

3. TPC-D submitted that in order to meet the demand of its customers, it procures power from TPC-G, renewable sources and external sources. As per Regulation 82 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, as a distribution licensee, TPC-D is entitled to pass on adjustments due to changes in the cost of power generation and power procured, to the retail consumers through FAC formula.

4. TPC-D submitted that the computation of FAC, apart from the formula specified, is governed by the following Regulations of the MERC (Terms and Conditions of Tariff) Regulations, 2005:

“82.3 The FAC charge shall be computed and charged on the basis of actual variation in fuel costs relating to power generated from own generation stations and power procured during any month subsequent to such costs being incurred, in accordance with these Regulations, and shall not be computed on the basis of estimated or expected variations in fuel costs.

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.”

5. TPC-D submitted that the Commission, in its APR Order dated June 4, 2008, in Case No. 69 of 2007 stipulated a ceiling of Rs. 0.48 per kWh on recovery through Fuel Adjustment Cost (FAC) charge in line with Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005.

6. TPC-D submitted that The Tata Power Company Ltd.-Generation Business (TPC-G) uses coal, oil and gas as the primary fuels for its thermal power plants. TPC-D submitted that the imported coal and oil prices are governed by the Fuel Supply Agreements, while the gas price is under the Administered Price Mechanism of the Ministry of Petroleum & Natural Gas (MoPNG), Government of India. TPC-D added that prices of these fuels are continuously increasing and submitted the expected monthly fuel prices for all the three fuels for FY 2008-09. TPC-D also submitted a comparison of expected fuel prices and the fuel prices considered by the Commission for FY 2008-09,



which indicates that there has been nearly 100% increase in coal prices, 54% increase in oil prices and 3% increase in gas prices in FY 2008-09, as compared to the prices considered by the Commission.

7. TPC-D submitted that since the wind power purchase rate will be same as approved by the Commission as per the Renewable Purchase Specifications, the wind generation will impact only to the extent of change in quantum (mix) of purchase.

8. As regards purchase from external sources, TPC-D submitted that though no external power purchase was envisaged in the APR Order for FY 2008-09, however, TPC-D would have to purchase power from external sources on account of outages of Unit 6 and Unit 7 of Trombay Thermal Power Station. TPC-D estimated the cost of such procurement as Rs. 8.50 per kWh.

9. TPC-D submitted that due to factors mentioned below, the FAC charge has crossed beyond the cap of 10% of average variable charge (i.e., Rs. 0.48 per kWh):

- i. The actual performance upto July 2008 (fuel prices, sales, power purchase quantum)
- ii. The estimated sales and power purchase derived from TPC-D APR Order for the period from August 2008 to March 2009
- iii. Expected fuel prices for the period from August 2008 to March 2009 as per fuel contracts in place
- iv. External power purchase at the rate of Rs 8.50 per unit for the period from August to March, 2009 (based on trend for April to July, 2008)

10. TPC-D submitted that if the existing cap of 10% on FAC is retained, then the estimated un-recovered FAC at the end of March 2009 would be around Rs. 194 Crore. Further, TPC stated that if the amount of under-recovery was allowed to be carried forward to the subsequent year (i.e., FY 2009-10) along with its carrying cost, i.e., along with an interest rate of 6%, the total amount of un-recovered FAC including carrying cost would be approximately Rs. 206 Crore. TPC-D submitted that this would lead to additional increase in tariff by Rs. 0.70 per kWh in the subsequent year. TPC-D



submitted the summary of the un-recovered FAC considering different levels of FAC cap as shown in the Table below:

Cap on FAC as % of Variable Charge	Cap on FAC (Rs./kWh)	Un-recovered FAC including interest @ 6% Rs. Crore	Impact on Future Tariff Paise/KWh
10%	48	205.69	70
20%	96	108.28	37
30%	144	17.36	6
35%	168	0	0

11. TPC-D requested that in order to recover power purchase cost in timely manner, to reduce working capital requirement and interest expenses thereon, the Commission may remove the cap on FAC rate and allow it to recover the actual FAC. TPC-D also proposed an alternative approach, i.e., to increase the cap on FAC to 35% of the variable charges, so that all the cost attributable on account of FAC could be recovered in FY 2008-09 itself.

12. The Commission, vide its notice dated **September 4, 2008** scheduled the hearing in the matter on October 7, 2008, and directed TPC-D to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

13. Two Interveners, namely Shri N Ponrathnam and Shri Jude Tandon, vide their letters dated September 25, 2008 and October 1, 2008 requested the Commission to allow them to be present at the hearing and make a formal submission. The Commission, vide its respective letters dated September 26, 2008 and October 1, 2008 intimated, the aforesaid applicants to file application on affidavit as per the MERC (Conduct of Business) Regulations, 2004.

14. At the hearing held in the matter on October 7, 2008, Shri V.H. Wagle of TPC-D submitted that the fuel prices had increased substantially as compared to prices considered by the Commission in its Tariff Order. As a result, the existing FAC cap of Rs. 0.48 per kWh is not adequate to recover the actual FAC and hence, TPC-D has petitioned for removal, or alternatively, relaxation of cap on FAC up to 35% of average energy charge, applicable to TPC-D consumers. Shri Wagle stated that the modified FAC cap could be made effective from September 2008 onwards, which, however shall be levied in November 2008 upon the Commission's approval for the same.



15. The Commission enquired of Shri. Wagle about the current fuel prices. Shri. Wagle of TPC-D stated that the oil price is Rs. 41,427 per Metric Tonne (MT) and coal prices is Rs. 5755 per MT and same is expected to increase to around Rs. 6500 per MT.

16. The Commission enquired whether the FAC was within the specified cap till September 2008. Shri. Wagle replied that specifically in the month of September 2008, the average power purchase cost was about Rs. 4.81 per kWh, whereas the rates approved by the Commission was Rs. 3.23 per kWh, so the excess FAC recovery, which need to be recovered for September 2008 was around Rs. 1.50 per kWh as against the approved FAC cap of Rs. 0.48 per kWh.

17. Shri. Ponrantham and Shri. Tandon, Interveners, vide their letters dated October 6, 2008 made the following submissions during the hearing:

- i. The Regulation specifies a cap of 10% on FAC and subsequently the Commission in its Tariff Order specified the ceiling for FAC charge. In view of the above, TPC-D's contention of relaxation/removal of FAC Cap is against the Commission's Order.
- ii. The Commission should conduct a Public Hearing in the matter as it is related to increase in the electricity tariffs in line with Section 62 of the Electricity Act, 2003.
- iii. Interveners submitted that the cost of hydro power is less than Rs. 1 per kWh and cost of power from coal based thermal power plant is less than Rs. 2 per kWh, and hence, the FAC cap of 35% proposed by TPC-D is very high as compared to the existing FAC cap of 10%, which itself is high.
- iv. Interveners submitted that the electricity bill should be simplified and FAC charge should be removed as it does not exist elsewhere in the Country.
- v. Interveners submitted that in the State of Maharashtra different FAC charges are prevailing for the four distribution licensees. Interveners contended that there should be uniformity in the terms of electricity tariffs, including the FAC.
- vi. Interveners submitted that the taxes are also levied on FAC amount in the electricity bills, and probably distribution licensees are also paying taxes when they are buying fuel from different sources, which leads to double taxation.



18. In response to the submissions made by the Interveners, Shri Wagle submitted that the various charges levied on consumers are in accordance with the Commission's Orders and TPC-D had submitted the detailed calculation for the proposed increase in the FAC cap to 35%.
19. The Commission asked TPC-D to submit the information that whether the concept of FAC prevails in other States of India or not, as pointed out by Shri Tandon.
20. The Commission asked TPC-D to submit the details of the actual fuel prices for the period from April to September 2008 and also the detailed computations and basis for the projected fuel prices for the period from October 2008 to March 2009.
21. TPC-D, vide its letter dated October 14, 2008, submitted the replies to the issues raised by the Interveners, which are summarised below:
 - i. TPC-D submitted that apart from Maharashtra, some other States in the Country have adopted the methodology of FAC charge to recover variations on account of change in fuel prices, viz., Andhra Pradesh, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Punjab and Uttar Pradesh.
 - ii. TPC-D submitted that it does not agree with the Interveners' contentions that the fuel prices are fixed by the Government. TPC-D submitted that the prices are fixed in arrangements as agreed between TPC-D and fuel suppliers. Only domestic gas prices are decided under the Administered Price Mechanism by the Ministry of Petroleum & Natural Gas, Government of India.
 - iii. TPC-D submitted that the contention that cost of generation for hydro and coal are less than Rs 1.00 and Rs 2.00 per kWh has not been supported by any data and as regards cost of generation by coal (variable cost), the contention was true only in the case when the coal cost was about Rs. 3500 per MT.



22. TPC-D, vide its above-referred letter, also submitted the replies to the queries raised by the Commission during the hearing, as summarised below:

- i. TPC-D submitted the details of the actual fuel prices for the period from April 2008 to September 2008 along-with the corresponding change in variable cost of power purchase and the projected fuel prices for the period from October 2008 to March 2009 based on the proposed delivery schedule of coal and oil.
- ii. TPC-D submitted the following assumptions for projecting the fuel prices:
 1. Coal
 - Coal contracts entered into and applicable for coal and freight during FY 2008-09
 - Schedule of delivery planned through various contracts during the remaining period
 2. Oil
 - Projections for Freight on Board (FOB) given by 'FACTS Global Energy Price Forecasts'
 - The contracts for freight and premium over FOB (for sulphur)

23. The Commission subsequently asked TPC-D to submit the details of actual power purchase and FAC computations in a specified format for the period from April to September 2008. TPC-D submitted the additional information regarding actual power purchase and FAC computations in the specified format on November 11, 2008.

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

25. As regards the contention raised by the Interveners that TPC-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, the Commission clarifies 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. 69 of 2007



in the case of TPC-D). Further, Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulates as follows:

“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.”

In view of the above, there is nothing to prevent TPC-D from filing its petition seeking relaxation/removal of the FAC cap 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 TPC-D, are not sustainable.

26. As regards the contention raised by the Interveners that a public hearing in the matter should be conducted as it is related to increase in the electricity tariffs in line with Section 62 of Electricity Act, 2003, the Commission is of the view that this is not a case of base tariff revision and this is a matter of recovery of increase in actual fuel costs. In this regard, Section 62 (4) of the Electricity Act, 2003 stipulates as follows:

*“No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, **except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.**”*

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”

Moreover, the variation in fuel cost of own generation and power purchase has to be passed through to the retail consumers as an uncontrollable expense, in accordance with the Tariff Regulations, and the Commission’s MYT Order dated April 30, 2007 in Case No. 70 of 2006 on the MYT Petition filed by TPC-D.



27. 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 electricity bill should be simplified. It has also been submitted that the FAC charge should be removed as it does not exist elsewhere in the country. 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. Furthermore, even the EA 2003, Tariff Policy and the Commission's Tariff Regulations, expressly stipulate fuel surcharge / FAC to recover fuel costs.

28. As regards the actual under-recovery of FAC, TPC-D submitted that the extent of actual FAC under-recovery for the period from April to September 2008 is Rs 38.41 Crore as shown in the Table below:

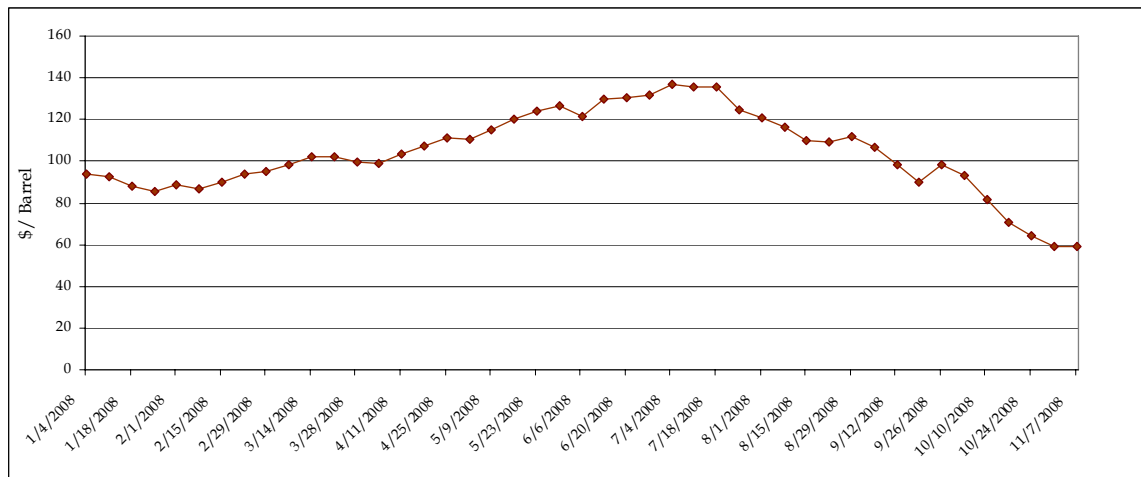
Month	Requirement @ InSTS	Avg. Cost TPC-D	T.O. Cost	Cj	Ij	Cost to be recovered	Actual Recovery	Under Recovery
	MU	Rs. /kWh	Rs. /kWh	Rs. Cr	Rs. Cr	Rs. Cr	Rs. Cr	Rs. Cr
	1	2	3	$4 = [(2-3)*1]$	5	$6 = 4+5$	7	$8=6-7$
Apr-08	223.86	2.88	3.23	-7.85	-0.16	-8.00678	9.4	-17.48
May-08	239.13	3.03	3.23	-4.79	-0.1	-4.88899	9.4	-14.37
Jun-08	229.37	3.69	3.23	10.51	0.21	10.72349	11	-0.33
Jul-08	224.39	4.24	3.23	22.71	0.47	23.18203	0.02	23.10
Aug-08	218.63	4.58	3.23	29.45	0.65	30.10251	8.87	21.16
Sep-08	219.06	4.85	3.23	35.42	0.80	36.22362	9.82	26.33
Total	1354.44	23.26	19.38	85.47	1.87	87.34	48.51	38.41

29. Thus, the actual under-recovered FAC for the first half of the year, i.e., April 2008 to September 2008 is only Rs 38.41 Crore, as compared to TPC-D's projection in its Petition of under-recovery of Rs 194 Crore for the entire FY 2008-09. Hence, TPC's proposal for removal of FAC cap in entirety or enhancing the cap to 35% is not justified, in view of the small amount of actual under-recovery during the period from April to September 2008.

30. The analysis of fuel prices for the period from April to November 2008 reveals that the period from April to September 2008 has seen an unprecedented surge in the international fuel prices and at the time of filing this Petition by TPC-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 to 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 variation in the price of the fuel on account of the recession in the World economy, the Commission is of the view that there may be decrease in the price of the fuels used for generating electricity during the period October to March 2009 and hence, it will not be appropriate to consider the fuel prices as estimated by TPC for projecting the FAC for the second half of FY 2008-09.

31. In view of the downward trend shown above and in view of the modest quantum of actual under-recovery of FAC as submitted by TPC for the period from April to September 2008, there is no justification for the enhancement of the cap to 35%. Therefore, the Commission does not approve any modification to the FAC cap at this stage. However, at the same time, it may not be appropriate to carry forward the actual under-recovery of FAC to be recovered in next year tariff as it may lead to tariff shock to consumers at that stage, hence, the Commission is of the view that there is a need to allow recovery of under-recovered FAC for the period from April to September 2008 to enable TPC-D to continue the power purchase to meet the requirements of its consumers.



32. The Commission has examined the details of actual source wise power purchase for the period from April to September 2008 as submitted by TPC-D. The actual under-recovery of FAC for the period from April to September 2008 as submitted by TPC is Rs 38.41 Crore though detailed vetting of the FAC for this period have not been done, as TPC-D is yet to submit the FAC data in required formats for vetting by the Commission. Based on the details submitted by TPC-D, it is observed that if the under-recovered FAC amount for the period April to September 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 27 paise.

33. The Commission allows TPC-D to recover the actual under-recovered FAC of Rs 38.41 Crore till September 2008 in the remaining months of the year, i.e. November 2008 to March 2009, at the rate of 27 paise/kWh.

34. Though the Commission has allowed recovery of under-recovered FAC till September 2008 without detailed vetting of FAC computations, any under/over recovery on account of this will be considered in the detailed vetting of FAC for subsequent months.


35. The Commission directs TPC-D to submit the details of FAC computations for the period from April to September 2008 in the formats prescribed by the Commission. For subsequent months, i.e., from October 2008 to March 2009, TPC-D should submit the details of FAC computations for vetting on regular basis.

With the above, TPC-D's Petition in Case No. 70 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member




(Prafulla S Varhade)
Secretary, MERC