

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 59 of 2008

In the matter of
Petition filed by M/s. Brihan Mumbai Electric Supply & Transport Undertaking to
allow recovery of ‘under recovered FAC’ for the period of October 2007 to March
2008, increase in the cap over FAC and allow it to recover actual FAC

Shri. A. Velayutham, Member

Shri. S. B. Kulkarni, Member

ORDER

Dated: December 1, 2008

The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) submitted a Petition under affidavit before the Commission on August 12, 2008, under Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 in order to allow BEST to recover the “Under recovered FAC” for the period of October 2007 to March 2008 from its consumers and to allow increase in the Cap on FAC Charges from 10% to 20% for FY 2008-09.

2. In the Petition, BEST made the following prayers:
1. *“Allow BEST to recover the under recovery of Rs. 74.80 Crore due from consumers (of applicable tariff slabs) towards FAC for the month of October 2007 to March 2008 by a way of additional charge of Rs. 0.66 / Unit during the month of August 2008 to October 2008;*
 2. *Increase the cap on FAC for the year 2008-09 to 20% from current cap of 10%;*
 3. *Allow BEST to recover actual FAC with prior approval from Honourable Commission*



4. *Condone any inadvertent errors/omissions and permit BEST to add/modify this filing.”*

3. BEST submitted that 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.”

4. BEST submitted that Commission, in its Order dated April 3, 2007 in Case No. 66 of 2006 in the matter of Determination of Annual Revenue Requirement and Tariff for FY 2007-08 under MYT, had approved the power purchase cost for BEST for FY 2007-08. Further, based on the approved revenue from energy charges and sales, the variable component of tariff was computed as Rs. 4.50 per kWh. Thus, as per Regulation 82.6 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, the maximum permissible FAC charge of Rs. 0.45 per kWh was approved by the Commission to be levied on its consumers.

5. BEST submitted that it has purchased a total of 1803.57 MU from The Tata Power Company –Generation business (TPC-G) during the period from October 2007 to March 2008, and FAC charged by TPC-G during the period was Rs. 132.54 Crore as shown in the Table below:

Period	Purchase from TPC-G	FAC Amount
	MU	Rs. Lakh
Oct-07	332.09	1322.90
Nov-07	307.22	1486.99
Dec-07	308.33	1352.05
Jan-08	243.25	3309.79
Feb-08	272.23	2756.18
Mar-08	340.44	3026.71
Total	1803.56	13254.62

6. BEST submitted the details of month-wise FAC incurred by BEST and recovered from consumers for the period from October to March 2008, as shown in the Table below:



Table: Status of actual FAC incurred by BEST and under recovery from its consumers (paise/kWh)

Sl.	Particular	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08
1	FAC Charge without considering cap on monthly FAC charge	21.1	28.3	42.6	104.0	110.7	78.4
2	Cap on monthly FAC Charge	45.0	45.0	45.0	45.0	45.0	45.0
3	Actual recovered	*Nil	*Nil	*Nil	*Nil	*Nil	45.0
4	Under recovery	21.1	28.3	42.6	104.0	110.7	33.4

Note: *Till February 2008, no FAC was recovered as approval was not received for the FAC calculation submitted for first time after the implementation of Tariff Regulations of MERC (Terms & Conditions of Tariff) Regulations, 2005 vide letter no. GM/DGM(ES)/61777/2007 dated October 12, 2007.

7. BEST submitted that the actual FAC was much higher than the maximum permissible FAC that is recoverable from the consumers, on account of the cap equal to 10% of variable charges. BEST submitted that there has been a net under-recovery of Rs 74.80 Crore from the consumers during the period from October 2007 to March 2008, whereas BEST has already paid this amount to TPC-G.

8. BEST requested the Commission to allow the recovery of accumulated under-recovered FAC of Rs. 74.80 Crore during the period from October 2007 to March 2008 by way of additional charges in the months of August, September and October of FY 2008-09.

9. BEST proposed to recover the accumulated FAC charges of Rs. 74.08 Crore during the three months (August, September and October 2008) through the levy of additional charge at Rs. 0.66 per kWh, considering the monthly sales as approved by the Commission in its APR Order for FY 2007-08 and Tariff for FY 2008-09. BEST also submitted that the months from August to October were monsoon months in Mumbai and consumption during these months was generally lower as compared to the months of March, April and May. BEST submitted that even with the incremental per unit cost due to the additional charge on account of un-recovered FAC, the consumers' total outgo on their power bills would not see a sharp increase on account of the lower consumption during these three months.

10. BEST submitted that the variable cost of power purchased has increased significantly since the month of January 2008 and added that this trend is likely to continue in the near future, considering the global rise in fuel prices. BEST submitted that the actual FAC amount comes to an average of 20.21% of the total variable component of tariff and requested the Commission to consider an increase in the cap on FAC recovery from 10% to a minimum of 20% of the variable component of tariff.



BEST submitted the actual FAC as a percentage of average variable cost for the period from January 2008 to May 2008 as shown in the table below:

Table: Actual FAC as a percentage of average variable cost incurred by BEST

Parameters	Unit	Jan-08	Feb-08	Mar-08	Apr-08 (E)	May-08 (E)
Apportionment of change in variable cost of power purchase to Licence Area	Rs. Lakh	2883.12	3091.02	2612.84	3006.56	3866.9
Sale within Licence Area	MU	262.74	279.25	333.12	353.54	377.65
Actual FAC	Rs./kWh	1.10	1.11	0.78	0.85	1.02
Current CAP on FAC	%	10%	10%	10%	10%	10%
Actual FAC as % of approved variable cost#	%	24.39%	24.60%	17.43%	15.74%	18.88%

#Approved variable cost is taken as Rs. 4.5/kWh till March 08 and Rs. 5.4 /kWh for Apr & May 08

11. BEST submitted that the ceiling on recovery of FAC (cap of 10% variable charge) will lead to liquidity crunch and financial crisis for BEST, as TPC-G, from whom BEST procures power, recovers the entire FAC amount every month from BEST. Accordingly, BEST requested the Commission to reconsider the cap imposed on recovery of FAC as per the Tariff Regulations.

12. BEST submitted that Para 5.4 of the Commission's Order dated June 6, 2008 in Case No. 73 of 2007 in the matter of BEST's Annual Performance Review for FY 2007-08 and Tariff for FY 2008-09, stipulates as under:

"..... The FAC will be charged on a monthly basis, and the details of the computation and recovery from the same will have to be submitted to the Commission for post-facto, on a quarterly basis. It is also clarified that the FAC mechanism will be applicable for both, non-costly sources as well as expensive sources of power purchase."

13. BEST submitted that currently it recovers the FAC amount up to the cap of 10% and any FAC over and above this cap remains as outstanding FAC to be recovered. BEST added that it also submits the audited details of computation and recovery of FAC on a quarterly basis for post-facto approval.

14. BEST requested the Commission that as an alternative to relaxation of cap on FAC to a minimum of 20%, BEST may be allowed to recover the actual FAC from its consumers with prior approval from the Commission, as and when it pays the FAC charges to TPC-G.



15. The Commission, vide its Notice dated August 20, 2008, scheduled the hearing in the matter on September 2, 2008, and directed BEST to serve a copy of its Petition along with its accompaniments to the four authorized Consumer Representatives. At the hearing held in the matter on September 2, 2008, Shri. A. G. Patil of BEST submitted as under:

- i. In order to avoid any liquidity crunch, un-recovered FAC of Rs 74.80 Crore of the period from October 2007 to March 2008 may be allowed to be recovered from BEST's consumers @ 66 Paise/kWh during the period from August to October 2008.
- ii. Relax the FAC cap from 10% to 20% of the variable component of the tariff.
- iii. As an alternative, BEST may be allowed to recover actual FAC from its consumers with prior approval from the Commission, as and when it pays FAC charges to TPC.

16. The Commission enquired of BEST as to why the under-recovery of Rs 74.80 Crore for FY 2007-08 was not considered in the provisional true-up for FY 2007-08 during the APR for FY 2007-08. BEST submitted that the amount of Rs 74.80 Crore is over and above the amount considered for provisional true-up for FY 2007-08. In response to the Commission's enquiry, BEST clarified that the amount of Rs 74.80 Crore is the final audited figure, and the details have also been submitted to the Commission.

17. The Commission enquired of BEST as to how this amount of Rs 74.80 Crore got accumulated, despite the FAC mechanism being in place, and whether BEST had filed any Petition before the Commission last year for approval of such amount. BEST replied that it could not approach the Commission earlier because of the unavailability of audited figures, BEST added that it waited till a clear trend was visible before approaching the Commission.

18. BEST referred to the Commission's Order dated March 24, 2006 in Case No 52 of 2004 on the Petition filed by MSEDCL for recovery of FAC charge of their own generation, fuel cost and expensive power purchase. BEST submitted that the distinction between the Petitions filed by BEST currently and MSEDCL. is that BEST's Petition is essentially restricted to FAC charges, which are being levied on them by TPC-G and they have not considered any expensive power purchase from outside in this Petition.



19. After the hearing, the Commission asked BEST to submit the details of actual power purchase and FAC computations in a specified format for the period from April to September 2008, which was submitted by BEST.

20. Having heard the Parties and after considering the material placed on record, the Commission rules as under:

21. As regards BEST's request to allow recovery of the under-recovered FAC of Rs. 78.4 Crore for the period from October 2007 to March 2008 from its consumers over the future period, the Commission clarifies that the provisional truing up of power purchase expenses has already been undertaken for FY 2007-08 in the Commission's Order dated June 4, 2008 in Case No. 73 of 2007 in the matter of BEST's Annual Performance Review (APR) of FY 2007-08 and Petition for Tariff determination for FY 2008-09, as under: (refer Para 4.6.9)

“The summary of the total power purchase cost as approved in MYT Order, as estimated by BEST in the APR Petition and as approved by the Commission based on provisional truing up for FY 2007-08, is shown in the Table below:

Table: Power purchase cost for FY 2007-08

S.No	Source	MYT Order		BEST APR Petition		Approved after Provisional Truing up)	
		Quantum (MU)	Cost (Rs Crore)	Quantum (MU)	Cost (Rs Crore)	Quantum (MU)	Cost (Rs Crore)
1	TPC-G: Existing	4134.62	1325.98	4143.04	1399.10	4143.04	1399.10
2	TPC-D(Short Term)	231.09	99.87	582.44	318.15	822.35	452.29
3	RPS	181.89	62.75	40	20	40.00	20.00
4	Standby Charges		146.1		114.63	0.00	114.63
5	Transmission Charges		97.64		97.61	0.00	97.61
6	SLDC Charges		0.80		0.80	0.00	0.80
7	Reduction of DSM		-5.39				-5.39
8	TPC FAC of previous years		123.7		123.70		123.70
10	Under-recovery of FAC for previous years		8.00		8.00		8.00
11	True-up due to Corrigendum order				27.00		27.00
	Total	4547.6	1859.45	4765.48	2108.98	5,005.38	2237.73



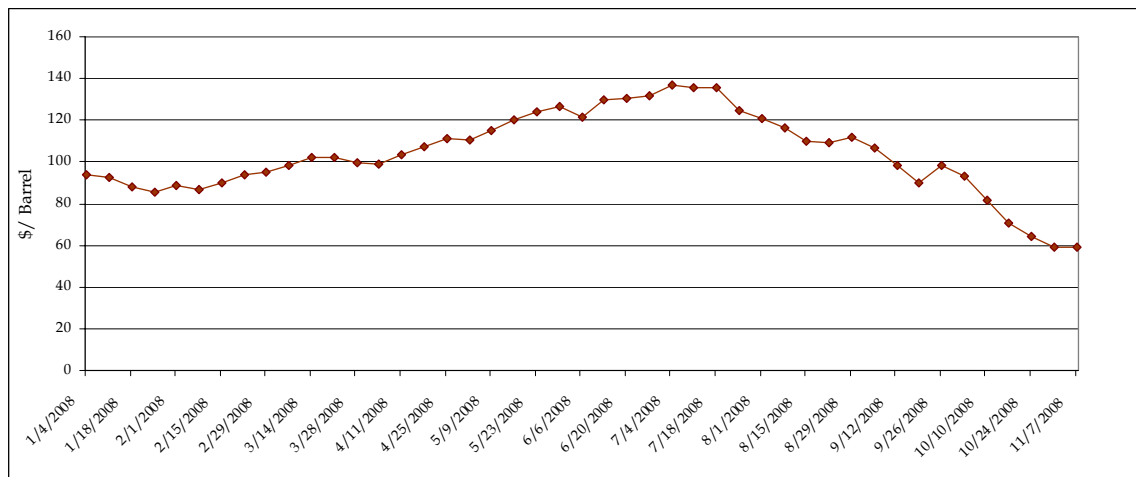
Since the Commission has already undertaken the provisional truing up for expenses and revenue for FY 2007-08 based on BEST's submissions in the APR Petition, the Commission is of the view that there is no need to pass through the amount of FAC under-recovery of Rs. 78.4 crore for the period from October 2007 to March 2008 at this stage. The Commission hence, rules that any under-recovery on this account would be considered at the time of the final truing up for FY 2007-08, i.e., during APR of FY 2008-09 and Petition for Tariff determination for FY 2009-10, provided the same is incorporated by BEST in its APR Petition for FY 2008-09.

22. As regards the actual FAC under recovery in FY 2008-09, BEST submitted that the actual FAC under-recovery for the period from April to June 2008 is Rs 91.84 Crore as shown in the Table below:

Particulars	Apr-08	May-08	Jun-08
Variable cost as approved in Tariff Order (Rs/unit)	2.74	2.74	3.26
Quantum of Power Purchase (MU) at T< >D interface	410.22	433.16	391.84
Average variable cost of Power Purchase (Rs/unit)	3.64	3.83	4.90
Additional variable cost (FAC) (Rs. Crore)	36.70	47.20	64.54
Sales in MU (Month 'J+2') Jun, Jul, Aug 2008	350.65	361.61	343.80
Per Unit FAC without Cap (Rs/kWh)	1.05	1.31	1.88
FAC recoverable with cap (Rs. Crore)	18.79	19.38	18.43
Balance un-recovered FAC– Paise/kWh	0.51	0.77	1.34
Balance un-recovered FAC– Rs Crore	17.91	27.82	46.11

23. 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 fuel prices and at the time of filing of this Petition by BEST, i.e., during August 2008, the 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, which fell to around 60-70 US Dollars per Barrel, i.e., approximately half of the prices 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 2008 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 November to March, 2009.

24. As per the details submitted by BEST, the actual un-recovered FAC for the period from April to June 2008 is Rs 91.84 Crore, though detailed vetting of the FAC for this period has not been done, as BEST is yet to submit the FAC data in required formats for vetting by the Commission. Moreover, though BEST has not submitted the details of the under-recovered amount for the period from July to September 2008, the Commission is of the view that there may be substantial under-recovery for the period from July to September 2008, in view of the actual power purchase expenses during this period.

25. At the same time, the Commission is of the view that it may not be appropriate to completely remove the ceiling on FAC recovery and permit BEST to levy a substantially high FAC charge to consumers without prior approval of the Commission as that may lead to a huge tariff shock for the consumers. Since, the objective of having a cap on FAC recovery is to avoid any tariff shock to the consumer, the Commission does not approve any modification to the FAC cap at this stage. However, the Commission clarifies that the cap on FAC charge recovery for FY 2008-09 has been inadvertently mentioned as 53.6 paise/kWh in Para 10 of the Errata and Corrigendum issued to the Order dated June 4, 2008 in the matter of BEST's Petition for APR of FY 2007-08 and Tariff determination for FY 2008-09, and should be read as 64.3 paise/kWh for FY 2008-09, which is 10% of the average variable component of tariff.



26. Though the Commission does not approve any modification to FAC Cap, at the same time, it may not be appropriate to carry forward the actual 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 to enable BEST to continue power purchase to meet the load requirements of its consumers, while at the same time safeguarding the consumers from a tariff shock.

27. Based on the details submitted by BEST, it is observed that 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 to March 2009, the per unit rate works out to around 51 paise/kWh. The Commission permits BEST to recover the actual under-recovered FAC of Rs 91.84 Crore for the period from April to June 2008 on the sales of November 2008 to March 2009 at a rate of 51 paise/kWh.

28. However, though the Commission has allowed recovery of under-recovered FAC for the period from April to June 2008 without detailed vetting of FAC computations, any under/over recovery on this account would be adjusted at the time of detailed FAC vetting for subsequent months. The Commission directs BEST to submit the details of FAC Computations for the period from April to September 2008 in the formats prescribed by the Commission at the earliest. For subsequent months, i.e., from October to March 2009, BEST should submit the details of FAC computations for vetting on regular basis.

With the above ruling, BEST's Petition in Case No. 59 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(Prafulla S Varhade)
Secretary, MERC