. 22/ 2011, on which the order was passed. The learned Ombudsman held that the complaint was not barred by limitation because, since 2004 the cause of action was arisen repeatedly and continuously.

- ✓ The Hon'ble Bench noted that "*The cause of action in the case before the Forum arose way back in 2004 and in 2006 when the Cell did not deal with the complaint within the reasonable time.*" Further that "*The cause of action in the complaint arose in 2003-04, the regulation came into force in 2006, the Forum and Cell were established in 2006, the respondent no. 2 was suffering disconnection since 2003, he was suffering losses because of non supply of electricity since 2003 and so, he could have approached the Forum directly.*" and further that "*The facts thus indicate that the respondent no. 2 delayed the filing of the complaint before the Forum and the Cell inordinately. Prior to 2006, he had opportunity to file a suit for damages etc. Even that was admittedly not done. In my view, the case initiated by the respondent no. 2 even before the Cell and the Forum was delayed. There is no time limit prescribed for approaching the Cell, but when no time is prescribed, it must be 'reasonable time'. As stated above, the complaint was inordinately delayed. The explanation is not forthcoming for the delay. In view of this, the case of the respondent no. 2 was hopelessly time barred.*"
- ✓ While commenting on the decision of the Electricity Ombudsman, the Hon'ble Bench has remarked that "*The observations of learned Ombudsman in Paragraph No. 17, saying that the cause of action in the present case was continuing one, is grossly erroneous. The cause of action for getting the electricity supply restored arose when the disconnection occurred in 2003. The cause of action for damages arose when the respondent no. 2 suffered loss for non-supply of electricity. The limitation for such an action would commence from the date of disconnection of the electricity supply. The limitation does not start every day or it is not a case of continuous cause of action. This is clear from the Articles 72 to 91 of the Limitation Act, 1963.*"
- ✓ The Hon'ble Bench has set aside the order of the Electricity Ombudsman referring to the Articles 72 to 91 of the Limitation Act, 1963 and mandated as "*These articles provide the period of limitation and the time from which the period starts to run. In all the cases referred in these articles, it is provided that the period of limitation starts on the date breach occurs. This was a case of breach of contract. Admittedly, the electricity supply got disconnected in 2003, long prior to the regulations came into force. In view of the above discussion, the writ petition succeeds. The impugned order dated 27th February, 2012, passed by the Electricity Ombudsman, Nagpur, in Representation No. 22/2011 is set aside.*"
- ✓ The Hon'ble Nagpur Bench has taken note of the Judgement dated 19th January 2012 of the Bombay High Court in the WP 9555 of 2011 in case HPCL Vs MSEDCL and offered the comments as: "*The sentence in paragraph No. 15, "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", is pressed into service by the learned counsel when he argued that the limitation for approaching the Forum started when his complaint was rejected by the Cell. This is admittedly an incorrect submission, because, admittedly, before the Cell could reject the complaint, the respondent no.2 suomotu approached the Forum. In my view, in this case, the facts clearly establish that the cause of action for the case arose when the electricity supply was disrupted in 2003 and in my view, the consumer ought to have approached the Forum within two years from the date of cause of action.*"

Thus as per discussions above, it is clear that the rejection of this case on the basis of limitation period is on the different ground and facts. The order dated 10th July 2013 of the Nagpur Bench does not conflict with the order dated 19th January 2012 of the Bombay High Court.

2. The facts in the present case are:
- ✓ The issue is non-compliance of the directions of the MERC as per order dated 26/06/2015 in case no. 95 Of 2013 ,MSEDCL According to this order , the Distribution Company has to refund excess collected amount to the consumers to whom wrongful premature billing has been done. The complaint has submitted the grievance on the basis of this order . Hence the cause of action arose in June 2015 and is supposed to continue till the Distribution Company refunds the same. The grievance filed by the complainant to the Forum on 10/04/2017 is therefore well within time period of 2 years. Though the issue is regarding recovery of the excess AEC in August 2013 and Additional FAC in August 2013 to December 2013 , the cause of action of refund has arisen in June 2015 after the MERC order dated 26/06/2015 directing the recovery of this amount.
 - ✓ The grievance was submitted to the IGRC on 21/01/2017. But the IGRC has not decided the case even after lapse of more than 2 months. IGRC should have decided the case before 20/03/2017 . Hence the complainant is at liberty to make an appeal to the Forum within 2 years i.e. up to 19/03/2019 on the non-action of the IGRC in view of the order dated 19th January 2012 of the Bombay High Court in the WP 9555 of 2011.
3. The Distribution Company has argued that : "It is not every grievance in respect of non-compliance of any order of the commission, which 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."
- This is not a correct argument. The full text of the Regulation 2.1(C) of the CGRF & EO Regulations 2006 is as under:
- "**Grievance**" means any fault, imperfection, shortcoming or inadequacy in "**Grievance**" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes *inter alia* (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be. the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes *inter alia* (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.
- As such the grievance in respect of non-compliance of any order of the Commission is very much within the purview of the Forum. The argument is made partially referring to its contents and on the basis of the full text of the said regulation. Hence both the arguments about limitation period and jurisdiction are not tenable. Therefore the Forum has decided to consider the grievance on its merit.
4. 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-1 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 .
5. 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. The Fixed Charges is to be recovered through AEC 3. 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. The Fixed Charges are to be recovered through AEC 4.

6. MERC in the order dated 04/09/2013 in Case No 44 of 2013 has also allowed MSEDCL to recover the Additional Fuel Adjustment Cost (FAC) .
7. Accordingly the Distribution Company issued Commercial Circular No. 209 dated 07/9/2013 and raised demand for the AEC (AEC-1+AEC-2+AEC-3+AEC-4) and Additional FAC .In this circular there is no mention of the month from which these charges are to be recovered.
8. The Distribution Company started recovering the charges from August 2013 instead of September 2013 bill in case of some consumers. Few of them have approached MERC for erroneous levy of AEC & Additional FAC . The Distribution Company agreed to the erroneous recovery in these cases and refunded the amounts in their cases. . The Hon'ble Commission decided these petitions as summarized below:

Petition filed by	Case No. & Order Date	Issue	MERC Order
M/s. Eurotex Industries and Exports Ltd .	Case No. 184 of 2013 27 th March 2014	Penalizing MSEDCL under Section 142 and 146 for contravening Section 45,Section 62(3) of the Electricity Act,2003 and Commission's Order in Case Nos.95, 28 and 44 of 2013.	MSEDCL has rectified the error of levy of AEC and additional FAC and has refunded back the amount which was erroneously charged to the Consumers in the billing month of February, 2014.
M/s. Balbir alloys Pvt. Ltd. & 18 others	Case Nos. 110 -115 of 2013, 122-127 of 2013, 131 of 2013, 136-137 of 2013, 146-149 of 2013 27 th March 2014	under Section 142 of the Electricity Act, 2003 against MSEDCL for violating the MERC Order dated 5 September, 2013 in Case No.95 of 2013	MSEDCL has rectified the error of levy of AEC and additional FAC and has refunded back the amount which was erroneously charged to the Consumers in the billing month of February, 2014.

During the proceedings in case. 184 of 2013 of M/s. Eurotex Industries and Exports Ltd with the Commission, the Distribution Company has submitted a letter No. 7318 dated 03rd March 2014 to the Commission . As per this letter the Distribution Company has stated that AEC and Additional FAC levied to the consumers in the billing month of August 2013 will be refunded in the billing month of February 2014. 1198 such consumers are identified . But the Distribution Company could neither confirm the whether the complainant is included in this list nor such refund is reflected in February 2014 or March 2014 bill .

9. Later , the MERC order dated 05/09/2013 in case No. 95 of 2013 was challenged by M/s TATA Motors Ltd. 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."

10. 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.

11. M/s Paul Strips and Tubes Pvt. Ltd. has also filed a Petition to the MERC for non-compliance of Commission's Order dated 26 June, 2015 regarding levy of Additional Energy Charge (AEC). The proceedings are on and as per the Daily order dated 15/11/2016 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.
 - ✓ 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.
12. The above elaborations reveal that applying charges for bill of August 2013 (Consumption of July 2013) was certainly against the orders of MERC and it was premature recovery when the MERC has ordered for applying additional charges with effect from September 2013 bill. Hence the argument of the Distribution Company that " *This aspect if considered in proper prospective it would make it clear that, controversy of so-called "premature billing" is meaningless*" is not correct.
13. In order to reduce the impact of hike in electricity tariff in view of the above mentioned MERC orders , Government of Maharashtra decided to give concession in electricity rates to the MSEDCL consumers vide GR No. Sankirna/2013/C.No. 278 (Part-1)/ERG-5 dt. 29/01/2014 by offering subsidy. MSEDCL issued a Commercial Circular No. 218 dated 18/02/2014 under which the rise in tariff in September 2013 for Residential (up to 0 to 300 units), Commercial, Industrial and Agricultural consumers was reduced as per Annexure "A" to this circular .
14. The bill details for the complainant for the period August 2013 to January 2014 reveal following facts in respect of AEC :

Bill Month	Units Consumed	Energy Charges @ Rs. 6.33 pu	Energy Charges including AEC	AEC Recovered (AEC-1+AEC-2 +AEC-3+AEC-4)	Remarks about AEC
Aug-13	3342570	21158468.10	25562304.07	4403835.97	Recovered Extra
Sep-13	3141600	19886328.00	24025386.00	4139058.00	Recovery as per rule
Oct-13	4254450	26930668.50	32535906.39	5605237.89	Recovery as per rule
Nov-13	6486600	41060178.00	49606273.50	8546095.50	Recovery as per rule
Dec-13	7228800	45758304.00	55282248.00	9523944.00	Recovery as per rule
Jan-14	5088600	32210838.00	32210838.00	0.00	Not recovered in view of GoM GR dated 29/01/2014 for concessional tariff w.e.f. from January 2014 bill

Hence it is clear that the application of the AEC for the bill of the month of August 2013 is contrary to the orders of MERC and premature, therefore needs to be refunded.

15. Additional FAC at 18.57 paise/pu was allowed to be recovered for 3 months starting from bill of September 2013. The bill details for the complainant for the period August 2013 to January 2014 reveal following facts in respect of FAC :

Bill Month	Units Consumed	FAC rate ps/unit	Addl. FAC rate ps/unit	Net FAC rate Applied	FAC Amount Billed	Remarks
Aug-13	3342570	3.29	Not to be applied	21.86 (3.29+18.57)	730685.802	Additional FAC of Rs. 620715.25/- recovered extra
Sep-13	3141600	-14.66	18.57	3.91 (18.57-14.66)	122836.56	Recovery as per rule
Oct-13	4254450	-7.72	18.57	10.85 (18.57-7.72)	461607.83	Recovery as per rule
Nov-13	6486600	-6.24	18.57	12.33 (18.57-6.24)	799797.78	Recovery as per rule
Dec-13	7228800	-22.46	Not to be applied	12.33	891311.04	FAC Amount computation not clear. But the issue is not before the Forum.
Jan-14	5088600	0	Not to be applied		0.00	No FAC

As per MERC orders Addl.FAC is to be recovered from bill of September 2013 for further 3 months i.e. up to November 2013. It is seen that Additional FAC has been recovered for month of August 2013 bill. It also needs to be refunded.

16. The complainant has demanded the interest on the refunds. But it is seen from the documents submitted to the Forum that the demand of the refund related to August 2013 has been raised first time in January 2017 with the IGRC. The entitlement to interest needs to be considered against the fact that the claim of refund filed by the complainant is belated. The Distribution Company can not be held responsible for the delay. The Forum is inclined to take the view that the refund be given with interest at Bank Rate from February 2017 till the date of refund.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, 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 AEC and Additional FAC levied for the bill of the month of August 2013 in the ensuing bill after the date of this order along with the interest at Bank Rate from February 2017 till the date of refund in accordance with the section 62 (6) of the Electricity Act, 2003.
2. 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 one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum.

3. 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.
4. 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)
Member

(Sandip D. Darwade)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

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