

**CONSUMER GRIEVANCE REDRESSAL FORUM**  
(Established under the section 42 (5) of the Electricity Act, 2003)  
**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.**  
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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./552/28-2016-17/

Date: 02/11/2016

(BY R.P.A.D.)

**In The Matter Of**  
**Excess Collected The AEC And Additional FAC Charges Before Proper Time**

**Date of Submission of the case : 06/09/2016**  
**Date of Decision : 02/11/2016**

To.

1 M/s.Paris Ispat Pvt. Ltd.,  
S.R.No. 151, Plot No. 1 to 8 ,  
At post Velhale Tq. Sangamner ,  
Dist. Ahmednagar 422605  
(Con.No. 155709005810)

Complainant

2 Nodal Officer ,  
Maharashtra State Electricity Distribution Com. Ltd.,  
Circle office, Ahmednagar,  
3 Executive Engineer,  
Maharashtra State Electricity Distribution Com. Ltd.  
Sangamner Divn. Office  
Dist. Ahmednagar.

Distribution Company

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**DECISION**

M/s. Paris Ispat Pvt. Ltd. . (hereafter referred as the Complainant ). Sangamner is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company ). The Complainant has submitted grievance against MSEDCL for refund of excess collected due to premature billing. 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.150 of 2016 on 06 /09/2016.

The Forum in its meeting on 14/09/2016, decided to admit this case for hearing on 27/09/2016 at 1.00 pm in the office of the forum . A notice dated 15/09/2016 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, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

## **Consumers Representation in brief :**

### **A. 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).

### **B. 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).

### **C. 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.

### **D. 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.

### **E. 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.

#### **F. 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:**

1. 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.
2. 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.
3. 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.
4. As per direction of Commission vide order dated 26/06/2015, to refund excess collected amount on account of wrongful premature billing.
5. 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. In view of the 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. We are submitting herewith order of Supreme Court in Civil Appeal No.7433 of 2008 dated 19/12/2008.
7. 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.

8. MSEDCL has not taken the permission from Commission for charging of AEC 1,2,3&4 under one head and recovery from the month of August,2013 instead of Sept.,2013. Also, Commission has not approved the MSEDCL request in the same matter or not revised its original orders, as per letter No.PR-3 date 23/09/2013 submitted to commission.
9. MSEDCL has not filed 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.

**Demands of the Consumer :**

1. 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.
2. So collection of amount due to premature should be refunded with interest as per EA, 2003.

**Arguments from the Distribution Company.**

The Distribution Company submitted a letter dated 26/09/2016 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

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**Action by IGRC :**

1. Internal Grievance Redressal Cell , Ahmednagar Circle conducted hearing on 03/08/2016 for the complaint submitted on 15/06/2016
2. After hearing both the parties IGRC gave decision as per letter dated 05/08/16 as under:  
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**Observations by the Forum:**

1. The complainant has demanded refund of the prematurely collected Addition Energy Charges (AEC) and Additional FAC in the present grievance application submitted to the Forum . The IGRC has rejected the grievance pointing out that the complainant has filed a Writ Petition in the Aurangabad Bench of Bombay High Court against the Distribution Company which is pending for decision.
2. It is true that the Writ Petition (Stamp No. 5204/2016.) against the MSEDCL was filed in the Aurangabad Bench of Bombay High Court on 16/02/2016 by the complainant. The same was registered by the Hon'ble Bench under WP No. 2019 of 2016 . In the said petition, the complainant has challenged the recovery of Additional Charges like:
  - i. ASC (Additional Supply Charges)
  - ii. IASC (Incremental Additional Supply Charges)
  - iii. RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd)
  - iv. AEC (Additional Energy Charges)
 done by the Distribution Company during the period May, 2007 to May, 2008 and requested the Hon'ble Court to direct the authorities of the Distribution Company to refund the same. This petition was disposed off by the court with following order dated 31/03/2016:

*Mr. A.S. Bajaj, learned counsel for respondent No. 2, on instructions, submits that Chief Engineer, (Commercial) MSEDCL would take decision upon the claim made by the petitioner within a period of two weeks from today.*

*2. In the light of that, writ petition stands disposed of. No costs.*

*3. If any of the party is aggrieved by the decision, they are entitled to take steps in accordance with law. Interim order passed by this court under order dated 22<sup>nd</sup> February, 2016 shall continue for a period of two weeks from today. Needless to state that after expiry of two weeks period, the same would come to an end.*

3. The complainant then filed a Writ Petition (Stamp No. 16131/2016) against the MSEDCL in the Aurangabad Bench of Bombay High Court on 06/05/2016. The same was registered by the Hon'ble Court under WP No. 6252 of 2016 on 15/06/2016. The following order was passed on 16<sup>th</sup> June 2016 by the Hon'ble Court

*The petitioner claims refund of the amount to the tune of Rs.9,29,00,000/- (Rupees Nine Crores twenty nine lakhs) based on tariff order, which claim has been rejected. The petitioner has been issued a bill for a sum of Rs.5,21,99,863/-. The petitioner assures to deposit 50% of the bill amount within a period of three weeks from today.*

However the court was informed by the Distribution Company that the petitioner has not deposited the bill amount as directed by the court. The Hon'ble Court passed following order on 24<sup>th</sup> August 2016 :

*None appears for petitioner.*

*2. Mr. Bajaj, learned counsel for respondent informs that pursuant to the order dated 16th June, 2016 of this Court, the petitioner has not deposited current bill amount. The petitioner is directed to deposit the current bill amount. In the event of default, appropriate orders including vacation of interim order would be passed.*

*3. Stand over to 07-09-2016. To be listed in urgent category.*

This petition is still pending with the Hon'ble High Court. The plain reading of the copy of the this petition and the written statement filed by the Distribution Company reveal that the issue raised in the petition pertains to Additional Charges recovered during May, 2007 to May, 2008. The issues raised by the complainant in the present representation to the Forum are :

- ✓ Premature recovery of AEC and Additional FAC
- ✓ Refund of the same in view of the MERC order dated 26/06/2015 in Case No.95 of 2013 and M.A. no.187 of 2014

4. The IGRC failed to properly appreciate the issues and hence rejected the grievance on the grounds of matter under litigation. The IGRC has also referred to itself as the Forum. In fact the IGRC is just a cell/committee not the Forum in terms of the MERC CGRF & EO Regulations.
5. Forum disagreeing with the IGRC decision and has examined the demand of the complainant as per foregoing paras.
6. After the issuance of tariff order for MSEDCL on 16<sup>th</sup> 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.
7. 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.
8. 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.

9. 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.***

.....  
**Summary of Findings:**

.....  
***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.***

10. 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.

11. 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. ...."*

12. 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 26<sup>th</sup> 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.***

13. 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 .

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 refund to the Complainant , the amount of AEC recovered in the month of August 2013 and Additional FAC should be billed for September ,2013 up to November, 2013 and excess recovered by billing it for August ,2013 up to December, 2013 should be refunded . Both 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.
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 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.
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

**( Hari V. Dhavare )**  
Member-Secretary

**(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. , Circle office, Ahmednagar .