

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 65 of 2008

In the matter of
Petition filed by M/s. Reliance Infrastructure Limited for Recovery of Variation in
Power Purchase Cost approved by the Commission in REL-D Tariff Order dated
June 4, 2008.

Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: November 28, 2008

M/s Reliance Infrastructure Ltd. – Distribution Business (RInfra-D) (formerly known as Reliance Energy Limited) filed a Petition under affidavit before the Commission on August 14, 2008, for recovery of variation in power purchase cost approved by the Commission in Reliance Energy Limited – Distribution Business (REL-D) Tariff Order dated June 4, 2008 in Case No. 66 of 2007.

2. The main prayers of the Petitioner are as under:

a. *“The Commission may kindly permit an upward revision in the FAC cap or completely remove the same, so as to prevent significant under recovery of FAC in FY 09 resulting in tariff shock to consumers in FY 10 and protect the financial viability of the Petitioner*

Or,

b. *The Commission may kindly devise an alternate mechanism to permit the Petitioner to recover the additional cost of power purchase, post incurrence of the same, along with additional interest on working capital.*

c. *Any other relief that the Commission may deem fit”*



3. RInfra-D submitted that the Commission in its Order dated June 4, 2008 in the matter of Annual Performance Review for FY 2007-08 and Tariff Determination for FY 2008-09 in Case No. 66 of 2007 had stated that in case of any variation in the fuel prices with respect to the existing levels, RInfra-D would be able to pass on the corresponding increase to the consumers through the existing FAC mechanism, subject to the stipulated ceiling of 10% of average energy charges. Further, the Commission through its Errata and Corrigendum dated June 17, 2008 in relation to the above mentioned Order specified the FAC Cap as 54.5 paise per kWh in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

4. RInfra-D submitted that the Commission in its Order dated June 4, 2008 had considered a rate of Rs 5.50/kWh for purchase of power from bilateral sources for FY 2008-09, however, despite its best efforts, RInfra-D has been unable to procure the same at the rate considered by the Commission in its Order. RInfra-D submitted that the average rate of power procurement from bilateral sources was Rs 8.32 /kWh, Rs 8.02 per kWh and Rs 7.67 per kWh in the month of April 2008, May 2008 and June 2008, respectively.

5. RInfra-D further submitted that it also absorbed the surplus power available in the imbalance pool settlement at a price of Rs 8.28 per kWh and Rs 8.63 per kWh in the months of April 2008 and May 2008, respectively. RInfra-D added that the Commission, vide its Tariff Order for FY 2008-09, had considered the procurement of such power also at a rate of Rs. 5.50 per kWh.

6. RInfra-D submitted that The Tata Power Company Ltd.- Generation Business (TPC-G) levied FAC at the rate of Rs 0.70 per kWh, Rs 0.92 per kWh, Rs 1.39 per kWh and Rs 1.85 per kWh in the months of April, May, June and July 2008, respectively, thus, passing on the FAC incidence from TPC-G to RInfra-D, but the same could not be fully passed on by RInfra-D to its consumers on account of FAC cap of 10%.

7. RInfra-D submitted that the Commission vide its Order dated April 21, 2008 in the matter of Petition filed by Reliance Energy Ltd.- Generation Business for Annual Performance Review for FY 2007-08 and Tariff Determination for FY 2008-09 in Case No. 65 of 2007, had considered the rates of different varieties of coal for its Dahanu



Thermal Power Station as Rs. 2299.89 per Metric Tonne (MT) for washed coal, Rs. 2808.53 per MT for imported coal, and Rs. 1876.09 per MT for Indian coal. The blending ratio considered by the Commission in the said Order was 73%:20%:7% respectively, and the weighted average coal price considered in the Tariff Order works out to Rs. 2371.92 per MT, whereas, the actual weighted average price incurred was Rs. 2770 per MT. It was submitted that the increase in the average price of coal by about Rs. 398 per MT is on account of increase in the purchase rate of imported coal.

8. RInfra-D submitted that there are four primary reasons for the variation in power procurement cost during FY 2008-09, as summarised below:

- i. High rate of power procured through bilateral arrangements as against the rate considered by the Commission in its APR Order;
- ii. The Weighted Average System Marginal Price (WASMP), at which the surplus power available with TPC-D and BEST is being absorbed by RInfra-D, through the Interim Balancing Settlement (IBS) Mechanism, is close to Rs. 9 per kWh as against Rs. 5.50 per kWh considered by the Commission in its APR Order for FY 2008-09;
- iii. Actual FAC incidence from TPC-G
- iv. Cost escalation of own generation plant, i.e., DTSP, on account of fuel price variance.

9. Rinfra-D submitted the source-wise details of power procurement (including own generation from DTSP) from all sources during the months of April 08 to July 08 as shown in the Table below:

Particulars	Apr-08			May-08			Jun-08			Jul-08		
	Rs./kWh	MU	Rs. Cr.	Rs./kWh	MU	Rs. Cr.	Rs./kWh	MU	Rs. Cr.	Rs./kWh	MU	Rs. Cr.
DTSP fuel cost	1.7	343.67	58.33	1.81	337.96	61.2	1.8	341.4	61.41	1.68	354.39	59.69
TPC-G (28.14% share)	3.33	278.19	92.5	3.33	293.47	97.59	3.33	243.66	81.03	3.33	240.98	80.13
TPC-G - FAC incidence	0.7		19.57	0.92		26.89	1.39		33.85	1.85		44.62
Total energy charges from TPC-G	4.03	278.19	112.08	4.24	293.47	124.48	4.71	243.66	114.88	5.18	240.98	124.75
TPC-G sale of power	4.03	-1.05	-0.42	4.24	-6.13	-2.6	--	--	--	--	--	--
Bilateral power purchase	8.89	35.82	31.84	7.48	77.55	57.97	7.68	102.35	78.56	9.64	171.54	165.31
Imbalance Pool Settlement by SLDC	8.31	195.13	162.24	8.63	202.22	174.53	8	138.6	110.88	9.5	72.12	68.52
Total variable cost	4.27	851.75	364.07	4.59	905.07	415.58	4.43	826.01	365.73	4.99	839.03	418.27

*July 08 bilateral purchase details are provisional.



10. RInfra-D further submitted that the actual average variable cost of the power purchased during the period from April 2008 to July 2008 was Rs. 4.57 per kWh as against the variable cost of Rs. 3.31 per kWh considered by the Commission in its APR Order dated June 4, 2008, thus showing an increase of Rs. 1.26 per kWh. RInfra-D submitted that however, FAC as per the Commission's Order dated June 4, 2008 and Corrigendum and Errata dated June 17, 2008 is limited to Rs. 0.545 per kWh, hence, it is unable to pass on the entire variation in power purchase cost due to cap of 10% on the FAC. RInfra-D submitted that the balance un-recovered cost on this account was Rs. 285.88 Crore during the period from April to July 2008 as shown in the Table below:

Particulars (Month 'J')	Apr-08	May-08	Jun-08	Jul-08	Total
Average variable cost of power (Rs./unit)	4.27	4.59	4.43	4.99	4.57
Variable cost as approved in Tariff Order (Rs./unit)	3.31	3.31	3.31	3.31	3.31
Purchased (MU)	851.75	905.07	826.01	839.03	3421.9
Additional variable cost (FAC) – Rs. Crore	82.56	116.46	92.74	140.97	432.73
Particulars (Month 'J+2')	June 08 (Actual)	July 08 (Estimated)	August 08 (Estimated)	Sep '08 (Estimated)	Total
Sales MU	716.73	714.52	710	700	2841.3
FAC recovered / recoverable (@ 54.5 p/u sold)	31.06	38.94	38.7	38.15	146.85
Balance cost un-recovered – Rs. Crore	51.5	77.52	54.04	102.82	285.88

11. RInfra-D submitted that this trend of variation in cost of procurement will continue to hold good in the coming months. RInfra-D projected the under-recovery of additional power purchase cost due to FAC cap for the entire FY 2008-09, based on the following assumptions:

- i. FAC chargeable by TPC-G for Q-2, Q-3 and Q-4 of FY 2008-09 estimated as Rs. 1.20 per unit, Rs. 0.80 per unit and Rs. 0.90 per unit, respectively, based on actual FAC charged by TPC-G for Q-1 of FY 2008-09, i.e., Rs. 0.99 per unit.
- ii. Rate for purchase from bilateral sources and Imbalance Pool Settlement estimated as Rs. 8.75 per unit, Rs. 8.25 per unit and Rs. 8.25 per unit, respectively, for Q-2, Q-3 and Q-4 of FY 2008-09, considering the actual purchase rate of Rs. 8.15 per unit for Q-1 of FY 2008-09.



12. Based on the above assumptions, RInfra-D estimated the weighted average rate of power purchase during FY 2008-09 as Rs 4.66 per kWh as shown in the Table below:

Particulars	Tariff Order (Approved)	RInfra Estimates for FY 09		
		April 08 to July 08 (Actuals)	Aug 08 to Mar 09 (Estimated)	Total FY 09
Total generation (MU)	3701.00	1377.42	2323.58	3701.00
Total Purchase (MU)	6218.00	2051.63	4166.37	6218.00
Total (MU)	9919.00	3429.04	6489.96	9919.00
Variable cost of DTPS (Rs. Crore)	619.09	240.64	403.35	643.99
Variable cost of TPC-G (Rs. Crore)	999.07	351.26	647.81	999.07
TPC – FAC incidence on RInfra-D (Rs. Crore)		124.93	166.15	291.08
Purchase through Bilateral and Imbalance pool settlement (Rs. Crore)	1495.42	849.85	1834.40	2684.25
RPS (Rs. Crore)	173.59	--	4.20	4.20
Total variable cost (Rs. Crore)	3287.17	1566.67	3055.92	4622.59
Weighted average variable cost of power purchase (Rs./kWh)	3.31	4.57	4.71	4.66

Accordingly, RInfra-D estimated the un-recovered cost that may accumulate for FY 2008-09 as Rs. 876.31 Crore, as shown in the Table below:

Particulars	RInfra Estimates for FY 2008-09
Additional variable cost of power (from table above) – Rs./kWh	1.346
Additional cost recoverable through FAC (on 9919 MU of power procurement) – Rs. Crore	1335.42
FAC Cap (Rs./kWh)	0.545
Projected sales (MU)*	8424
Projected recovery via FAC – Rs. Crore	459.11
Under-recovery (Rs. Crore)	876.31

*Sales have been taken as considered by the Commission in APR Order for FY 2008-09.

13. RInfra-D submitted that the estimated amount of under-recovery for FY 2008-09 does not include the interest expense on working capital funds that it would have to borrow to meet the shortfall in power purchase cost recovery. RInfra-D further submitted that due to the magnitude of under-recovery, the additional interest on working capital borrowings would be large and shall become eligible for recovery at the time of APR/True-up as at present, the cost of short-term borrowings is 16% to 18%. RInfra-D requested the Commission to allow RInfra-D to recover the additional interest on working capital considering the magnitude of under-recovery.

14. RInfra-D referred to the Commission's Order in Case No. 52 of 2005 dated March 21, 2006 in the matter of Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition for review of Regulations relating to FAC formula wherein, the Commission vide Para 35, 36 and 37 ruled as follows:



“35. Based on actual FAC per unit for the month of September 2005 as approved by the Commission and the FAC per unit to be charged to the consumers based on generation and power purchase cost data submitted by MSEDCL, the Commission is of the opinion that there is a need to modify the FAC ceiling to improve the liquidity position of MSEDCL and to enable MSEDCL to continue the short term power purchase to mitigate the load shedding to the extent possible. Considering the quantum of FAC to be recovered based on data submitted by MSEDCL, the enhancement of ceiling from 10% of variable charge to say 20% of variable charge will not suffice. However, it may not be appropriate to completely remove the FAC ceiling and permit MSEDCL to levy a substantial high charge as FAC to consumers, without prior approval of the Commission.”

“36. The Commission will approve the FAC to be recovered by MSEDCL in excess of existing ceiling on recovery through FAC charge, i.e., 10% of variable charge, after detailed vetting of the actual FAC data on case-to-case basis.”

“37. The Commission directs the MSEDCL to submit the details of FAC Computations in the formats prescribed by the Commission for vetting for the period October 2005 to January 2006 by 25th March 2006. For subsequent months, i.e., from February 2006, the MSEDCL should submit the details of FAC computations for vetting in a timely manner, if it is serious to mitigate its projected liquidity problems. The Commission, after vetting the FAC computations submitted by MSEDCL, will approve the FAC charge to be recovered in excess of the existing FAC cap.” (emphasis added)

15. The Commission, vide its notice dated August 26, 2008, scheduled the hearing in the matter on September 23, 2008, and directed RInfra-D to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

16. Four interveners, viz., Shri N. Ponrathnam, Shri Jude Tandon, Shri Sampath K and Ms. Iona Dias, vide their Intervention Application on Affidavit dated September 16, 2008 (except Shri Ponrathnam’s Intervention Application on Affidavit, which was dated September 15, 2008) raised the following issues:



- i. The provisions of law under which the Commission admitted the Petition of Reliance Infrastructure Limited as it is not authorised by the Commission to supply electricity.
- ii. The Petitioner had not signed any Power Purchase Agreement, which is mandatory as per Regulations 22 to 25 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, hence, the distribution licensee should not be allowed to recover FAC.
- iii. The Petitioner had disobeyed the Commission's Tariff Order and levied different FAC for different billing periods and hence, should be prosecuted.
- iv. Whether the Commission is violating its own Regulations, as on the one hand, the MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulates a ceiling of 10% on FAC recovery, while on the other hand the Commission has admitted the Petitions filed by different distribution licensees to enhance the ceiling of FAC recovery.
- v. The basis for different FAC claimed by different distribution licensees.

17. During the Hearing held in the matter on September 23, 2008, Shri Kapil Sharma representing RInfra-D submitted that as per Regulation 82.6 of MERC (Terms and Conditions of Tariff) Regulations, 2005, the monthly FAC charge shall not exceed 10% of the variable component of tariff, or such other ceiling as may be stipulated by the Commission from time to time. He added that the Commission approved the FAC cap as 54.5 Paise per unit. He drew the attention of the Commission to Page No. 87 of the APR Order, which stipulates as follows:

“The Commission observed that the short term purchase rate as submitted by REL-D for short term purchase during April to September 2007 is higher than the rate considered by REL in its Petition. However, as the power purchase from external sources is approved for the entire year and the rate will vary depending upon the demand and supply situation in various months of the year, i.e., purchase rate may vary from Rs 6-7/kWh during peak hours of the day to Rs 3-4/kWh during off-peak hours of the day. Accordingly, the Commission has considered the rate of Rs 5.50/kWh for purchase of from bilateral sources for estimating the cost of power purchase from external sources.”



18. Shri. Kapil Sharma submitted that the power purchase rate for bilateral power sources for the months of April, May, and June 2008 was Rs 8.32/kWh, Rs 8.02/kWh and Rs 7.67/kWh, which is much higher than the rate of 5.50 paise/kWh considered by the Commission in the APR Order.

19. Shri. Kapil Sharma submitted that the Dahanu Thermal Power Stations's variable cost has also gone up because of the increase in purchase price of coal by Rs. 398/- per MT. He said that all these elements put together have resulted in the weighted average variable cost of purchase becoming higher by Rs. 1.26 paise per kWh for the period from April to July 2008, as against 54.5 paise per kWh allowed under the FAC cap. He submitted that the total FAC under-recovery during the first four months of FY 2008-09 has been around Rs 300 Crore. He added that if the variable costs seen in Q-1 are applied to Q-2, Q-3 and Q-4, the overall under-recovery would be to the extent of Rs 886 Crore or close to Rs. 1,000 Crore. He submitted that if this amount is not allowed to be recovered in this year, the FAC formula itself allows for the interest on Working Capital on FAC under-recovery to be included in FAC computations, and the same consumers will be required to bear the additional burden in the next financial year. Hence, he requested the Commission to reconsider the FAC cap of 10% so that the additional interest burden is also not passed on to the consumers.

20. The Commission enquired of Shri. Kapil Sharma whether increasing the FAC cap is RInfra-D's only prayer. Shri Kapil Sharma replied that the total variation in the variable cost of generation and power purchase must be considered. He also submitted that the FAC cap of 10%, 20% or 30% may not suffice in this case as the volume of under recovery is very large.

21. During the hearing the four interveners, viz., Shri N. Ponrathnam, Shri Jude Tandon, Shri Sampath K and Ms. Iona Dias, raised the issues as submitted by them in their Intervention Applications on Affidavit as discussed in previous paragraphs.

22. Shri. Ponrathnam, also stated during the hearing that similar Petitions have been filed by TPC-D and MSEDCL, and as TPC-D is going to be a licensee in the same area as RInfra-D, there should be uniformity in tariff. The Commission observed that the issue of uniformity in tariff is a different issue and not related to this matter.



23. RInfra-D replied to the issues raised by the Interveners, vide letter dated October 16, 2008, as follows:

- i. The company has changed its name from Reliance Energy Limited to Reliance Infrastructure Limited and the Commission had recognised the same vide its MERC (Specific Conditions of Distribution Licence applicable to Reliance Energy Limited) Regulations, 2008.
- ii. The Commission had approved the power purchase of RInfra-D and Regulations referred by the Interveners do not restrain it from levying FAC. RInfra-D further submitted that Regulation 82.8 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 allows the distribution licensee to recover FAC charges in respect of approved power purchase.
- iii. As per the Regulations of the Commission, the FAC applicable for any month is recovered from the consumers with a delay of two months. FAC recovered in June 2008 thus pertains to cost incurred in April 2008 as per the actual FAC incidence of Rs 0.4331 per kWh. Since RInfra-D's actual FAC incidence was more than Rs. 0.545 per kWh for the months of July, August and September 2008, FAC up to the permissible ceiling of 10% was recovered from its consumers.
- iv. Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 are self explanatory and the Commission had retained the powers to review the ceiling of 10%, if need be.
- v. FAC for different distribution licensees would differ based on the variable cost considered for each of the distribution licensee.

24. RInfra-D made an additional submission on October 23, 2008, suggesting an alternative mechanism to recover the additional cost of power purchase in order to minimise the impact of any tariff increase due to additional cost of power purchase. RInfra-D submitted that the actual figures for power purchase for the period from April 2008 to September 2008 indicate that the total under-recovery for FY 2008-09 (full year) could exceed Rs. 1000 Crore.

25. RInfra-D submitted that the amount of under-recovery is quite large, which if attempted to be recovered fully in the rest of the current financial year, could lead to significant tariff shock to the consumers of its licence area. Hence, RInfra-D has



proposed an alternative mechanism to pass on the under-recovered amount to the consumers without causing a significant mid-year tariff increase as follows:

- a) The actual un-recovered amount on account of FAC cap of 10%, for the period from April 2008 to August 2008 may be recovered in ensuing financial year, i.e., FY 2009-10, along with the appropriate carrying costs. RInfra-D submitted that this un-recovered amount shall become an additional expenditure in the Annual Revenue Requirement (ARR) of RInfra-D for FY 2009-10 and hence, would be recovered from the consumers through normal tariffs. RInfra-D further submitted that the carrying cost of this un-recovered amount may be fixed by the Commission at the prevailing short-term lending rates.
- b) RInfra-D submitted that the balance under recovery (i.e., after recovering FAC of 54.5 paise per kWh) for the period from September 2008 to March 2009 may be passed on consumers in the form of additional charge. The additional (variable) charge incurred in 'j-2th' month could be recovered in 'jth' month in the same way as per the FAC formula specified in the MERC (Terms and Conditions of Tariff) Regulations, 2005 (i.e., the additional [variable] charge incurred in September, 2008 and onwards could be recovered from November 2008 and onwards). RInfra-D submitted that in addition to the 54.5 paise per kWh being charged as FAC, the consumer shall also pay an additional differential charge in the form of X% of the respective variable charge of the slab/sub-category to which the consumer belongs. The magnitude of 'X' will depend on the amount of under-recovery for the month in question. As this charge is proposed as a % of variable charge of individual sub-category's variable tariff, the actual magnitude in terms of Rs. per unit would be different for different sub-categories, even though in percentage terms, it shall be uniform. RInfra-D submitted that it will work out the value of 'X' each month depending upon the under-recovered amount, sales volume, etc., for such month. Thus, the value of 'X' will be different in different months.
- c) RInfra-D submitted that the recovery method proposed above will significantly dampen the impact of the same on tariff of its consumers, while also allowing it to fully recover the cost of power.

26. The Commission asked RInfra-D to submit the details of actual power purchase and FAC computations in a specified format for the months of August and September 2008. RInfra-D submitted the additional information sought by the Commission vide its email dated November 11, 2008.



27. Having heard RInfra-D and the stakeholders, and after considering the material placed on record, the Commission is of the view as under:

28. As regards the contention of the Interveners regarding the admissibility of the Petition vis-à-vis the distribution licence issued to RInfra, the Commission clarifies that the Commission had recognised the change of name of the Company from Reliance Energy Limited to Reliance Infrastructure Limited, while notifying the MERC (Specific Conditions of Distribution License Applicable to Reliance Energy Limited) Regulations, 2008, notified on August 20, 2008.

29. As regards the contention of the Interveners that the FAC should not be allowed to be recovered by the distribution licensee as it had not entered into Power Purchase Agreement, which are mandatory as per Regulation 22 to 25 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, it is clarified that the Commission has directed RInfra-D (earlier Reliance Energy Ltd.-D) in its Order dated November 6, 2007 (in Case No. 86 of 2006, Case No 87 of 2006 and Case No. 30 of 2007) to enter into Power Purchase Arrangement with RInfra-G (earlier REL-G) for the internal allocation of power from its generation business, i.e., R Infra-G. Accordingly, RInfra-D has filed a Petition for approval of Power Purchase Arrangement between RInfra-G and RInfra-D in Case No. 8 of 2008, which is currently being processed by the Commission. The Commission also clarifies that the while approving the power purchase expenses for FY 2008-09 in its Order on the Annual Performance Review for FY 2007-08 and Tariff Determination for FY 2008-09 for R Infra-D, the Commission has considered the impact of the Judgments of the Honourable Appellate Tribunal for Electricity and the Honourable Supreme Court of India in the matter of allocation of capacity from TPC-G to RInfra-D as reproduced below:

“Considering the fact that the ATE Judgment dated May 6, 2008 on appeals filed against the Commission’s Orders on approval of PPA between TPC-G and BEST and internal arrangement between TPC-G and TPC-D, has been stayed by the Hon’ble Supreme Court, the Commission has considered the allocation of power from the existing capacity and Unit-8 of TPC-G based on the approved PPA between TPC-G and BEST and the internal capacity allocation from the generation division of TPC to its own distribution division, for FY 2008-09, with effect from April 1, 2008. Accordingly, from the existing capacity of TPC-G, the Commission has considered the power availability of 500 MW for REL-D for FY



2008-09 with effect from April 1, 2008. However, considering TPC's submissions dated March 25, 2008, the Commission has not considered any power available from Unit 8 of TPC-G for REL-D."

Thus, the Interveners contentions in this regard are not sustained.

30. As regards the contention of the Interveners that RInfra-D's proposal of relaxation/removal of FAC cap is against the Commission's Order wherein the Commission has specified the ceiling of 10% for FAC charge as per the Tariff Regulations, it is clarified that the FAC formula allows for recovery/refund of incremental/reduction in cost actually incurred as compared to the base fuel cost considered for determination of the variable cost of generation and power purchase in the Tariff Order (in this case, the APR Order issued on June 4, 2008 in Case No. 66 of 2007 in the case of TPC-D). Further, Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulates:

"82.6 The monthly FAC charge shall not exceed 10% of the variable component of tariff, or such other ceiling as may be stipulated by the Commission from time to time:

Provided that any excess in the FAC charge over the above ceiling shall be carried forward by the Distribution Licensee and shall be recovered over such future period as may be directed by the Commission."

Further, Para 5.3 (h) (4) of the Tariff Policy notified by the Government of India stipulates as follows:

"Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events"

In view of the above, RInfra-D's Petition seeking relaxation/removal of the FAC cap is in accordance with the provisions of MERC (Terms and Conditions of Tariff) Regulations, 2005. Therefore, contentions raised against the maintainability of the Petition as filed by RInfra-D, are not sustainable.



31. The Interveners have raised certain issues, which the Commission is of the view, are not within the ambit of the present petition. Interveners have submitted that the different FAC has been levied for different billing periods. There should not be different FAC charges for different distribution licensees in the State. The Commission is of the view that these submissions cannot be taken up under the present petition which seeks removal / relaxation of the FAC cap to allow under-recovery of fuel costs. Furthermore, even the EA 2003, Tariff Policy and the Commission's Tariff Regulations, expressly stipulate fuel surcharge / FAC to recover fuel costs.

32. As regards RInfra-D's submission that the Commission in its Order dated June 4, 2008 had considered a rate of Rs 5.50/kWh for purchase of power from bilateral sources for FY 2008-09, and despite its best efforts, RInfra-D has been unable to procure the same at the rate considered by the Commission in its Order, the Commission clarifies that it has considered a rate of Rs 5.50/kWh in its Order for purchase of power from bilateral sources as against RInfra-D's own projection of lower purchase rate of Rs 4.41/kWh.

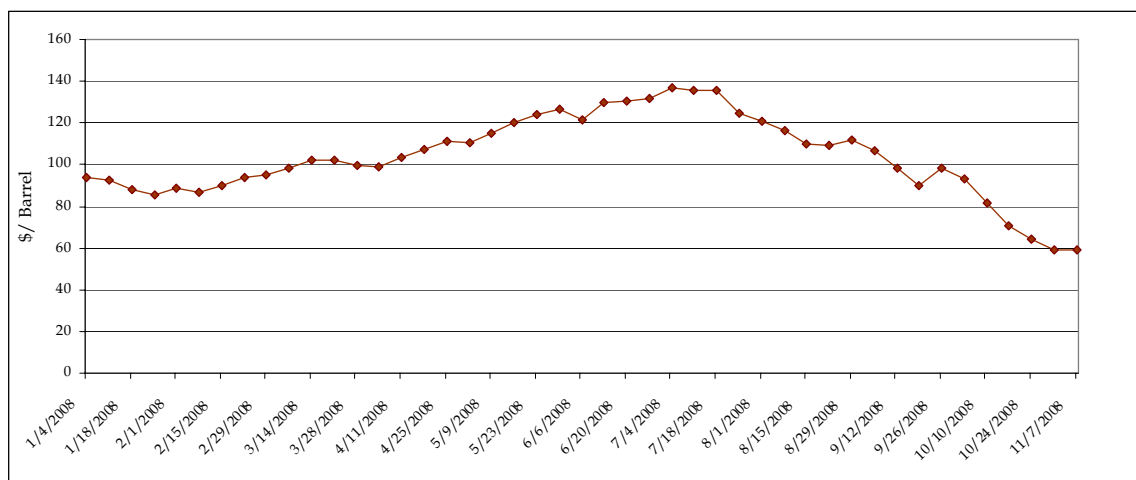
33. RInfra-D has submitted that the blending ratio considered by the Commission in the said Order was 73%:20%:7% respectively, and the weighted average coal price considered in the Tariff Order works out to Rs. 2371.92 per MT, whereas, the actual weighted average price incurred was Rs. 2770 per MT. The Commission clarifies that while approving the fuel charges for FY 2008-09, the Commission has considered the latest actual fuel price for the period from October 2007 to January 2008, which were higher than the rates as projected by RInfra-G.

34. R Infra-D submitted that the extent of actual FAC under-recovery for the period from April to September 2008 is Rs 494.06 Crore, as shown in the Table below:

Particulars	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08
Variable cost as approved in Tariff Order (Rs/unit)	3.31	3.31	3.31	3.31	3.31	3.31
Quantum of Power Purchase (MU)	851.75	905.07	826.01	834.50	794.25	815.93
Average variable cost of Power Purchase Rate (Rs/unit)	4.27	4.59	4.43	5.36	4.83	4.96
Additional variable cost (FAC) – Rs. Crore	82.56	116.46	92.74	170.99	121.00	135.17
Sales MU (Month 'J+2')	716.73	714.52	710.00	707.41	737.86	686.16
Per Unit FAC without Cap (Rs/kWh)	1.15	1.63	1.31	2.42	1.64	1.97
FAC recovered / recoverable with cap (Rs/kWh)	0.55	0.55	0.55	0.55	0.55	0.55
Balance un-recovered FAC– Paise/kWh	0.61	1.08	0.76	1.87	1.09	1.42
Balance un-recovered FAC– Rs Crore	51.50	77.52	54.04	132.44	80.79	97.78



35. The analysis of fuel prices for the period from April to November 2008 reveals that this period has seen an unprecedented surge in the international fuel prices and at the time of filing this Petition by RInfra-D, i.e., during August 2008, the international crude oil prices were very high in the range of 110 to 120 US Dollars per Barrel. However, due to the recession in the world economy recently, there has been a steep dip in the oil prices during the month of October 2008 and the oil prices in October 2008 were in the range of 60-70 US Dollars per Barrel, i.e., approximately half of the price prevalent during August 2008, thereby reducing the price of various fuels linked to crude prices. The Commission has analysed the weekly OPEC countries' spot prices from January to October 2008, which is shown in the Figure below:



Considering the recent downward trend in the price of the fuel on account of the recession in the World economy, the Commission is of the view that it will not be appropriate to consider the fuel prices as estimated by RInfra-D for projecting the FAC for the second half of FY 2008-09.

36. As per the details submitted by R Infra-D for the period from April to September, 2008, it is observed that the actual un-recovered FAC amount is Rs 494.06 Crore. Considering the quantum of un-recovered FAC, the enhancement of ceiling from 10% of variable charge to say 20% of variable charge, will not suffice. However, it may also not be appropriate to completely remove the FAC ceiling and permit RInfra-D to levy a high charge as FAC to consumers, without the prior approval of the Commission as that may lead to huge tariff shock to the consumers.



37. The Commission is of the opinion that if the FAC cap is removed, it may lead to tariff shock to the consumers, particularly to subsidised category consumers. Therefore, the Commission does not approve any modification in FAC cap at this stage. However, at the same time, it may not be appropriate to carry forward the entire under-recovery of FAC to be recovered in next year's tariff as it may lead to tariff shock to consumers at that stage. The Commission is of the view that there is a need to allow recovery of certain proportion of under-recovered FAC, which will enable RInfra-D to continue undertaking power purchase to meet the load requirements of its consumers, while at the same time ensuring that there is no tariff shock to the consumers. Also, in view of the downward trend in fuel prices in the later part of FY 2008-09, the under-recovery, if any, may get adjusted, thus, avoiding frequent changes in the FAC.

38. R Infra-D has submitted the completed details of FAC computations for the period from April to June 2008 for vetting by the Commission. The Commission has examined the details of actual source-wise power purchase for the period from April to June, 2008 and undertaken the detailed vetting of FAC for this period. Based on the detailed vetting, the actual FAC under-recovery for the period from April to June 2008 is Rs 197.47 Crore. Further as per the details submitted by R Infra-D for the period from April to September, 2008, it is observed that the actual un-recovered FAC amount is Rs 494.06 Crore, and if this amount would be allowed to be recovered in the remaining months then it may lead to a huge tariff shock to the consumers. If the under-recovered FAC amount for the period from April to June 2008 is to be recovered on the sales of remaining period of FY 2008-09, i.e., in five months from November 2008 to March 2009, the per unit rate works out to around 59 paise/kWh. Therefore, the Commission has considered to allow the under-recovered amount for the period from April to June, 2008 to be recovered as an additional charge in five months from November 2008 to March 2009.

39. As regards RInfra-D's proposal to charge the differential FAC to consumers in the form of additional charge as % of the respective variable charge of the slab/sub-category to which the consumer belongs, similar request was made by TPC-D in its Petition in Case No. 23 of 2005 and the Commission in its Order dated November 9, 2005 in Case No. 23 of 2005 observed as follows :

“Allowing differential FAC cap would amount to change in tariff structure and hence it can only be done during the ARR and Tariff process”



Therefore, the Commission does not agree with the RInfra's proposal of differential FAC at this stage as this would amount to change in tariff structure.


40. The Commission permits RInfra-D to recover the actual under-recovered FAC of Rs 197.47 Crore for the period from April to June 2008 in the remaining months of the year, i.e., November 2008 to March 2009 @ 59 paise/kWh.

41. The Commission directs RInfra-D to submit the details of FAC Computations for the period July to September 2008 in the formats prescribed by the Commission for vetting. For subsequent months also, i.e., from October to March 2009, RInfra-D should submit the details of FAC computations and FAC levied for vetting on regular basis.

With the above, RInfra-D's Petition in Case No. 65 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

 
(Prafulla S Varhade)
Secretary, MERC