

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/NUC/N.R.Dn./642/32/2017-18/

Date:

(BY R.P.A.D.)

Date of Submission of the case : 26/12/2017
Date of Decision :

To.

M/s.Bhavesh Polymer Pvt. Ltd.
Gat No. 162 ,Near MIDC Malegaon,
TQ. Sinnar Dist. Nashik
Sinnar 422103 ,
(Consumer No. 075949020970)

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 Company
(Respondent)

DECISION

M/s. Bhavesh Polymers Pvt. Ltd. , (hereafter referred as the Complainant). Sinnar Nashik is the HT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Respondent). The Complainant has submitted grievance against MSEDCL for Refund of excess collected AEC & Addl. FAC charges. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. . But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.146 of 2017 on 26 /12/2017.

The Forum in its meeting on 27/12/2017, decided to admit this case for hearing on 02/02/2018 at 12.30 Pm in the office of the forum . A notice dated 27/12/2017 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 Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Smt P.V. Bankar Nodal Officer/Ex. Engr. , Asstt.Acct. Smt. S.S. Turekar represented the Distribution Company during the hearing. Shri . B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

Our Grievance is for billing dispute, wrong interpretation and implementation of the directions of the Commission issued in its order in case no.95 of 2013 dated 05/09/2013; 44 of 2013 dated 04/09/2013; 28 of 2013 dated 03/09/2013 and finally order in case no.95 of 2013 and M.A. 187 of 2014 dated 26/06/2015 in the matter of wrongful premature billing.

Our Grievance is limited to wrongful premature billing and as per Commission's order dated 26/06/2015 and not for recovery calculation or its recovery mechanism approved by Commission.

The Brief facts pertaining to our representation:

1) Main Base points of Representation:

Commission has approved the levy of AEC 1 + AEC 2 from the month of Sept.2013, AEC 3 + AEC 4 from the month of Oct.2013 and Addl. FAC from Sept.2013 by order issued in the month of Sept.2013. But MSEDCL has interpreted the order and started to levy from the month of Aug.2013.

Commission has instructed vide order dated 26/06/2015 to refund amount erroneously charged to remaining consumers during August, 2013, as MSEDCL has submitted to Commission that "it had rectified the error in levy of AEC, and refunded the amount Rs.2461.22 Lakh in the billing month of Feb.2014 erroneously charged to 1198 consumers during August, 2013.

Also, in this order Commission has clarified that "(18) under-recovery of the cost by MSEDCL will be dealt with in its MYT Petition in Case No.121 of 2014."

2) 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.

3) Tariff Philosophy of Commission:

Hon'ble Commission has never approved any levy on retrospective basis.

Hon'ble Commission in its tariff order dated 16/02/2012 defined the applicability of order in section 8.1 reads as below: (and same principle noted in all tariff related orders)

"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.

Hon'ble Commission in its tariff order dated 26/06/2015 in Case No. 121 of 2014 clarified the applicability of tariff order as below:

"The Commission notes that tariff rates and charges determined and approved by the Commission have been made effective with prospective effect. Determination of the Tariff rates and charges with retrospective effect not only affects the consumer and utility but also

creates regulatory uncertainty for the transactions already effected in the past and hence is unfair from utility as well as consumer perspective.”

- 4) **In Case No.78 of 2016 dated 13/07/2017**, Commission Held that “Thus, the Orders quoted above clearly provided that the AEC approved in the Order dated 5 September, 2013 was applicable for the period of 1 September, 2013 to 28 February, 2014, i.e. only for the electricity consumption during that period. Therefore, recovery of AEC on the electricity consumption prior to or after that period would not be consistent with the Commission’s Order dated 5 September, 2013.”
- 5) **Provision of MERC in regards of tariff determination & its implementation:**
AEC is the part of Tariff and Tariff is being determined by the MERC. The methodology of AEC calculation and recovery thereof has to be approved from the Commission in the order. Without change in Order or without approval /sanction of MERC, the AEC methodology could not be changed or altered. MSEDCL has changed levy of AEC recovery methodology for charging for earlier period consumption i.e. from the month of Aug.2013 instead of Sept.2013 thereby violating the principles of Commission’s directions. This has clarified by the Commission vide order dated 26/06/2014 and instructed to make any remaining refunds on **account of wrongful premature billing** in next billing cycle.
- 6) **As per provisions of the MERC 1999 Act, Electricity Act, 2003 and various Supreme Court orders, in one of M/s. LML Ltd. (supra), Court proceeded on the basis that it was the Commission alone who had the exclusive jurisdiction to determine the tariff. In view of the provisions of the 1999 Act as also the regulations framed thereunder, as the law stands now, there cannot be any doubt or dispute that the Commission alone has the exclusive jurisdiction and even for the purpose of modification and / or alteration of tariff, the Commission must be approached.** (Supreme Court in Civil Appeal No.7433 of 2008 dated 19/12/2008)

Nobody has power to change the Commission’s orders for methodology of AEC calculation and recovery schedule approved. If not agreed, consumer and Licensee can apply for review or apply against the order to APTEAL.

MSEDCL has not file review petition or not challenged the same order of Commission to appropriate authority. MSEDCL has duty to comply the Commission’s direction in right spirit.

- 7) MSEDCL has refunded the AEC 1+ AEC 2 + AEC 3 + AEC 4 + Additional FAC for the month of August 2013 without interest. As per EA 2003, it should be refunded with interest. Hon’ble Supreme Court in Civil Appeal No.2451 of 2007 in the matter of M/S. NTPC Ltd vs M.P. State Electricity Board & ... decided on 29 September, 2011 in the matter of Section 62(6) held that:

“62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”

The words 'tariff determined under this section' indicate that the prohibition from charging excess price is dependent on the determination of the price under the preceding five sub-sections. It is only when a licensee or generating company deliberately recovers or extracts from a person a price or charge in excess of the price determined under section 62 (6), that such person can claim the excess price or charge paid by him along with interest. **The tariff charged exceeds the tariff approved by the Commission under these regulations, the**

generating company or the transmission licensee, as the case may be, shall pay interest at the Bank Rate, computed on monthly basis, on the excess amount so charged, from the date of payment of such excess amount and up to the date of adjustment.

Relief:

From the above, it seems that MSEDCL has wrongly collected AEC and Additional FAC charges before the usual or proper time: too early and not as per order of Commission and recovery also not as per MSEDCL letter dated 23/09/2013 submitted to Commission.

AEC 1+ AEC 2 + AEC 3 + AEC 4 + Additional FAC Interest on the wrongly collected for the billing month of August, 2013 which was refunded in the billing month of Oct.2017.

AEC3 + AEC4 Refund of Wrongly collected for the billing month of September, 2013

Addl. FACRefund of Wrongly collected for the billing month of December, 2013.

You are kindly requested allow the above with interest as per Section 62(6) of EA 2003 as MSEDCL has fully responsible for excess collection of amount as interpreted the tariff orders and excess charged to consumer and after Commission's order date 26/06/2015 not refunded the premature recovery of amount.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 02/02/2018 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

Regarding AEC 1+AEC 2+ AEC 3+ AEC 4 effect given by H.O. Mumbai in the Oct. 17 through system wide IT Amendment dtd 31/10/2017 & letter of CE Comm. PR-3/Tariff/AEC No.25310 dtd. 13/10/2017. Calculation sheet of IT attached herewith. Effect of Additional FAC will be given to the consumer .

Action by IGRC :

- 1 Internal Grievance Redressal Cell Nashik Urban Circle conducted hearing on 07/11/2017 for the complaint submitted on 26/09/2017 .
- 2 After hearing both the parties IGRC gave decision as per letter dated 27/11/2017 as under .

" AEC-1, AEC-2, AEC-3, AEC-4 pkt 1 | kBhps t kLr ?kr ysys i s vkDVkcj 2017 P; k fcykr ijr dj. ; kr vkys vkgr-**

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-I Rs. 2037.78 Crs. in 6 equal instalments & b) AEC -2 Rs. 235.39 Crs. On monthly basis till issue of MYT Tariff Order from the consumers, in the form of Additional Energy Charges .
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. All the above Additional Energy Charges (Le AEC 1 to 4) were included and combined under the single head i.e. AEC which is indicated on the energy bill.
4. 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). The relevant paras are as under:

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

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Summary of Findings:

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xix) As the variation in cost of generation is ultimately to be passed on to consumers, the Commission hereby allows MSEDCL to recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, the Commission allows MSEDCL to recover the variation in fixed charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers in proportion to Average Billing Rate of respective consumer categories, under intimation to the Commission.

5. Accordingly the Distribution Company issued Commercial Circular No.209 dated 07/9/2013 and raised demand for the **AEC** and **Additional FAC** from the Electricity Bill of month of August, 2013.
6. However, the MERC order dated 05/09/2013 in case No. 95 of 2013 was challenged with the Appellate Tribunal of Electricity (ATE). The ATE by order dated 22.8.2014 directed as under:
"We, therefore, set aside the Impugned Order and remand the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of the Electricity Act and hear the matter in a transparent manner and pass the final order uninfluenced by its earlier findings, as expeditiously as possible. We want to make it clear that we are not giving any opinion on the merits."

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 The Commission has allowed AEC recovery from the month of September, 2013 but as represented by the complainant the recovery was made from the month of August, 2013. Similarly Commission has allowed recovery of Additional FAC from the month of September, 2013 for the period of three months. But MSEDCL has billed Additional FAC to the complainant for five months from August, 2013 up to December, 2013 instead of three months from September, 2013 up to November, 2013.
- 9 M/s Paul Strips and Tubes Pvt. Ltd has filed a petition for non-compliance of Commission's Order dated 26 June, 2015 regarding levy of Additional Energy Charge (AEC). In the Daily order dated 15/11/2016, the Hon'ble 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.

10. As per recent decision passed by Hon'ble Commission on the petition filed by M/S Paul Strips and Tubes (P) Ltd (case no 78 of 2016) as mentioned in observation by the Forum which states that If MSEDCL has recovered AEC in 6 installments on the electricity consumption of August 2013 to January 2014, it needs to refund the AEC collected on the August 2013 consumption and recover the AEC for the consumption of February 2014.

11 The MERC orders are clear and the complainant is entitled to the refund of the amount of AEC recovered in August 2013 (***which was a wrongful premature billing***) along with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003. Similarly the Additional FAC should be billed for September, 2013 up to November, 2013 and excess recovered for August, 2013 up to December, 2013 should be refunded with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should also refund the additional FAC and Additional AEC charged in Aug 2013, which was refunded in the month of Oct. 2017.
2. The Distribution Company should also refund wrongly collected AEC+3 & AEC+4 on the billing month of Sept.13.
3. The Distribution Company should also refund additional FAC collected for the month of Dec. 2013.
4. All these refunds should be adjusted in the ensuing bill after the date of this order, and the amounts should be refunded along with the interest till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003.

5. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
6. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
7. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Chandrakant M. Yeshirao)

Member

(Prasad P. Bicchal)

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 .

