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(A Govt. of Maharashtra Undertaking)
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Consumer Grievance Redressal Forum
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Mumbai – 400078

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ Date

Case No. 10,11,12,13,14 Hearing Dt. 31.05.2016

In the matter of excess recovery of Fuel Adjustment Charges, and Grievance for Refund of excess collected due to premature billing

M/s. Suchak Kraft Paper Industries Ltd

Plot No. T- 17, MIDC Taloja Tal- Panvel, Dist- Raigad - Applicant

V/S

M.S.E.D.C.L. Vashi circle - Respondent

Present during the hearing

A - **On behalf of CGRF, Bhandup**

1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
2) Shri.Ravindra S.Avhad, Member Secretary, CGRF, Bhandup.
3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - **On behalf of Appellant**

Mr. B.R .Mantari – Consumer representative

C - **On behalf of Respondent**

Mr. S.S.Patil, The Nodal Officer& Executive Engineer, Vashi Circle

HT Consumer no. 000149008390

1.The consumer has filed present Grievance application under regulation No. 6.4 of the MERC (CGRF& E.O.) Regulations 2006.Herein referred to as the Regulations.

2.Being aggrieved & dissatisfied as the IGRC did not decide the matter within 60 days, the consumer above named approaches the forum on the following grounds amongst other grounds.

3. Above name consumer filed this complaint in Schedule Form 'A' before this Forum on dated 27.04.2016. After filing this complaint notice was issued to the respondent utility on dated 2 May 2016.

4. M/s SUCHAK KRAFT PAPER INDUSTRIES is HT consumer at 22 KV level bearing consumer no. 000149008390 at Plot No. C-21/1, TTC MIDC Industrial Area, Pawane, Navi Mumbai with Contract Demand 490 KVA and Connected Load 600 KW and date of connection as 29.05.1979 under HT I industrial (Non Express) tariff category

The Brief facts pertaining to consumer grievance

CASE NO. 10, 11 & 14 OF 2016

***Grievance for Refund of excess collected due to premature billing**

1. AEC-1 and AEC-2
2. AEC-3 and AEC-4
3. Addl. FAC

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).

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).

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.

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.

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.

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:

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.

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.

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.

As per direction of Commission vide order dated 26/06/2015, to refund excess collected amount on account of wrongful premature billing.

In the same matter, M/s. Eurotex Industries has approached to Commission and MSEDCL has committed to Commission for refund of One month AEC and Addl. FAC which has charged in the billing month of August 2013 and submitted the compliance report and refunded the same amount to 1198 consumers including M/s. Eurotex Industries in the billing month of Feb.2014 vide letter no.PR-3/Tariff/07318 dated 03/03/2014.

MSEDCL letter dated 03/03/2014 clearly shows that bills for some of consumer for billing month of August 2013 were already issued before the necessary amendments in billing software and these consumers were charged with adjustment with amendment in Oct.2013. It is clear that the refund has made for 1198 consumer is for August billing month.

From the billing month of January, 2014, Government of Maharashtra has compensated AEC charges as per GoM's Decision No. Sankirn/2013/C.No.278 (Part-1)/ERG-5 dt.29/01/2014.

Relief:

From the above, it seems that 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 should be refunded with interest as per EA, 2003.

CASE NO. 13 OF 2016

***Grievance regarding refund of excess collected FAC from the billing month of Dec.2013 to Dec.2014.**

M/s. Suchak Kraft Paper Industries Ltd consumer No. 000149008390 is a High Tension (HT) industrial consumer having 490 KVA sanctioned Contract Demand.

We have noticed that MSEDCL has not charged FAC as per MERC post facto approval given as per billing month.

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. MSEDCLhas 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".

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.

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.

CASE NO. 12 OF 2016

***In the matter of excess recovery of Fuel Adjustment Charges**

Exide Industries is a High Tension (HT) industrial consumer having 4995 KVA sanctioned Contract Demand. The Commission issued the order in Case No. 43 of 2012 on 15th June, 2014 and permitted MSEDCL to recover the un-recovered FAC amount of Rs.1483 Crore from its consumers through monthly bills in6equal instalments. The recovery amount was Rs. 247 Crs.in each month from June, 2012 to November, 2012. The amount of Rs. 247Crore per month wasto berecovered 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. MSEDCL accordingly issued Circular No.162dated 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.

The details of billing period of additional FAC recovered are as under:-

Bill for the month	**June-2012**	**June-2012**	**July-2012**	**August-2012**	**September 2012**	**October 2012**	**November 2012**
Types of bill	**Regular**	**Supplementary**	**Regular**	**Regular**	**Regular**	**Regular**	**Regular**
Billing Period	20.5.2012 to 20.6.2012	20.6.2012 to 01.7.2012	01.7.2012 to 01.8.2012	01.8.2012 to 01.9.2012	01.09.2012 to 01.10.2012	01.10.2012 to 31.10.2012	31.10.2012 to 30.11.2012
MSEDCL circular no.	162	163	165	166	168	169	169
Bill date	22.6.2012	13.7.2012	4.8.2012	06.9.2012	04.10.2012	05.11.2012	04.12.2012

As per the order of the MERC, the recovery was to be made only in 6 equal monthly instalments 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 15th May, 2012 to 01 December, 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.

The additional FAC recovered for the period from 20th May, 2012 to 31st May, 2012be refunded with interest at the rate of 9 % per annum.

After service of notice respondent utility appeared and filed reply on date 20.06.2016 case wise

Utility Say

CASE NO. 12 OF 2016

For refund of Additional Fuel Adjustment Cost (FAC) levied by MSEDCL

1) M/s SUCHAK KRAFT PAPER INDUSTRIES filed grievance application before Hon'ble forum, for refund of Additional Fuel Adjustment Cost (FAC) levied by MSEDCL in respective months as under

CASE NO.	REFUND FOR	PERIOD OF REFUND CLAIMED						APPLICANT'S CLAIM FOR REFUND
12	**Addl FAC**	JUN 12	JUL 12	AUG 12	SEP 12	OCT 12	NOV 12	MSEDCL recovered FAC for extra 15 days than that of allowed for 06 months

2) Bill date for billing month of JUN 2012 was on 20.06.2012 & for billing month of NOV 2012 it was on 03.12.2012. Applicant consumer submitted its claim on Add FAC on 21.01.2016 before IGRC Vashi Circle and on 27.04.2016 before CGRF Bhandup. Thus it is clear that Applicant consumer overruled two years period from the cause of action arisen, for claiming benefit for wrongly levied extra Add FAC recovered by MSEDCL for later period.

3) It is most respectfully submitted that the consumer has not followed the procedure by filing the grievance within 02 yrs from the date on which the cause of action has arisen. As per Regulation 6.6 of MERC (CGRF & Ombudsman) Regulation 2006, the forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen.

4) Grievance filed by consumer, in matter of Add FAC levied to consumer for the period from JUN 2012 to NOV 2012. Details of bill period and charges levied are as follows

BILL MONTH	BILLING PERIOD			CONSUMPTION UNITS (KWh)	Add FAC rate (PAISE/UNIT)	FAC levied
	FROM	TO	DAYS			
JUN 2012	16.05.2012	16.06.2012	30	173868	43.51	₹ 75649.97
JUN 2012 (Supplementary Bill)	16.06.2012	01.07.2012	15	76596	43.51	₹ 33326.92
JUL 2012	01.07.2012	01.08.2012	31	177604	45.08	₹ 80063.88
AUG 2012	01.08.2012	01.09.2012	31	149708	43.43	₹ 65018.18
SEP 2012	01.09.2012	01.10.2012	30	163542	53.74	₹ 87887.47
OCT 2012	01.10.2012	03.11.2012	34	170546	38.84	₹ 66240.07
NOV 2012	03.11.2012	30.11.2012	27	115297	59.96	₹ 69132.08

5) From above table, it is cleared that, with reference to order passed by Hon'ble Commission in case no. 43 of 2012 dtd. 15.06.2012, MSEDCL has charged Add FAC for period of 06 months only. The applicable rates of Add FAC in respective months were notified by MSEDCL Commercial Circular No. 162, 163, 165, 166, 168 & 169. In JUNE 2012 MSEDCL HT Billing system commuted to HT AMR (Automated Meter Reading) program through own MDAS (Meter Data Acquisition System) portal from existing manual HT reading updating with Auto reset facility on 1st of every month. Thus to have uniformity in billing program – to be started at start of every month , supplementary bill for month of JUN 2012 for period of 16.06.2012 to 01.07.2012 was issued to consumer.

6) FAC charged to consumer in every month was levied with respect to software amendments provided by the corporate office.

CASE NO. 13 OF 2016

Claiming benefit for wrongly levied FAC recovered by MSEDCL for DEC 2013 billing.

7) Bill date for billing month of DEC 2013 was on 06.01.2014. Applicant consumer submitted its claim on FAC on 21.01.2016 before IGRC Vashi Circle and on 27.04.2016 before CGRF Bhandup. Thus it is clear that Applicant consumer overruled two years period from the cause of action arisen, for claiming benefit for wrongly levied FAC recovered by MSEDCL for DEC 2013 billing.

8) It is most respectfully submitted that the consumer has not followed the procedure by filing the grievance for DEC 2013 billing, within 02 yrs from the date on which the cause of action has arisen. As per Regulation 6.6 of MERC (CGRF & Ombudsman) Regulation 2006, the forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen.

9) The FAC Charged to the consumer in energy bill for month of DEC 2013, FEB 2014 is as follows;

Sr.No	BILL MONTH	BILL DATE	GEN. COMM CIRCULAR NO.	DATE	FAC CHARGED IN THE ENERGY BILL
1	DEC 2013	06.01.2014	187	13.11.2013	-6.24 Paise / Unit
2	JAN 2014	03.02.2014	187	13.11.2013	-6.24 Paise / Unit
3	FEB 2014	08.03.2014	190	10.03.2014	4.28 Paise / Unit

FAC charged to consumer in every month with respect to software amendments provided by the corporate office vide general Commercial circulars (Enclosed h/w under MSEDCL Commercial Circular No. 187 & 190) published every month for all consumers of all tariff categories.

CASE NO. 10, 11 & 14 OF 2016

For refund of Additional Energy Charges (AEC) & Additional Fuel Adjustment Cost (FAC) levied by MSEDCL

10) M/s SUCHAK KRAFT PAPER INDUSTRIES filed grievance application before Hon'ble forum, for refund of Additional Energy Charges (AEC) & Additional Fuel Adjustment Cost (FAC) levied by MSEDCL in respective months as under

CASE NO.	REFUND FOR	PERIOD OF REFUND CLAIMED		APPLICANT'S CLAIM FOR REFUND
10	**AEC 3 + AEC 4**	AUG 13	SEP 13	MSEDCL raised demand from billing month of AUG 2013 instead of OCT 2013
11	**AEC 1 + AEC 2**	AUG 13		Excess recovery by MSEDCL form AUG 13 instead of SEP 13 onwards
14	**Addl. FAC**	AUG 13	DEC 13	MSEDCL has raised Addl FAC demand from AUG 13 to DEC 13 instead of SEP 13 to NOV 13

11) Based on the order issued by the Hon'ble MERC in

i) Case No. 95 of 2013 Dtd. 05/09/2013,

ii) Case No. 28 of 2013 Dtd. 03/09/2013,

iii) Case No. 44 of 2013 Dtd. 04/09/2013,

The consolidated amount of ₹ 5342 Crs. was allowed, to MSEDCL, to recover from consumers of all categories, in line with said orders. In the said orders Hon'ble Commission has determined the period of recovery of Additional Energy Charges (AEC) & Additional FAC from the all category consumers of MSEDCL as under.

a. Recovery of amount of Rs. 106.44 crore for MSPGCL on account of impact of Hon'ble ATE Judgment in Appeal No. 34 of 2012 - ***6 equal monthly instalments starting from October, 2013.***

b. Recovery of amount of Rs. 628.90 Crs for MSPGCL on account of impact of Humble ATE Judgment in Appeal No. 47 of 2012 - ***6 equal monthly installments starting from October, 2013.***

c. Recovery of under-recovered fuel cost in Case No. 44 of 2013 for MSPGCL, i.e., Rs. 28.05 Crs for infirm power supplied to MSEDCL – ***3 monthly installments after the issue of this Order***

d. Recovery of fixed cost and energy charges for Khaparkheda -5 Thermal Project as per the tariff approved vides Order dt. 04/09/2013 in Case No. 44 of 2013 for MSPGCL.

e. Recovery of the accumulated under-recovery for MSPGCL of Rs. 2037.78 Crs accrued till the month of August 2013 - ***Period of six (6) months w.e.f. month of September 2013 till the month of February 2014.***

f. Recovery of monthly fixed expense for MSPGCL of Rs. 235.39 Crs. - ***From the month of September 2013 on a monthly basis till further determination of MSEDCL tariff by MERC***.

12)In the aforesaid orders, the Hon'ble Commission has allowed MSPGCL to recover the amount from MSEDCL in six months starting from OCTOBER 2013, hence MSEDCL has started charging the same from the billing month of AUG 2013 i.e. from SEPTEMBER 2013 (AUGUST 2013 billed in SPETEMBER 2013) vide notification through MSEDCL Commercial Circular No. 209 Ref No. PR-3/TARIFF/25287 dtd. 07.09.2013.

13)The Hon'ble State Commission passed an Order dated 5 September, 2013 in Case No. 95 of 2013 allowing the Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) to recover additional charges from its consumers in the form of Additional Energy Charge (AEC) over and above the then prevailing tariff applicable as per Order dated 16 August, 2012 (Case No. 19 of 2012). An Appeal (No. 295 of 2014) was preferred by Tata Motors Ltd., on which the Appellate Tribunal for Electricity (ATE) issued its Judgment on 22 August, 2014. The ATE remanded the matter to the State Commission to give an opportunity to the parties concerned as per the provisions of Section 64 of the Electricity Act (EA), 2003 and pass its final Order. The Hon'ble State Commission, in exercise of the powers vested in it under Sections 61, 62 and 64 of the EA, 2003 and all other powers enabling it in this behalf, and after taking into consideration the suggestions and objections of the public, and all other relevant material, passes the Order in respect of Case No. 95 of 2013 and M.A. No. 187 of 2014 on

26.06.2015. The Summary of Rulings of the Order passed by Hon'ble State Commission, in respect of Case No. 95 of 2013 and M.A. No. 187 of 2014 on 26.06.2015 says

i) The cost components of AEC-1 & AEC-2 were approved by the Commission in the respective Orders following due regulatory process. However, these cost components were not allowed to be recovered by MSEDCL from its consumers in those Orders. ***The Commission is of the view that allowing the recovery of these costs to MSEDCL is justifiable and necessary.***

ii) The Commission has scrutinised the rates at which AEC-1 and AEC-2 were applied by MSEDCL in terms of the principles adopted by the Commission. ***The total category-wise AEC charged by MSEDCL is less than the amount of costs allowed to be recovered, and the category-wise rates levied are also lower than if the principles had been correctly applied.*** Hence, the question of allowing carrying cost for over-recovery does not arise.

iii) 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.

However MSEDCL vide letter No. PR-3/Tariff/26517 Dtd. 23.09.2013 had appraised to Hon'ble Commission regarding recovery of Additional Energy Charges & Additional FAC – implementation of MERC thereof and

14)Recovery mechanism therein. In the said letter MSEDCL had categorically stated that, in order to avoid complications in implementation of order Dtd. 3rd, 4th & 5th September 2013, instead of levying all individual AEC's separately, MSEDCL has merged all the Additional Energy Charges & will be levying all AEC (i.e. AEC 1 to AEC 4) under one head of AEC as well as also merged the Additional FAC 1 & FAC 2 under one head of Addl. FAC.

17)With reference to daily order dtd. 08.01.2014 passed by the Hon'ble Commission in different case No . 110 to 115, 122 to 127, 131, 136, 137, 144, 146 to 149, 158, 171 of 2013 & Govt of Maharashtra GR No. Sankirna/2013/C. No. 278 (Part-1)/ERG-5 Dt. 29.01.2014, and queries raised by M/s EUROTEX

INDUSTRIES & EXPORTS Ltd vide Case No. 184 of 2013 before Hon'ble Commission, MSEDCL specifically verified queries & found that, AEC & Addl. FAC were levied to all consumers for bill issued in SEPTEMBER 2013. However in this process, bills for some of the consumer for billing month of AUGUST 2013 were already issued before the necessary amendments in billing software. These consumers were charged with adjustment with amendments in OCTOBER 2013. In order to have uniformity, MSEDCL has refunded one month AEC & Addl. FAC of all such 1198 consumer amounting ₹ 2461.22 Lakhs in billing month of FEBRUARY 2014. MSEDCL submitted later facts before The Hon'ble Commission vide letter No. PR-3/TARIFF/7318 Dtd. 03.03.2014. (Enclosed h/w under Annexure D) Hon'ble Commission took note of it and passed decision on 27.03.2014, in matter of Case No. 184 of 2013 filed by M/s EUROTEX INDUSTRIES & EXPORTS Ltd. (Enclosed h/w under Annexure E), and dismissed the petition, ruling that, MSEDCL has rectified the error of levying of AEC & Addl. FAC & has refunded back the amount which was erroneously charged to the consumers.

Meanwhile, Government of Maharashtra vide GR No. Sankirna/2013/C.No. 278 (Part-1)/ERG-5 dtd. 29/01/2014 has declared concessional energy charges for Residential (up to 0 to 300 units), Commercial, Industrial and Agricultural category consumers

15)Which is effective from 1st February 2014. Due to enforcement of GoM's concessional rate from 1st February 2014, 6th installment of AEC (1-4) was not be recovered by MSEDCL from consumers and on account of 6th installment (i.e. for billing month of January 2014 billed in February 2014), GoM has given financial assistance to MSEDCL in the form of subsidy. Vide Government of

Maharashtra vide GR No. Sankirna/2013/C.No. 278 (Part-1)/ERG-5 dt. 29/01/2014 and MSEDCL Commercial Circular 218 Dtd. 18th February 2014, refund of AEC & Add. FAC with allied duties charged on it, amounting to ₹ 204965.31/-, awarded to consumer in the energy bill for the month of FEB 2014. Copy of commercial Circular is enclosed herewith (Enclosed h/w under Annexure F).

16)The Hon'ble CGRF Nagpur Urban Zone in case No. 100 of 2014 filed by M/s Nice Papers ltd. (Enclosed h/w under Annexure G)for charging of AEC & FAC by MSEDCL, opined that the amount of which is recovered by MSEDCL from consumer as per the commission order in case No. 95 of 2013 is correct & justified. And accordingly dismissed the grievance application. Hence our submission to this Hon'ble Forum is that, considering the view of CGRF Nagpur in above said grievance, dismiss the present grievance filed before this forum, in matter of refund of AEC & Addl. FAC under Case No. 10,11 & 14 , as there is no any merit in the present grievance.

17) Details of applicable Addl AEC charged to consumer and refunds made to consumer are as follows;

a) Applicable AEC & Addl FAC to M/s SUCHAK KRAFT PAPER INDUSTRIES with respect to Commercial Circular No. 209 Dtd. 07.09.2016

Category	AEC 1	AEC 2	AEC 3	AEC 4	Total AEC	Add FAC
	Paise/Unit	Paise/Unit	Paise/Unit	Paise/Unit	Paise/Unit	Paise/Unit
HT I Industrial – (Non Express)	58.35	47.19	7.82	18.39	**131.75**	**18.57**

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b) Details of AEC & Addl FAC levied to *M/s SUCHAK KRAFT PAPER INDUSTRIES*

S No.	Bill Month	Bill Period		Consumption Units	AEC charged	FAC Charged	Refund
		FROM	TO				
1	**AUG 2013**	07.08.13	05.09.13	136060	₹ 179259.04	₹ 25266.34	
2	**SEP 2013**	05.09.13	03.10.13	125560	₹ 165425.29	₹ 23316.49	
3	**OCT 2013**	03.10.13	11.11.13	198752	₹ 261855.76	₹ 36908.25	
4	**NOV 2013**	11.11.13	30.11.13	97632	₹ 128630.15	₹ 18130.26	
5	**DEC 2013**	30.11.13	31.12.13	163696	₹ 215669.48	₹ 30398.35	
6	**JAN 2014**	31.12.13	31.01.14	118172	₹ 155691.61	₹ 21944.54	
7	**FEB 2014**	31.01.14	28.02.14	130584			₹ 204965.31

Prayer

It is therefore most respectfully prayed that this Hon'ble Forum may be pleased to:

a) Dismiss the present grievance application filled by the consumer
b) Hold the acts of the Respondent as just and in accordance with law.
c) Pass any further orders as this Hon'ble Forum deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

After perusing consumer complaint and replied filed by respondent utility following point arose for my consideration

1) Whether consumer complaint is within limitation under ombudsman Regulation procedure late down on the point of limitation.

2) Whether consumer is entitled for refund of AEC 1, AEC2 AEC3 AEC 4 FAC for year 2013-14. FAC 2016 on dated 11.02.2016 and 16.02.2016 difference with interest @9%

3) Whether consumer is entitled to any relief.

Reasoning

On the date of hearing consumer and his representative appeared before this Forum. He submitted grievance raising dispute for refund of FAC excess for the period June 2012 to November 2012. According to consumer he approach to IGRC and raised dispute but the said arrears claim by the consumer combine of different period. Document filed by consumer are minutely perused it appears form the record bill issued to the consumer and alleged to which paid in the year 2012. According to me cause of action arose for consumer to raised the dispute in year 2012 alleging contravention of

circular issued by respondent utility at appropriate time. But this consumer filed copy of form no 'X' which is dated 27.01.2016. On the date of filing itself the dispute raised by consumer is not within the period of 2 year on which date cause of action arose to the consumer to raise the dispute before appropriate forum.

During the course of hearing respondent utility authorized officer submitted that no judgment or order pass on consumer grievance as the dispute raised by the Consumer beyond the period 2 year and therefore in none of the complaint IGRC entertain and pass any order. It is submitted by consumer that limitation period shall not applicable to the consumer has IGRC is not Forum and therefore he create right to filed the complaint without prejudice to the rights of consumer. I have considered the issue of limitation separately. To my view consumer is required to raised the dispute within the period of 2 year on date of original cause of action to raised the dispute available to the consumer but in this case claim of refund of FAC of earlier period. Accordingly to me is not within the period of limitation as prescribe in regulation it is not filed within the period of 2 years from the date of cause of action in the year 2012. Therefore all the complaint filed by consumer cannot be entertained by this Forum. I hold relief claim by the consumer is time barred. Hence I answered consumer complaint is time barred.

So far as dispute raised by consumer and claim refund of FAC for the year December 2013 and May 2014 and submitted in view of Circular No 189 and 193 and as per order of MERC in case no 95/2013 MA No 187 of 2014 dated 26.07.2015. Respondent utility filed reply that difference of FAC arrears already considered and refund this adjusted and benefit given to the consumer in next appropriate bill as per direction of MERC and at present there is no necessity or refund of the case arose to claim by the consumer. In this consumer complaint which is combine together part of the relief claim by the consumer required to be considered separately in this hearing consumer representative hardly press the ground to grand the relief in his favor on the point of limitation M/s Hindustan petroleum corporation Ltd Vs MSEDCL in case no 9455/2011 and also in case of M/s. Lupin Vs MSEDCL Pune representation no 23/2016 order dated 13.05.2016. Both the judgment place before me on perusal of this complaint entire dispute of claim of consumer decided by me on

merits. Consumer also relied on judgment given by CGRF Nasik in instant case perused by me. The judgment given by CGRF Nasik is not binding to president of other Forum and therefore it will not helpful on the ground that CGRF not considered reply filed by utility properly in appropriate case and considered only the grievance made by consumer. To my view recent development, various judgment and order required to be considered while deciding policy issue on the ground whether relief of refund of AEC1 AEC2 AEC3 AEC4 FAC & additional FAC in proper aspect as APTEL judgment 95/2013 direction given to MERC for reconsidered the issue without passing any judgment on merit. Consequently MERC and other judgment required to be followed by me as follows. I am required to mention those judgments in following list

1] MERC Case No. 28 of 2013 dated 3/9/2013 (AEC-3 & 4)

2] MERC Order in Case No. 44/13 dated 4/9/13 (FAC).

3] MERC Case No. 95/2013 dated 5/9/13 (AEC 1 & 2).

4] MSEDCL Commercial Circular No.209 dated 7/9/13.

5] MERC Order in Case No.144/13 dated 27/3/2014.

6] MERC Order in Case No.95/2013 dated 26/6/15.

7] MSEDCL Commercial circular No 243 Dated 07.09.20138

8] GR.No sankirna/2013/C.No 278(Part-I) ERG-5 Dated 29/01/2014

9] CGRF Nagpur order 300 of 2014 M/s. Shiva Steel Industries (Nag)Ltd vs MSEDCL Nagpur

10] MERC order in Case No. 92 of 2014 M/s Cosmo Films Ltd Vs MSEDCL

11] MERC order in Case No. 211 of 2014 M/s. Ruhatiya Spinners Pvt. Ltd. Vs MSEDCL.

12] Forum heard arguments of both the sides and perused the record.

13]It is an admitted fact that on the basis of order of Hon'ble MERC Dt. 3.9.2013 in case No. 28/13, order of Hon'ble MERC Dt. 4.9.2013 in case No. 44/13 and order of Hon'ble MERC Dt. 5.9.2013 in case No. 95/13, M.S.E.D.C.L. had issued Circular No. 209 Dt. 7.9.2013.

14] In present grievance application, it is the contention of the applicant that M.S.E.D.C.L. has to issue corrected energy bill as per Commercial Circular No. 209 Dt. 7.9.2013. However, it is pertinent to note that on 22.8.2014, Hon'ble APTEL – Appellate Tribunal for Electricity (Appellate Jurisdiction) has passed the order in Appeal No. 295/13 in the matter of TATA Motors Vs. MERC &

MSEDCL on 22.8.2014. On careful perusal of this Judgement, it is crystal clear that in this matter, order passed by Hon'ble MERC in case No. 95/13 Dt. 5.9.2013 is challenged. In this land mark Judgement in Appeal No. 295/13, TATA Motors Vs. MERC & M.S.E.D.C.L. decided on 22.8.2014, Hon'ble APTEL on page No. 56/58 & 57/58 held as under : - 81. SUMMARY OF OUR FINDINGS "(a) The impugned Order has been passed in violation of section 62, 64 and 86 (3) of the Electricity Act 2003. The Page 5 of 12 Case No.300/14

State Commission should have followed the mandatory procedures contemplated u/s 64 and 86 (3) of the Electricity Act 2003 by issuing public notice and giving opportunity to the consumers to raise objections/suggestions on the retail supply of tariff proposed and only after considering these objections/suggestion, should have determined the tariff. (b) As per Section 62 (4) of the Act, the tariff may not ordinarily be amended more frequently than once. However, the tariff can be amended more than once in a financial year in respect of any changes in terms of fuel surcharge formula as may be specified by the State Commission. This Tribunal has held earlier that the tariff can be revised without following the procedure u/s 64 provided the revision in tariff is in terms of the Fuel Surcharge Formula as specified by the State Commission through Regulations or by the Tariff Order. The Impugned Order was not an amendment in tariff as per the specified Fuel Surcharge Formula. (c) 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". Page 6 of 12 Case No.300/14

15] Therefore as per authority cited supra, order passed by Hon'ble MERC in case No. 95/13 Dt. 5.9.2013 is set aside and matter is remanded back to State Commission with certain specific directions.

16] As the matter is remanded back by Hon'ble APTEL to State Commission with certain directions, therefore the matter is subjudice and pending before Hon'ble MERC for decision in the light of observations given by Hon'ble APTEL in the authority cited supra.

17] Therefore though in the authority cited supra, appellant was different i.e. M/s. TATA Motors Ltd. but same issue and same subject matter is decided by Higher Authority and therefore now the matter is subjudice before State Commission and matter is remanded back and hence present grievance application is untenable at law before this Forum, as per Regulation 6.7(d) of the said Regulations. According to Regulation 6.7 (d) of the said Regulations, Forum shall not entertain Grievance "where a representation by the consumer, in respect of the same Grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority". Therefore as same subject matter is decided by Hon'ble APTEL and matter is pending before MERC and therefore this Forum has no jurisdiction to decide present Grievance application.

18] Furthermore, now the Commercial Circular No. 209 Dt. 7.9.2013 does not remain in existence which was issued on the basis of 3 different orders passed by Hon'ble MERC. Therefore, now the applicant has to apply afresh to M.S.E.D.C.L. on the basis of the Judgement of Hon'ble APTEL Dt. 22.8.2014 in Appeal No. 295/13 and to request for Page 7 of 12 Case No.300/14
consideration of the matter in the light of the authority cited supra. In spite of filing fresh application, if M.S.E.D.C.L. does not comply, then the applicant consumer has to approach afresh to I.G.R.C. on the basis of the order passed by Hon'ble APTEL in Appeal No. 295/13 and even then if the grievance is not redressed then only applicant may approach this Forum, if the time limit, circumstances and regulations permit. In that eventuality, Forum shall decide such grievance in accordance with law. At present, present Grievance Application deserves to be dismissed.

19] Hon'ble APTEL passed order in Appeal No. 23/14 and Appeal No. 65/14 Dt. 11.9.2014 & held as under : - "We have heard the Learned counsel for the parties. It is noticed that the Order passed on 5.9.2013 has already been set aside in Appeal No. 295 of 2013, and the matter has been remanded for re-determination. Consequently, the impugned Order dated 29.10.2013 challenged in this Appeal has also to be set aside and remanded for re-determination. Accordingly, Ordered. In view of the above Order, it is open to the Appellants to approach the Distribution Company for refund of the amount,

which has been collected earlier. With these observations, both the Appeals are disposed of".

20] It has been specifically observed in the said authority that it is upto the Appellants to approach Distribution Licensee for refund of the amount which has been collected earlier. This order is dated 11.9.2014. It Page 8 of 12 Case No.300/14 is pertinent to note that in the case in hand, the applicant filed application to I.G.R.C. on 9.4.2014, i.e. before passing of above discussed order by Hon'ble APTEL Dt. 11.9.2014. Therefore now the applicant is at liberty to file specific application to M.S.E.D.C.L. for refund of the amount on the basis of authority cited supra and change in circumstances. There is nothing on record to show that after passing of the order by Hon'ble APTEL in case No. 23/14 and 65/14 Dt. 11.9.2014, applicant filed any application for refund of amount to M.S.E.D.C.L. Therefore after passing of the said order by Hon'ble APTEL applicant did not approach M.S.E.D.C.L. for refund of amount nor filed any grievance application before I.G.R.C. as contemplated under Regulation 6.2 of the said Regulations, which is mandatory provision and under these circumstances, the applicant can not approach to this Forum directly for refund of the amount. Therefore, now the applicant has to approach first to Distribution Licensee for refund of the amount which has been collected earlier and if same amount is not refunded by the Distribution Licensee, then applicant is at liberty to approach to I.G.R.C. and even then if grievance is not redressed, then only applicant can approach to this Forum for refund of the amount. For these reasons, grievance application deserves to be dismissed.

21] It is pertinent to note that as per order passed by Hon'ble APTEL in case No. 295/13 Dt. 22.8.2014, impugned order of Hon'ble MERC regarding AEC has been set aside and the matter is remanded to State Commission to give opportunity to the parties concerned as per provisions of Section 64 of Electricity Act 2003 and to hear the matter in a transparent manner and pass final order. It is clear that Hon'ble APTEL had not given any opinion on merits, nor given any stay to the present recovery of AEC, neither given any directions to M.S.E.D.C.L. even though Page 9 of 12 Case No.300/14 .it was a party to the appeal. These facts show that Hon'ble APTEL wants the matter to be decided afresh. Therefore the matter is subjudice.

22] Learned representative of the applicant placed his reliance on the Common Order passed by Hon'ble Electricity Ombudsman Nagpur in Case No. 68/14, 88/14, 89/14, 91/14, 92/14, 94/14, 95/14, 117/14, 122/14 & 127/14 Dt. 22.12.2014. On the contrary, Officers of respondent M.S.E.D.C.L. placed their reliance on the Judgement passed by Hon'ble APTEL in Case No. 295/13 decided on 22.8.2014 and another Judgement passed by Hon'ble APTEL in appeal No. 23/14 and IA No. 30/14, 31/14 & 93/14 and Appeal No. 65/14 Dt. 11.9.2014. We have carefully perused authorities & Judgements passed by Hon'ble Electricity Ombudsman Nagpur so also both the Judgements and orders passed by Hon'ble APTEL and relied by M.S.E.D.C.L. In our considered opinion, being the Higher Authority, Judgements of Hon'ble APTEL has a direct binding force on this Forum. Therefore we place our reliance on cited decisions of Hon'ble APTEL and relying on the decisions of Hon'ble APTEL, we hold that grievance application deserves to be dismissed. It is our duty to read, interpret, explain and understand the judgement of Hon'ble APTEL in its true meaning, sense and language and we can not mis-interpret it at any cost. We must bear in mind that Hon'ble APTEL has not only set aside order passed by Hon'ble MERC but in the same breath remanded the matter back to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of Electricity Act 21003 and hear the matter in transparent manner and pass final order uninfluenced by its earlier findings as expeditiously as possible. Hon'ble APTEL further made it clear that they are not giving any opinion on the merits. Therefore it is clear that up till now Hon'ble APTEL had not given any findings on merits of the matter and matter is subjudice. Page 10 of 12 Case No.300/14

23] It is pertinent to note that officers of M.S.E.D.C.L. produced one most important document before this Forum. It is a letter written by Chief Engineer (Commercial) Dt. 11.12.2014. It is a letter regarding request for refund of AEC with reference to Hon'ble APTEL's order dated 22.8.2014 in appeal No. 295/13 and in this letter there is reference of Hon'ble APTEL's order in appeal No. 295/13 Dt. 22.8.2014 and Hon'ble MERC's order in case No. 95/13 Dt. 5.9.2013. Recitals of this letter are as under : - "With reference to above, vide judgement dated 22nd August 2014, APTEL has set aside the impugned Order (case No. 95 of 2013 dated 5th September 2013) 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 make it clear that APTEL are not giving any opinion on the merits. It is felt that as there are no specific direction of the APTEL in the judgement in Appeal No. 295 of 2013 for refund of amount that is recovered from consumers in the form of Additional Energy Charges, hence the question of refund of the AEC amount to the consumers does not arise. In order to avoid the multiple litigations, MSEDCL filed Miscellaneous Application in Case No. 95 of 2013 before Hon'ble Commission for early disposal of matter in view of APTEL's judgement in Appeal No. 295 of 2013 on 3.11.2014. In the application MSEDCL requested the Hon'ble Commission that it may take up the matter at the earliest and dispose of the matter expeditiously so as to avoid the future litigations. This will also provide clarity to the consumers of the State. In view of Miscellaneous application in Case No. 95 of 2013 filed before Hon'ble Commission, your application regarding refund of Additional Electricity Charges is kept pending till further clarification from Hon'ble Commission".

24] On close scrutiny of this letter dated 11.12.2014 issued by Chief Engineer (Com.), it is crystal clear that in order to avoid multiple litigations, M.S.E.D.C.L. filed Miscellaneous Application in Case No. 95/13 Page 11 of 12 Case No.300/14

before Hon'ble Commission for early disposal of the matter, in view of Hon'ble APTEL's judgement in Appeal No. 295/13 on 3.11.2014. In the application, M.S.E.D.C.L. requested Hon'ble Commission that it may take up the matter at the earliest and dispose off the matter expeditiously so as to avoid further litigations. This will also provide clarity to the consumers in the State. In view of misc. application in case No. 95/13, filed before Hon'ble Commission, application for refund of AEC is kept pending till further clarification from Hon'ble Commission. 19. Therefore again it is clear that Misc. Application No. 95/13 filed by M.S.E.D.C.L. is pending before Hon'ble MERC for further clarification and directions. Therefore it is again clear that matter is subjudice and pending before Hon'ble Commission recently, and hence according to regulation 6.7 (d of the said Regulations, this Forum has no jurisdiction to entertain the present grievance application. This Forum is of considered

opinion that we have to wait till passing of the order by Hon'ble MERC in Misc. Application in case No. 95/13 regarding refund of AEC.

25] It is pertinent to note that this letter of Chief Engineer (Com.) Dt. 11.12.2014 appears to be received in the office of non applicant at Nagpur on 5.1.2015. (Specific stamp Dt. 5.1.2015 regarding receipt of the letter is appearing on the document). Judgement delivered by Hon'ble Electricity Ombudsman is Dt. 22.12.2014. Therefore it appears that this letter of Chief Engineer (Com.) Dt. 11.12.2014 received in the office of non applicant at Nagpur on 5.1.2015 i.e. after passing of the Judgement by Hon'ble Electricity Ombudsman Nagpur. Further more, on careful perusal of the judgement of Hon'ble E.O. Nagpur it appears that this letter is not referred in the Judgement. Therefore it is subsequent development Page 12 of 12 Case No.300/14 that Misc. Application in case No. 95/13 is filed before Hon'ble Commission for early disposal of the matter in view of Hon'ble APTEL's judgement in appeal No. 295/13 on 3.11.2014, requesting the Hon'ble Commission to take up the matter at the earliest and to dispose off the matter expeditiously to provide clarity to the consumers of the State and seek further clarifications from Hon'ble Commission. These are subsequent changes and change in circumstances that the miscellaneous application in Case No. 95/13 is filed by M.S.E.D.C.L. and it is pending before the Hon'ble Commission. In such circumstances, at this moment no relief can be granted to the applicant as prayed for. For these reasons, we hold that grievance application deserves to be dismissed.

In view of the judgment after considering policy issue entitlement of respondent utility to charge and claim. Question of refund of FAC AEC 1 AEC2 required to be answered in favour of utility as in those various judgment respondent utility is allowed to claim the AEC, AFC & FAC charges from the existing and non existing consumer since period 2013 to 2016 .Even the circular received by the respondent utility authorize higher officer and issuing proper guidelines the respondent utility required to act upon the circular and decide the issue of question of refund in various cases properly. To my view claiming of AEC 1 AEC2 AEC3 AEC4 and additional FAC in all consumer complaint filed before this Forum required to date as per direction and decision of reviewed and revise bill issue which is already settled with due

respect and to prevent loss of revenue. I found question of relief claim by this Consumer not maintainable. Hence consumer complaint required to be rejected with cost. Hence I proceed to pass following order.

As per Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2006 Clause No 4 and Clause No 8.4 which read as " Every order made by the Forum shall be a reasoned order either in Marathi or English and signed by the members conducting Proceedings" & as per clause 4(c) " one member shall be a representative of a register voluntary consumer protection organization of the area, working preferable for at least five year' on matters concerning consumer grievance ". The member was on long live so delayed in Judgment.

Order

The consumer complaint No 10,11,12,13,14 stands dismiss no order as to the cost. Proceeding close.

Both the parties be informed accordingly.

The order is issued under the seal of Consumer Grievance Redressed Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree I Agree/Disagree

DR. ARCHANA SABNIS MEMBER CGRF, BHANDUP	ANIL P. BHAVTHANKAR CHAIRPERSON CGRF, BHANDUP	RAVINDRA S. AVHAD MEMBER SECRETARY CGRF, BHANDUP