

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/NUC/N.U.Dn.1/614/04/2017-18/

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 :15/04/2017

Date of Decision :16/05/2017

To.

M/s. Nashik Strip Pvt. Ltd. ,
Plot No. 13 -17 & 28 – 32 STICE
Shirdi Road, Musalgaon
Tq. Sinner 422112
Dist. Nashik
(Consumer No. 075949010210)

Complainant

1. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Shingada Talav,
Nashik
2. Executive Engineer (Rural)
Maharashtra State Electricity Distribution Com. Ltd.
Vidyut Bhavan Nashik Road.

Distribution Licensee
(Respondent)

DECISION

M/s. Nashik Strip Pvt. Ltd. (hereafter referred as the Complainant). Sinner , Nashik 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.71 Of 2017 on 15 /04/2017.

The Forum in its meeting on 18/04/2017, decided to admit this case for hearing on 02/05/2017 at 11.30 Pm in the office of the forum . A notice dated 18/04/2017 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, Urban I Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer. . The hearing was later postponed to 05/05/2017 at the request of the complainant.

Shir. S.S. Sawairam , Nodal Officer/Ex. Engr. , Sr. Manager Shri. D.R. Mandlik 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 29/04/2017 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

es ukf'kd LVhi ik-fy- xk-da 075949010210 ; k xkgdki ekgs fMI rj 2013] Qcpkjh 2013 o es 2014 e/; s Addl. AEC o Addl. FAC pkt i yko. ; kr vkysys vkgr- gs l ol pkt i xkgdki MERC Order dtd. 04@09@2013 in case No. 44 of 2013 , MERC Order dtd. 26@07@2015 in case No. 95 of 2013, M.A. 187 of 2014, egkforj.k ifji =d da 189, 193 (Regarding FAC Charges) uq kj yko. ; kr vkysys vl u rs ; kx; vkgr-

Action by IGRC :

The complainant applied to the 14/02/2017 but the IGRC did not decide the case even after lapse of 2 months.

Observations by the Forum:

1. 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 .
2. 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.
3. 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) .
4. 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. As per this circular AEC charges applicable for HT-I Non-Continuous consumers in paise /per unit are as under:

AEC-1	AEC-2	AEC-3	AEC-4
58.35	47.19	7.82	18.39

5. 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.

6. 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."

7. 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.

8. 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.
9. 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.
10. 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 .
11. 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	994455	62,94,900.15	7605094.60	1310194.46	Recovered Extra
Sep-13	1043730	66,06,810.90	7981925.18	1375114.28	Recovery as per rule
Oct-13	1064997	67,41,431.01	8144564.56	1403133.55	Recovery as per rule
Nov-13	929930	58,86,456.90	7111639.68	1225182.78	Recovery as per rule
Dec-13	1052861	66,64,610.13	8051754.50	1387144.37	Recovery as per rule
Jan-14	995364	63,00,654.12	6300654.12	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.

12. Additional FAC at 18.57 paise/pu was allowed to be recovered for 3 months starting from bill of September 2013. bill from 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	994455	3.29	Not to be applied	21.86 (3.29+18.57)	217387.86	Additional FAC of Rs. 184670.29/- recovered extra
Sep-13	1043730	-14.66	18.57	3.91 (18.57-14.66)	40809.84	Recovery as per rule
Oct-13	1064997	-7.72	18.57	10.85 (18.57-7.72)	115552.17	Recovery as per rule
Nov-13	929930	-6.24	18.57	12.33 (18.57-6.24)	114660.37	Recovery as per rule
Dec-13	1052861	-22.46	Not to be applied	12.33	129817.76	FAC Amount computation not clear .But this issue is not before the Forum.
Jan-14	995364	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.

13. 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 February 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 therefore directs to give interest at Bank Rate from March 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 March 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:

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