

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: mercindia@merc.gov.in**  
**Website: www.mercindia.org.in/ www.merc.gov.in**

**CASE No. 124 of 2016**

**In the matter of**

**Petition of Maharashtra State Electricity Distribution Co. Ltd. for amendment to Fuel Adjustment Charge provisions of Multi-Year Tariff Regulations, 2015**

**Coram**

**Shri. Azeez M. Khan, Member**  
**Shri. Deepak Lad, Member**

Maharashtra State Electricity Distribution Co. Ltd.

Petitioner

**Appearance**

For the Petitioner:

Shri. Ashok Chavan (Rep.)  
Shri. Anil Kalekar (Rep.)

For Authorised Consumer Representative:

Shri. Prasad Kokil (CMIA)

**ORDER**

**Dated: 27 July, 2017**

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 19 September, 2016 seeking amendments to the provisions relating to Fuel Adjustment Charge (FAC) in the MERC (Multi-Year Tariff) Regulations, 2015 ('MYT Regulations').
2. The prayers of MSEDCL are as follows:
  - a) *"To admit the petition;*
  - b) *To allow the petitioner to recover the FAC calculated for the month 'n-2' from the consumers of 'n-2'th month to be billed in the month 'n' on the basis of their consumption of 'n-2th' month as requested in the petition;*

- c) *To make the necessary/appropriate amendments in the present regulations so as to give effect to the submissions of Petitioner as given in para 13;*
- d) *To pass such order/ orders as Hon'ble commission may deem fit considering Fact and circumstances of the case and in the interest of consumers at large;...*

3. The facts as stated in the Petition are as below:

3.1 Provisions of MYT Regulations, 2015 relating to FAC:

- 3.1.1 The Regulations regarding computation and levy of FAC are prescribed under Regulation 10. Regulation 10.8 states that the FAC calculated as per the prescribed formula shall be recovered from the actual sales in terms of "Rupees per kilowatt-hour".
- 3.1.2 The Regulation is silent about the month in terms of 'actual sales'. As per prevailing practice, it is assumed to mean the actual sales of the month 'n' for FAC of 'n-2' month.
- 3.1.3 Accordingly, MSEDCL calculates FAC for the month 'n-2' and levies and recovers FAC from consumers on the actual sales in the month 'n' (after a lag of 2 months).

3.2 Effect on MSEDCL and its consumers due to shifting of HT Industrial consumers:

- 3.2.1 MSEDCL is revenue-neutral about recovery of FAC from consumers as it is a pass-through for the actual expenditure incurred on power purchase. However, it has a direct impact on the consumers in terms of a higher effective rate for the electricity consumed and results in movement of consumers to Open Access.
- 3.2.2 Levy of FAC for 'n-2' billed in the month 'n' affects consumers, especially in case of change in consumer mix and consumption. This impact can be seen particularly in case of HT Industrial consumers where there is an increasing trend of consumers shifting either towards Open Access or to non-Continuous tariff category from the Continuous category.
- 3.2.3 The burden of FAC for the 'n-2' month of those HT consumers who cease to be HT Industrial - Continuous category in the 'n' th month due to shifting to Open Access or to the Non-Continuous category is being passed on to the other HT Industrial Continuous consumers through the increased FAC rate.
- 3.2.4 Due to the increase in energy rate on account of higher FAC, the HT consumers again tend to move either towards Open Access or to the Non-Continuous category, making it a vicious cycle resulting in further increasing FAC on the remaining consumers.

- 3.2.5 If FAC for the month exceeds the ceiling of that category, the differential amount cannot be billed and is carried forward to the next month, which in turn increases the FAC of that month and so on.
- 3.2.6 This scenario is worsening day by day because of shifting of consumers to Open Access or changing the category, and it is apprehended that this trend will further aggravate.
- 3.2.7 Besides burdening HT Continuous category Industrial consumers, this blocks the revenue of MSEDCL in case of exceeding the cap.

### 3.3 Request letter to Commission for modifying FAC mechanism:

- 3.3.1 In view of the above, vide letter dated 4 July, 2016 MSEDCL had requested the Commission to allow it to amend the present mechanism of calculation and levy of FAC by charging it to consumers of the month for which FAC is levied, with the following suggestions:
- a) The FAC be recovered in 'n' month from consumers in 'n-2' month on the basis of actual sales in that month, i.e. the month which the FAC actually represents.
  - b) In case of HT Industrial category, those consumers who shift to Open Access or change from Continuous to non-Continuous category and vice-versa will continue to be charged FAC applicable for the category of the month of FAC. A new HT Industrial consumer shall not be burdened with FAC for first two months as there is lag of 2 months in the recovery of FAC.
  - c) In case of Residential, Commercial and other categories, the above clause may or may not be applied since the number of consumers entering and leaving this pool remains more or less same.

### 3.4 Reply from the Commission:

- 3.4.1 Vide letter dated 26 August, 2016, the Commission rejected the suggestion of modifying the FAC mechanism and directed MSEDCL to follow the MYT Regulations. The para-wise submissions of MSEDCL to that letter are as follows:

#### 3.4.2 Commission's Response

*MERC (Multi Year Tariff) Regulation 2015 specify the determination and levy of FAC. Regulations 10.2 to 10.9 read together provide that FAC for 'n<sup>th</sup>' month is determined based on the month of variation in power purchase cost,*

*over/under recovery and carrying cost of 'n-2<sup>th</sup>' month. This is as per the basic principle of FAC i.e. to allow pass through of only the actual variation on Power purchase cost. Such category wise FAC determined in 'n<sup>th</sup>' month is levied to the consumers in 'n+2<sup>th</sup>' month.*

#### MSEDCL's Submission

The Commission has not addressed the main issue raised by MSEDCL, viz. that in the present mechanism consumers who have consumed electricity in a particular month are not paying FAC of that month in case they move away in Open Access.

#### 3.4.3 Commission's response

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

#### MSEDCL's Submission

Regulation 10.8 of the MYT Regulations, 2015 states that FAC calculated as per the prescribed formula shall be recovered from the actual sales in terms of 'Rupees per kilowatt-hour'. The Regulation is silent about the month of the term 'actual sales'.

Taking cognisance of Commission's observation regarding discrimination, MSEDCL now proposes that new consumers shall not be burdened with FAC for the first two months. The rationale is that, in the month 'n-2' for which FAC is calculated, new consumers had not consumed any electricity. As per the present mechanism for recovery of FAC, there is a time lag of 2 months to recover the FAC. With this modified proposal, the discrimination amongst the consumers is removed.

#### 3.4.4 Commission's response

*Electricity, being an ongoing business, consumers are also added regularly to the system, while some consumers would move away from the system, either to another licence area or another State/country. Under 'business-as-usual' circumstances, regulatory assets as well as the impact of truing up and associate carrying cost as well as FAC are recovered only from the consumers who are receiving supply at the time of recovery, and are not recovered one-to-one basis from the same set of consumers who were receiving supply at the*

*time of incurring the cost. MSEDCL's proposal is against this basic feature of the electricity business and tariff determination*

MSEDCL's Submission

MSEDCL's request is not against the basic feature of the electricity business. In view of the emergence of Open Access, the revenue of MSEDCL from HT Industrial category and the HT Industrial category consumers *per se* is affected due to the vicious circle resulting in higher rate of FAC. Hence, it is time to relook the prevalent practice with the prime objective to have a system of charging FAC on the principle of 'equity' in the larger interest of consumers.

3.5 Further, with the development in Information Technology and computerized billing system, the business has undergone changes whereby the hurdles in the conventional business model can be removed so as to fully implement the provisions of the Electricity Act (EA), 2003. The Commission may appreciate the following concerns of MSEDCL:

3.5.1 The Commission has not addressed the main issue raised, i.e. in the present mechanism, consumers who have consumed electricity are not paying FAC and are moving away towards Open Access and enjoying unjust enrichment;

3.5.2 Regulation 10.8 of the MYT Regulations, 2015 is silent about the month in the term 'actual sales'.

3.5.3 The principle of 'equity' needs to be ensured to avoid unjust enrichment of shifting consumers and unjust burden on new/rest of the consumers. It is not justifiable to burden the FAC of the consumers who have left on the remaining consumers.

3.5.4 MSEDCL's request is not against the basic feature/spirit of the electricity business. In view of emergence of Open Access, the revenue of MSEDCL from the HT Industrial category is adversely affected due to the vicious circle resulting in a higher rate of FAC.

3.6 With developments in Information Technology in place with MSEDCL, one to one mapping of consumers in the billing programme is now possible. As such, the required data regarding consumption of a particular consumer pertaining to the month 'n-2' can be captured for levy of FAC in the billing month 'n'.

3.7 Considering the above, necessary amendments in the FAC-related Regulations may be made to incorporate the following changes:

- (I) The FAC may be recovered in the 'n' month from consumers in 'n-2' month on the basis of actual sales in that month, i.e. the month for which FAC actually is.
  - (II) In case of HT Industrial category, those consumers who shift to Open Access or move from Continuous to non-Continuous category and vice-versa will continue to be charged FAC of the category of the month of FAC.
  - (III) The new consumer shall not be burdened with FAC for the first two months as there is a lag of 2 months to recover FAC.
4. In its submission dated 7 January, 2017, Chamber of Marathwada Industries and Agriculture (CMIA), an authorized Institutional Consumer Representative, stated as follows:
- 4.1 MSEDCL has sought amendment/modification in the FAC Regulations because it is collecting less FAC when HT Continuous category consumers change to the HT non-Continuous category and when HT consumers opt for Open Access. However, while truing up, MSEDCL will be compensated for the FAC collected.
  - 4.2 In its last MYT Order, the Commission has merged the Continuous and non-Continuous categories. Further, the Commission has increased the Cross-Subsidy Surcharge (CSS) and introduced Additional Surcharge for Open Access. Open Access consumers are returning to MSEDCL. Therefore, the present Petition has become infructuous.
  - 4.3 CMIA has filed a Petition in Case No. 81 of 2016 before the Commission for amending the FAC formula. That Case is reserved for Order. In that Petition, CMIA has set out how MSEDCL has been collecting more FAC.
  - 4.4 Recently, on 14 December, 2016, the Commission has accorded post facto FAC approval to MSEDCL for the months of April to June, 2016. In that approval, FAC has been computed based on the old Tariff Order. If the approved numbers for FY 2016-17 as per the latest MYT Order dated 3 November, 2016 are used, the FAC amount would be lower.
  - 4.5 The Commission may modify the FAC formula as suggested by CMIA in Case No. 81 of 2016 by amending the MYT Regulations, 2015.
5. At the hearing held on 12 January, 2017:
- 5.1 MSEDCL stated that, vide letter dated 4 July, 2016, it had requested the Commission to modify the FAC mechanism. The Commission, vide its letter dated 26 August, 2016, rejected MSEDCL's proposal. The present Petition has been filed for modifying the provisions relating to FAC in the MYT Regulations, 2015. While proposing these

modifications, MSEDCL has made certain changes to its earlier proposal for addressing the concerns raised by the Commission.

5.2 As per the present practice, MSEDCL calculates FAC for the 'n-2<sup>th</sup>' month and levies and recovers FAC from the consumers on the actual sales in the 'n<sup>th</sup>' month, i.e. after a lag of 2 months.

5.3 Industrial consumers are opting for Open Access and sales of MSEDCL are decreasing. The burden of unrecovered FAC from Open Access consumers for the 'n-2<sup>th</sup>' month is being passed on to other consumers. This further increases the energy rate for the remaining consumers of MSEDCL, thereby prompting them to opt for Open Access.

5.4 To avoid this, the MYT Regulations, 2015 need to be modified to allow recovery of FAC in the 'n<sup>th</sup>' month from the consumers of the 'n-2<sup>th</sup>' month based on their consumption in the 'n-2<sup>th</sup>' month. It is further proposed that new consumers will not be subject to FAC for the first two months as they had not contributed to it.

6. In its written submission dated 12 January, 2017 (received on 16 January, 2017), Vidarbha Industries Association (VIA), an authorized Institutional Consumer Representative, stated as follows:

6.1 The present practice of recovery of FAC is creating uncertainty regarding the recovery amount. There is always over-recovery or under-recovery due to changes in consumption in the 'n<sup>th</sup>' month. The over-recovery or under-recovery is again carried forward for future months' FAC, along with carrying cost if any for under-recovery.

6.2 FAC for the 'n-2<sup>th</sup>' month should be calculated and billed in the 'n<sup>th</sup>' month but should be based on consumption of 'n-2<sup>th</sup>' month. This will have the following advantages:

- a. There will be no under-recovery or over-recovery and hence no carrying cost.
- b. The consumer who migrated in Open Access or got Permanent Disconnection (PD) in the 'nth' month will also require to settle the FAC payable for past consumption before settlement of account.
- c. New consumers who have not consumed electricity in the 'n-2<sup>th</sup>' month will not be required to pay the unjustified FAC in the 'n<sup>th</sup>' month for the period when they were not consumers.
- d. FAC will be streamlined and will range between Rs. 0.30 to 0.40.

- 6.3 The FAC of a particular month should be recovered after actual computation but be charged on the basis of the units consumed in that month and not on the units consumed in the billing month in which FAC is debited. This will simplify the levy of FAC, and the consumers will also be billed accurately without shortfall or excess recovery due to variation in sales.
7. In its written submission dated 14 January, 2017 (received on 17 January, 2017), Shri Avinash Prabhune, a former authorized Consumer Representative, requested the Commission to take on record the following submission:
- 7.1 MSEDCL collects FAC in the 'n<sup>th</sup>' month on the units consumed in the 'n<sup>th</sup>' month, which is based on the computation of FAC of the 'n-2<sup>th</sup>' month. The prevailing method creates haziness in the recovery amount. Such practice also creates inconsistency in the carrying costs in future month's FAC, which is the result of under-recovery / over-recovery due to the change in consumption in the 'nth' month.
- 7.2 There is every possibility of carry forward recovery in the 'n-2<sup>th</sup>' month as it is based on computation of the 'n-4<sup>th</sup>' month with carrying costs. Such practice results in large variation and uncertainty in FAC (i.e. Rs. 0.10 to 1.00 per kWh).
- 7.3 The consumption of 'n-2<sup>th</sup>' month needs to be considered for billing FAC in the 'n<sup>th</sup>' month although FAC is calculated for the 'n-2<sup>th</sup>' month. This would be beneficial for the following reasons:
- a. There will be no carrying costs due to precise billing and no possibility of under/over recovery.
  - b. The billing of FAC in the 'n<sup>th</sup>' month for a new consumer is totally unjustified. It is a strange situation that a new consumer has to pay FAC although he was neither a consumer nor consumed electricity in 'n-2<sup>th</sup>' month.
  - c. It is rational that a consumer who migrated through Open Access or gets permanently disconnected in the 'n<sup>th</sup>' month will also require to settle the FAC payable for past consumption before finalisation of accounts.
  - d. FAC will become uniform and wide variations will be significantly reduced.
- 7.4 FAC for particular month must be recovered after computation on the basis of units consumed in the corresponding month of FAC calculation and not on the billing month in which FAC is debited. This will simplify the process of levying FAC and consumers will be billed precisely without under/over-recovery due to variations in sale.

## Commission's Analysis and Ruling

8. The suggestion for modifying the FAC mechanism so as to provide for recovery of FAC from the consumer consumption corresponding to the FAC month raised by MSEDCL now had also been raised by VIA during the public consultation process on MSEDCL's MYT Petition in Case No. 48 of 2016:

### *"2.14 Fuel Adjustment Charge*

#### *Objections/Suggestions*

*...VIA stated that MSEDCL is not following the MYT Regulations for calculating FAC. The present methodology of recovery of FAC is creating uncertainty and large variations in FAC charges ranging from Rs. 0.10/kWh to Rs. 1/kWh. It suggested that FAC for N-2th should be calculated and billed in the Nth month, but be based on consumption of N-2 th month. This method has advantages, namely (a) there will be no under-recovery or over-recovery and also no carrying cost, (b) the consumer who migrated under OA or gets permanently disconnected in Nth month will also require to settle FAC payable for past consumption before settlement of accounts (c) a new consumer who has not consumed electricity in the N-2th month will not be required to pay the unjustified FAC in Nth month for the period when he was not a consumer. Further, the FAC will be streamlined and range between Rs. 0.30 to 0.40."*

In its MYT Order, issued on 3 November, 2016 shortly after the present Petition was filed, the Commission rejected this suggestion as follows:

#### *"Commission's Ruling:*

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

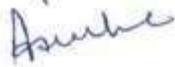
Thus, the Commission has already recently considered and rejected the suggestion to modify the FAC mechanism so as to recover FAC only from those consumers who had availed electricity supply at the time when the cost was incurred. The ruling of the Commission in its MYT Order, quoted above, is squarely applicable to the present case.

9. **FAC is an integral part of the electricity tariff. There cannot be different principles for recovering FAC and other components of tariff. The principle enunciated by MSEDCL, namely that the FAC for a particular period ought to be recovered only from those consumers who have actually consumed electricity during that period, would be equally applicable to the other components of the Aggregate Revenue Requirement which determine the electricity tariff. If that were to be the case, the truing up or revision of past period expenses by the Commission or the higher courts would also require to be recovered only from those who have consumed electricity during that period and not from new consumers. Applying this principle to tariff recovery would not only make the tariff structure and its determination more complex, but would also affect the ability of Distribution Licensees to recover their approved expenditure through tariffs. It also ignores the nature of a Licensee as an ongoing business. Instead, MSEDCL's purpose would be better served by reducing the time taken to collate details of variations in actual power purchase cost and energy sales so that the time lag of 2 months in FAC recovery is reduced. This may require upgradation of its own IT infrastructure, and also the modalities of its Suppliers.**

The Petition of the Maharashtra State Electricity Distribution Co. Ltd. in Case No. 124 of 2016 stand disposed of accordingly.

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**

  
**(Ashwani Kumar Sinha)  
Secretary**

