

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

**Case No. 23 of 2019**

**Case of Maharashtra State Electricity Distribution Co. Ltd. seeking review of the post facto approval of MSEDCL's Fuel Adjustment Charges for the period of January, 2018 to March, 2018.**

**Coram**

**Anand B. Kulkarni, Chairperson  
I.M. Bohari, Member  
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Co. Ltd.

.....Petitioner

**Appearance**

For Petitioner

: Smt. Kavita Gharat, Representative

: Shri. Amit Bute, Representative

**ORDER**

**Date: 2 April, 2019**

Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) has filed this Case dated 28 January, 2019 seeking review of the post facto approval of its Fuel Adjustment Charges (**FAC**) for the period of January, 2018 to March, 2018.

**2. MSEDCL's main prayers are as follows:**

- 1) *To consider the Rs. 330 Crs amount deposited in RPO Regulatory charges Fund for the adjustment in the FAC of January, 2018 to March, 2018 as a power purchase cost.*
- 2) *To allow MSEDCL to claim such amount deposited in RPO Regulatory Charges fund through adjustment in the FAC for future period also (i.e. April, 2018 onwards).*
- 3) *To refund the holding cost levied on the RPO Regulatory charges fund in the FAC of January, 2018 to March, 2018.*

**3. MSEDCL states that:**

3.1 The Commission vide letter dated 1 January, 2019, in the post facto approval of MSEDCL's FAC for the period of January, 2018 to March, 2018 ruled that:

*" ... MSEDCL submitted that from RPO regulatory funds created on April, 2018, it has purchased REC amounting to Rs. 144.15 Crore on 26.10.2018 from IEX and REC of worth Rs. 10.39 Crore on 01.11.2018 from PXIL. Accordingly, MSEDCL has purchased a total REC of worth Rs. 154.54 Crore from the RPO Regulatory Fund. Therefore, the Commission has considered the same. i.e. Rs. 154.54 Crore towards REC Cost in the present FAC approval as against Rs. 330 Crore claimed by MSEDCL.....*

*The associated holding cost has been computed for the amount of Rs. 154.54 Crore from the month of May, 2018 (i.e., midpoint for the billing months of Q4 of FY 2017-18) till October, 2018 when the REC has been actually procured as shown in table below. Further, for amount of Rs. 175 Crore (i.e. (Rs. 330 Crore minus Rs. 154.54 Crore), the holding cost has been computed from the month of May, 2018 to December, 2018..."*

3.2 The Commission in its Order dated 4 August, 2015 in Case No. 190 of 2014 had directed MSEDCL to create Renewable Purchase Obligation (RPO) Regulatory Charges Fund for fulfillment of shortfall against RPO targets. Further, vide Order dated 14 September, 2016 in Case No. 16 of 2016 and Order dated 27 March, 2018 in Case No. 169 of 2016, the Commission in the same line has directed MSEDCL for formation of RPO Regulatory Charges Fund.

3.3 The relevant portion from one of the Orders (i.e. Case No. 190 of 2014) is reproduced below:

*"..55. Consequently, the Commission directs as follows:*

- 1) *MSEDCL shall constitute, within a month of this Order, a separate 'RPO Regulatory Charges Fund';*
- 2) *The Fund shall be utilised by MSEDCL to purchase Solar and Non-Solar RECs and/or to procure power so as to fully meet the shortfall against RPO targets (as determined at paras. 46 and 47 above) by the end of March, 2016, and the amounts deposited into the Fund shall be determined by MSEDCL accordingly over the remaining period of FY 2015-16;.....*

..... The Commission has not specified the amounts to be deposited in the Fund since that will depend on the power procurement and/or REC purchase mix opted for by MSEDCL, the actual rate of RECs in the market from time to time, etc. Moreover, MSEDCL need not deposit into the Fund the entire amount estimated to be required in a lump sum at the outset, but spread it over the remainder of the year depending on its assessment of the market.....”

3.4 MSEDCL has started procuring Renewable Energy Certificates (**RECs**) from FY 2016-17 to meet cumulative shortfall of RPO targets and has created RPO Regulatory Charges Fund in the account system of MSEDCL from the month of March, 2015. Further, MSEDCL has started depositing the amount actually in cash in this fund from the month of April, 2018. During Quarter – I (Q1) of FY 2018-19, MSEDCL deposited a total sum of Rs. 330 Crore in this fund. The details of year wise shortfall ( till Q2 of 2018-19) and the funds deposited against RPO Regulatory charges are as below:

FY	MERC Order		RE Sources	Cumulative shortfall (MUs)	Fund Utilised (Crore)	REC Purchase MUs	Resultant Shortfall (MUs)
	Case No.	Date					
2012-13	180 of 2013	12-Mar-14	Non-Solar	314.97	0	0	314.97
			Solar	644.22		0	644.22
2013-14	190 of 2014	04-Aug-15	Non-Solar	1110.78	0	0	0
			Solar	925.96		0	925.96
2014-15	16 of 2016	14-Sep-16	Non-Solar	1774.97	0	0	1774.97
			Solar	1201.81		0	1201.81
2015-16	169 of 2016	27-Mar-18	Non-Solar	1778.86	0	0	1778.86
			Solar	157.95		0	1359.76
2016-17	207 of 2017	31-Jul-18	Non-Solar	1787.85	99.9	666 MUs/99.9 Crs	Surplus 34
			Solar	2049.614		0	2049.614
2017-18	(estimated)		Non-Solar	2189.944	615.29	4104.944 MUs/615.29 Crs.	<b>Surplus 90</b>
			Solar	3525.614		<b>3525.614</b>	

The details of cumulative shortfall, fund deposited in RPO Regulatory Charges Fund & REC purchased during FY 2018-19 (Month-wise) are as below:

Month		Standalone shortfall (MUs)	Fund Deposited(Crore)	REC Purchase MUs/Crore	Resultant Shortfall (MUs)
April, 2018	Non-Solar	386.33	165	0	386.33
	Solar	163.45		0	3689.06
May, 2018	Non-Solar	505.20	90	0	891.53
	Solar	204.10		0	3893.17

Month		Standalone shortfall (MUs)	Fund Deposited(Crore)	REC Purchase MUs/Crore	Resultant Shortfall (MUs)
June, 2018	Non-Solar	40.92	75	0	932.45
	Solar	143.80		0	4036.97
July, 2018	Non-Solar	-543.61	330	0	388.84
	Solar	99.72		0	4136.68
August, 2018	Non-Solar	-399.22	0	0	-10.38
	Solar	138.21		0	4274.90
September, 2018	Non-Solar	644.72	0	0	634.35
	Solar	170.26		1287.021 MUs/144.15 Crs.	3066.19
October, 2018 *	Non-Solar	757.36	0	0	1391.70
	Solar	150.02		91.945 MUs/10.39 Crs.	3124.27
November, 2018*	Non-Solar	598.53	0	0	1990.23
	Solar	187.28		0	3311.55
December, 2018*	Non-Solar	358.22	0	0	2348.46
	Solar	201.98		0	3513.53
<b>Total</b>	<b>Non-Solar</b>	<b>2348.46</b>	<b>660</b>	<b>0</b>	<b>2348.46</b>
	<b>Solar</b>	<b>1458.83</b>		<b>1378.966 MUs/154.54 Crs.</b>	<b>3513.53</b>

(\* Provisional)

3.5 MSEDCL has deposited Rs. 660 Crore in RPO Regulatory Charges Funds till December, 2018 in FY 2018-19 and started procuring RECs by bidding on Energy Exchanges. In September, 2018, MSEDCL has purchased Solar RECs for 1287.021 MUs worth of Rs. 144.15 Crore as against the bid quantity of 2049.614 MUs from IEX. In October, 2018 also, MSEDCL was able to procure only Solar RECs for 91.945 MUs worth of Rs. 10.39 Crore against the bid quantity of 762.593 MUs from PXIL.

3.6 Further, in November and December, 2018 MSEDCL had submitted its bid on Exchanges for purchase of Solar RECs for 625 MUs and 886 MUs respectively, however it could not get RECs on the Exchanges because of the high rate and shortage of RECs in the market. Also, in December, 2018, MSEDCL had submitted its bid for purchase of Non-Solar RECs of 886 MUs and could not get RECs due to unavailability of sufficient RECs in the Exchanges and bids closing at higher rates than the ones quoted by MSEDCL.

3.7 As on December, 2018, tentative cumulative shortfall for solar and non-solar RPO targets is 3513.53 MUs and 2348.46 MUs respectively and for fulfillment of this shortfall, MSEDCL was required to purchase RECs of approximately Rs. 691.71 Crs, by considering the solar

REC and Non-Solar REC rate of Rs. 1.00 per unit plus 18% GST. However, the available RPO Regulatory Charges Fund with MSEDCL as on December, 2018 is around Rs. 505 Crore only. Thus, in fact, the amount deposited by MSEDCL in RPO Regulatory Charges fund is less than the requirement of RPO fund to meet shortfall. Further while bidding for purchase of RECs on Exchanges, MSEDCL has to deposit equivalent amount to Exchange account.

- 3.8 The Commission has not specified any amounts to be deposited in the fund, while issuing the verification Orders of RPO targets. MSEDCL is depositing amount in the funds considering the shortfall in RPO target and floor rate of RECs in the market.
- 3.9 Therefore, MSEDCL requests the Commission to consider the amount deposited in RPO Regulatory Charges fund of Rs. 330 Crs as a power purchase cost for the adjustment in the FAC of January, 2019 to March, 2019. MSEDCL further requests to consider it for future period too so that it can deposit amount in RPO Regulatory Charges Fund and purchase REC/Renewable Power to meet shortfall in RPO target.

#### 4. **Hearing:**

At the time of hearing held on 25 March, 2019 MSEDCL reiterated its submission as stated in the Case.

#### **Commission analysis and ruling:**

5. The Commission vide letter dated 1 January, 2019, in the post facto approval of MSEDCL's FAC for the period of January, 2018 to March, 2018 has disallowed the amount which has been recovered through FAC under the head of RPO Regulatory Charge Fund without it actually incurring such amount on procurement of REC.
6. The Commission notes the contentions of MSEDCL that the Commission had directed MSEDCL to create Renewable Purchase Obligation (RPO) Regulatory Charges Fund for fulfillment of shortfall against RPO targets in the Case Nos. 190 of 2014, 16 of 2016, 169 of 2016 which were the matters of verification of compliance of RPO targets for FY 2013-14, 2014-15 and 2015-16 respectively.
7. The Commission notes that in the Order dated 4 August, 2015 in Case No. 190 of 2014 the Commission has directed MSEDCL as below:

*“53. Regulation 12 of the RPO-REC Regulations empowers the Commission to deal with shortfalls in compliance of RPO targets as follows:*

***“12. RPO Regulatory Charges***

*12.1 If the Obligated Entity fails to comply with the RPO target as provided in these Regulations during any year and fails to purchase the required quantum of RECs, the State Commission may direct the Obligated Entity to deposit into a separate fund, to be created and maintained by such Obligated Entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO, RPO Regulatory Charges and the Forbearance Price decided by the Central Commission; separately in respect of solar and Non-Solar RPO.*

*Provided that RPO Regulatory Charges shall be equivalent to the highest applicable preferential tariff during the year for solar or Non-Solar RE generating sources, as the case may be, or any other rate as may be stipulated by the State Commission.*

***Provided further that the fund so created shall be utilised, as may be directed by the State Commission."***

54. *In the light of the facts set out at paras. 46 to 50 above and the provisions of the RPO-REC Regulations, 2010, the Commission finds no justification or mitigating circumstances (except in case of Mini/Micro Hydro power) for MSEDCL's shortfall, in spite of RECs being available, against its Solar RPO target for FY 2013-14, and cumulative Non-Solar RPO shortfall of FY 2013-14 and previous years. **This is, therefore, a fit case for applying Regulation 12 of the RPO-REC Regulations, as envisaged by the ATE.***

55. *Consequently, the Commission directs as follows:*

- 1) MSEDCL shall constitute, within a month of this Order, a separate 'RPO Regulatory Charges Fund';*
- 2) The Fund shall be utilised by MSEDCL to purchase Solar and Non-Solar RECs and/or to procure power so as to fully meet the shortfall against RPO targets (as determined at paras. 46 and 47 above) by the end of March, 2016, and the amounts deposited into the Fund shall be determined by MSEDCL accordingly over the remaining period of FY 2015-16;*
- 3) MSEDCL shall furnish a statement of the amounts deposited into the Fund and the purchase of RECs and/or actual power there from to MEDA every month;***
- 4) MEDA shall report the position to the Commission with its comments every month.***

56. *If the REC floor prices (Rs. 1500/MWh for Non-Solar and Rs. 3500/MWh for Solar) are considered, and if only RECs are purchased, a minimum of Rs. 260.33 crore (Rs. 161.72 crore for Non-Solar + Rs. 98.61 crore for Solar) would have to be deposited into the Fund. However, while CERC has fixed the floor and forbearance prices of RECs,*

*the actual rate at which they may be available at any given time is not known. Hence, the Commission has not specified the total amount to be deposited in the Fund in terms of a figure. Moreover, MSEDCL need not deposit into the Fund the entire amount estimated to be required in a lumpsum at the outset, but spread it over the remainder of the year depending on its assessment of the REC market and/or actual power procurement.*

57. *MSEDCL has asked that it not be compelled to procure RECs to fulfil the RPO target since it would burden consumers. If a penalty is levied for non-compliance of RPO, MSEDCL may be allowed to recover it from RE generators. **The Commission clarifies that, considering the circumstances set out in this Order which have led to it invoking the provisions of Regulation 12, the expenditure on purchase of RECs and/or actual power procurement from the Fund shall not be passed through to consumers to the extent of the shortfall not met by MSEDCL by the end of FY 2015-16.***

8. Thus in the RPO related Cases cited above, the Commission had invoked the provisions of Regulation 12 of the RPO- REC Regulations. This provision of the Regulation is in the nature of punitive action for non-compliance of RPO obligation. Hence, as highlighted under above paragraph of the Order, the Commission has ruled that to the extent of non-compliance of RPO targets, corresponding amount will not be passed on the consumers i.e. if MSEDCL created RPO Regulatory fund and not used for fulfilling shortfall in RPO, then such fund cannot be allowed to be recovered from consumers. Whereas, if such amount in RPO Regulatory Fund is used for fulfilling shortfall in RPO targets, then such expenses from fund can be passed on to the consumers.
9. As against above stated provisions of Regulations / Orders, the MSEDCL has accumulated RPO Regulatory Funds of Rs. 660 crore by recovering provisional amount from the consumers through FAC mechanism in the month of April, 2018 to July, 2018. Whereas, it has been able to spend only Rs. 154.54 crore on procurement of REC that too in the month of September and October, 2018. The Commission feels that this is contradictory to the principle of RPO Regulatory Charge and also against the basic principle of FAC i.e. allowing actual (not provisional) variation in power purchase expenses, hence directed MSEDCL to refund such amount to the Consumers with interest.
10. Further, the Commission notes that as mandated under Section 62 (6) of the Electricity Act, 2003, Distribution Licensee cannot recover any charges / tariff more than that approved by the Commission. Although, normally Tariff cannot be revised more than once in a year, FAC mechanism has been provided under the Act for regular pass through of actual variation in power purchase expenses. The Commission in its several Orders has explained this concept. Relevant part of one of such Orders dated 23 March, 2018 in Case No. 46 of 2017 is reproduced below:

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*14. The FAC mechanism has been devised in pursuance of Section 62(4) of the EA, 2003 to enable Distribution Licensees to pass through variations in power purchase cost to consumers regularly during the year without waiting for tariff revision. This is beneficial to both Distribution Licensees as well as consumers. When power purchase costs decline, the FAC mechanism enables the benefit to be passed on to consumers at regular and short intervals, without the carrying cost that Distribution Licensees would have to otherwise pay. Similarly, when such costs are increasing, it helps Distribution Licensees to maintain financial liquidity by recovering all or part of the impact without subjecting consumers to large carrying cost and a possible tariff shock at the time of the next regular tariff revision. Except for prior approval for the first month of the Tariff Order, the FAC levied by the Licensees is vetted by the Commission ex post facto. This expedites the process of pass-through of actual variations in power purchase costs. Any error found during post facto vetting is corrected by adjustment in the next month's FAC computations. The variation in power purchase costs also undergoes prudence check in the true-up undertaken in the subsequent Tariff proceedings. At that stage, the revenue collected through FAC is also considered in the total revenue of the Distribution Licensee before determining the Revenue Gap or Surplus for the relevant year based on approved expenditure.*

Thus for speedy recovery of actual variation in power purchase expenses, the Commission allowed Distribution Licensee to first levy FAC to consumers and then submit it for post facto vetting of the Commission. Therefore, it is expected that such provision is implemented by Distribution Licensee to recover only prudent expenses and that too actually incurred by it. Under no circumstances, such FAC provision can be allowed to be used for levying provisional charges by Distribution Licensee for accumulating corpus / fund for future use.

11. MSEDCL cannot create RPO Regulatory Charges fund by invoking FAC and collect the same from the consumers on monthly basis, that too on provisional billing basis. It is expected that from out of the approved tariff for the control period which included the cost of RE for the number of units as per the RPO target, MSEDCL should have created the Fund for the unprocured quantum of RE power even though the cost of the same has been recovered through tariff from the consumers. RE Cell of the Commission should work out the source and the modalities of formation of RPO Regulatory Charges and the amount that needs to be periodically credited by MSEDCL. FAC mechanism cannot be used to create the Fund ordered to be created by the Commission in its order of August 2015.

12. Resultantly the Commission does not find any merit in MSEDCL's contentions and its prayer needs to be rejected. Earlier order dated 1/1/2019 of the Commission is sustained. MSEDCL should forthwith adjust the excess amount recovered by MSEDCL along with holding charges as worked out in the order, in the future bills of the consumers. Hence, the following Order:

**ORDER**

**The Case No. 23 of 2019 is dismissed.**

**Sd/-  
(Mukesh Khullar)  
Member**

**Sd/-  
(I.M. Bohari)  
Member**

**Sd/-  
(Anand B. Kulkarni)  
Chairperson**

  
**(Abhijit Deshpande)  
Secretary**

