

**Before the  
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**Case No 63 of 2012**

**In the matter of  
Stipulation of Revised Ceiling for Levy of Fuel Adjustment Cost (FAC) by  
Distribution Licensees in the State of Maharashtra under Regulation 82 of the  
Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff)  
Regulations, 2005**

**Shri V.P. Raja, Chairman  
Shri Vijay L. Sonavane, Member**

**ORDER (SUO-MOTU)**

**Dated: August 26, 2012**

Section 62 of the Electricity Act, 2003 (EA 2003) notified on June 10, 2003 stipulates as under:

*"(4) 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."(emphasis added)*

2. The Maharashtra Electricity Regulatory Commission ("MERC" or "the Commission") notified the MERC (Terms and Conditions of Tariff) Regulations, 2005 ("MERC Tariff Regulations") on August 26, 2005. Regulation 82 of the MERC Tariff Regulations specifies the methodology for computation of Fuel Adjustment Cost (FAC) Charges and the manner of levy of FAC, as reproduced below:

*"82 Fuel surcharge adjustment*

82.1 With effect from the first day of September, 2005, the Distribution Licensee shall pass on adjustments, due to changes in the cost of power generation and power procured due to changes in fuel cost, through the Fuel Adjustment Cost (FAC) formula, as specified below.

82.2 The FAC charge shall be applicable on the entire sale of the Distribution Licensee without any exemption to any consumer.

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.

...

82.5 The formula for the calculation of the FAC shall be as given under:

$FAC \text{ (Rs crores)} = C + I + B$ , Where

$FAC$  = Fuel Adjustment Cost

$C$  = Change in cost of own generation and power purchase due to variation in the fuel cost

$I$  = Interest on working capital

$B$  = Adjustment factor for over-recovery / under-recovery

Explanation I – for the purpose of this Regulation 82.5, the term “ $C$ ” shall be computed in accordance with the following formula:

$C \text{ (Rs. Crores)} = AFC_{Gen} + AFC_{PP}$ , Where:

$AFC_{Gen}$ : Change in fuel cost of own generation. This change would be computed based on the norms and directives of the Commission, including heat rate, auxiliary consumption, generation and power purchase mix, etc.

$AFC_{PP}$ : Change in energy charges of power procured from other sources. This change would be allowed to the extent it satisfies the criteria prescribed in these Regulations and the prevailing tariff order, and subject to applicable norms.

Explanation II – for the purpose of this Regulation 82.5, the term “ $I$ ” shall mean change in interest on working capital on account of change in fuel cost.

Explanation III – for the purpose of this Regulation 82.5, the term “ $B$ ” shall be computed in accordance with the following formula:

$$B_{J-2} (\text{Rs. Crores}) = A_{J-4} + R_{J-2}$$

Where:

$A_{J-4}$  : Incremental cost in month "J-4".

$R_{J-2}$  : Incremental cost in month "J-4" actually recovered in month "J-2".

**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.*

82.7 The calculation for FAC to be charged for the month "J" shall be as follows:

$$FAC_J (\text{Rs crores}) = C_{J-2} + I_{J-2} + B_{J-2}$$

*The FAC would be applicable from the month following the month in which the additional costs are calculated.*

...

82.9 The total FAC recoverable, as per the formula specified above, shall be recovered from the actual sales in "Rupees per kilowatt-hour" terms:

*Provided that in case of unmetered consumers, FAC shall be recoverable based on estimated sales to such consumers, calculated in accordance with such methodology as may be stipulated by the Commission:*

*Provided further that where the actual distribution losses of the Distribution Licensee exceed the level approved by the Commission, the amount of FAC corresponding to the excess distribution losses (in kWh terms) shall be deducted from the total FAC recoverable.*

82.10 Calculation of FAC per kWh shall be as per the following formula:

$$FAC_{\text{Rs./kWh}} = (FAC / (\text{Metered sales} + \text{Unmetered consumption estimates} + \text{Excess distribution losses})) * 10 \text{ (emphasis added)}$$

3. The MERC Tariff Regulations were amended on January 28, 2011, on the aspect of levy of proportionate FAC, as reproduced below:

"(i) For Regulation 82.6 of Tariff Regulations, the following Regulation shall be substituted:

**"82.6 The monthly FAC charges of a particular tariff category/sub-category/consumption slab shall not exceed 10% of the variable component of tariff of that tariff category/sub-category/consumption slab, 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.*

*Provided further that in case of un-metered consumers, ceiling of FAC charges shall be calculated by multiplying the ceiling of FAC charges of metered sub-category by the ratio of Average Billing Rate (ABR) of respective un-metered sub-category to ABR of metered sub-category within the same tariff category.*

(ii) For Regulation 82.10 of Tariff Regulations, the following Regulation shall be substituted:

*"82.10. Calculation of FAC per kWh for a particular tariff category/sub-category/consumption slab shall be as per the following formula:*

*$FAC_{cat} \text{ Rs/kWh} = (FAC / (\text{Metered sales} + \text{Unmetered consumption estimates} + \text{Excess distribution losses})) * K * 10$*

*Where:*

*$FAC_{cat}$  = FAC for a particular tariff category/sub-category/consumption slab in 'Rupees per kWh' terms.*

*$K = (\text{Energy Charge}) / (\text{ACOS})$*

*Where,*

*Energy Charge = Energy Charge for a particular tariff category / sub-category/consumption slab under consideration in 'Rupees per kWh' as approved by the Commission in Tariff Order.*

*ACOS = Average Cost of Supply in 'Rupees per kWh' as approved for recovery by the Commission in Tariff Order."**(emphasis added)***

4. It may be noted that though the MERC (Multi Year Tariff) Regulations, 2011 (MERC MYT Regulations) have been notified on February 4, 2011, the retail tariffs of all the Distribution Licensees in the State of Maharashtra are yet to be determined under the MERC MYT Regulations, as a result of which, the FAC mechanism specified under the

MERC Tariff Regulations continue to be applicable for such time the tariffs are determined under the MERC Tariff Regulations. The transitory provisions of the first amendment to the MERC (Multi Year Tariff) Regulations, 2011 notified on 21<sup>st</sup> October 2011 reads as follows:

**"6. Addition of Regulation 102:-**

*In the MYT Regulations, 2011, after Regulation 101, the following Regulation shall be added, namely:-*

**"102. Transitory provisions:**

*Notwithstanding anything to the contrary contained in these regulations –*

*(a) the tariff order issued by the Commission for the year ending on the 31st March, 2011 shall continue to operate;*

*and*

*(b) the Business Plan, and Petition for calculation of Aggregate Revenue Requirement and expected revenue from tariff and charges for determination of tariff in all cases covered under these Regulations from April 1, 2011 and onwards up to FY 2015-16 i.e., till March 31, 2016, shall continue to be filed and dealt with under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011.*

*Provided that in case an order of exemption has been issued under Regulation 4.1 then the concerned Generating Company or Transmission Licensee or Distribution Licensee shall file Annual Petitions for approval of ARR and tariff during the period of exemption, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.*

*Provided also that where there is no order of exemption under Regulation 4.1 for a Generating Company or Transmission Licensee or Distribution Licensee and if the Commission is satisfied that there is a difficulty in giving effect to the determination of tariff with effect from April 1, 2011 under these Regulations and in the event the tariff is required to be determined from April 1, 2012 or any further period under these Regulations, the repealed regulations in respect of the said tariff determination shall continue to be in-force, and the provisions of these regulations shall not apply to the determination of tariff for the period till April 1, 2012 or such further period."*

Hence, the MERC Tariff Regulations, 2005 continue to have effect in certain circumstances.

5. The Distribution Licensees, in their respective ARR and Tariff Petitions or through separate Petitions, have also been praying for either removal of the FAC ceiling or increase in the FAC ceiling, which have not been granted till date, since the requests were usually based on projected values. However, it has been observed that over the last two to three years, the fluctuations in the fuel prices have led to significant increases in the actual fuel cost during the year, and coupled with new Tariff Regulations being made applicable for Central Sector Utilities like NTPC, it has resulted in a situation where the total FAC chargeable has been significantly higher than that allowed to be recovered from the consumers, on account of the 10% ceiling on levy of FAC, which has led to under-recovery of power purchase expenses by the Distribution Licensees during the year.

6. As reproduced above, Regulation 82.6 of the MERC Tariff Regulations, as amended in January 2011, specifies that the monthly FAC charges of a particular tariff category/sub-category/consumption slab shall not exceed 10% of the variable component of tariff of that tariff category/sub-category/consumption slab, or such other ceiling as may be stipulated by the Commission from time to time.

7. Under the aforesaid Regulations, this Commission can lay down some other ceiling as may be stipulated by the Commission from time to time. Accordingly, the Commission in due discharge of the mandate under Regulation 82.6 of the MERC Tariff Regulations, vide its public notice dated 6\_July, 2012, issued a draft Order for the "Stipulation of Revised Ceiling for Levy of Fuel Adjustment Cost (FAC) by Distribution Licensees in the State of Maharashtra under Regulation 82 of the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005" on suo-motu basis, and invited comments from stakeholders. The Commission has received written suggestions and objections from various persons.

8. A public hearing was held on **Monday, 30 July, 2012, at 16:00 hours in Centrum Hall, 1st floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai 400 005**. The list of stakeholders who submitted their comments/suggestions in writing or made oral submissions during the public hearing is placed at **Appendix-1** and the list of participants who attended the public hearing is placed at **Appendix-2**. In addition, the Commission also allowed interested consumers and stakeholders of MSEDCL to submit

their comments and suggestions during the Public Hearings scheduled to be held at six Divisional Headquarters on MSEDCL's Petition for Final true up for FY 2010-11, Aggregate Revenue Requirement for FY 2011-12 and FY 2012-13, Tariff Determination for FY 2012 -13 and revision in Schedule of Charges in Case No. 19 of 2012, held during the period 11 July, 2012 to 27 July, 2012.

9. After considering the suggestions and objections received on the draft Order published by the Commission, in due discharge of the mandate under Regulation 82.6 of the MERC Tariff Regulations, the Commission hereby stipulates the revised Ceiling for levy of Fuel Adjustment Cost (FAC) by Distribution Licensees in the State of Maharashtra through this Order based on the rationale as explained in the subsequent sections of the Order.

### **Commission's Analysis**

10. The Commission is of the view that a certain appropriate FAC ceiling is required to be stipulated, rather than removing the FAC ceiling altogether, since entire FAC incurred in a particular month cannot be allowed to be passed through without any restriction. At the same time, the FAC ceiling has to be stipulated in such a manner that the FAC incurred by the Distribution Licensee under normal circumstances is allowed to be passed through to the consumers on a regular basis, subject to post-facto approval of the Commission, and only certain spikes due to steep fluctuations in fuel price or other developments may not get passed through directly within the FAC ceiling, for which separate prior approval will have to be obtained by the Distribution Licensees from the Commission.

11. The prevailing FAC ceiling for the Distribution Licensees in the State of Maharashtra, computed at the rate of 10% of average variable tariff of the respective Distribution Licensee, is given in the Table below:

**Table 1: Prevalent FAC Ceiling (Average for Licensee as a whole)**

<b>Sl.</b>	<b>Distribution Licensee</b>	<b>FAC Ceiling (paise/kWh)</b>
1	Maharashtra State Electricity Distribution Company Limited (MSEDCL)	47.46*
2	Reliance Infrastructure Limited (RInfra)	64.20

3	Brihanmumbai Electricity Supply & Transport Undertaking (BEST)	72.29
4	The Tata Power Company Limited (TPC)	49.95

**Note:** \* - In the draft Order, the average FAC Ceiling for MSEDCL was indicated as 39.33 paise/kWh. However, since the Tariff Order of MSEDCL for FY 2012-13 has been issued on 16 August, 2012 in Case No. 19 of 2012, the FAC Ceiling has been indicated above by considering the revised average Variable Tariff for MSEDCL based on revised tariffs.

It is to be noted that in accordance with the amendment to the MERC Tariff Regulations, the applicable ceiling is different for different consumer categories/sub-categories/consumption slabs, and amounts to 10% of the variable tariff of that consumer category/sub-category/consumption slab, and the FAC ceiling indicated in the Table above, is the average ceiling for the Distribution Licensee as a whole.

12. Based on the analysis of the monthly FAC allowable and actual FAC allowed to be recovered over the period from April 2009 till date, it is observed that the respective FAC ceiling prevalent for the respective year has been crossed several times, as shown in the Table below:

**Table 2: Number of occasions the FAC Ceiling has been crossed**

Sl.	Distribution Licensee	Total Number of months for which FAC computations have been vetted	Total Number of months in which FAC ceiling has been crossed <sup>\$</sup>	% of months when the FAC ceiling has been breached	Amount of FAC under-recovery at present* (Rs. Crore)
1	MSEDCL	33	17	52%	932
2	RInfra	27	4	13%	Nil <sup>\$\$</sup>
3	BEST	33	21	64%	140
4	TPC	33	31	94%	60

**Note:** \* - based on latest FAC vetting Report, i.e., June 2011 for RInfra, and December 2011 for MSEDCL, BEST, and TPC

\$ - on a cumulative basis, since amount of under-recovery in previous months is allowed to be recovered in the subsequent months, subject to the overall FAC ceiling



\$\$ - RInfra has been passing through FAC Credit (negative FAC) for most of the period under consideration.

13. The impact of the FAC under-recovery as stated above is that the liquidity of the Distribution Licensees is adversely affected, as they have to arrange for these funds from other working capital sources, which adds to the carrying cost, which in turn is passed on to the consumers. Thus, any legitimate expenditure incurred by the Licensees have to be allowed to be recovered from the consumers under the present cost-plus regime, and any delay in permitting recovery of the same only adds to the eventual burden on the consumers in terms of additional carrying cost, which should be minimised to the extent possible. Thus, balance of convenience is in favour of revisiting the FAC ceiling.

14. The reasons for the significant increase in FAC and consequent under-recovery due to the existing FAC ceiling of 10% are several, with some factors being applicable to all the Distribution Licensees in the State, and some factors being applicable to only certain Distribution Licensees. The fuel and power purchase costs have increased significantly over this period on account of increase in prices of domestic coal and imported coal and gas, which has adversely affected all the Distribution Licensees, whereas the increase in the price of power purchased from sources like NTPC on account of implementation of the new Tariff Regulations has affected MSEDCL. In case of TPC, the steep increase in FAC in FY 2010-11 and FY 2011-12 is on account of the sudden increase in the external power procurement to supply to the change-over consumers. In case of RInfra, the migration of consumers to TPC has had a contra effect, and resulted in negative FAC due to the reduction in power purchase expenses vis-a-vis the power purchase expenses considered by the Commission in the extant ARR and Tariff Order.

15. The above developments, coupled with the fact that the retail tariffs of the MSEDCL and BEST had not been revised till recently, and the tariffs of TPC-D and RInfra-D have not been revised since September 2010, on account of several factors including the transition to the MYT framework, deferment sought by certain Distribution Licensees regarding applicability of the MYT regime, etc., though certain interim reliefs have been given in some cases through different Orders after following due regulatory procedure, has contributed to the significant under-recovery of FAC. When the tariffs are revised periodically, the prevailing FAC is merged with the base tariffs and the FAC is equated to zero, since the prevalent fuel costs are considered for projecting the fuel costs at the time of determination of the Aggregate Revenue Requirement (ARR) and Tariffs.

16. Further, it is to be noted that under the MERC MYT Regulations, 2011, the Z<sub>FAC</sub> can be levied by the Distribution Licensee only after prior approval of the Commission, and hence, there is no ceiling on levy of FAC.

17. In this regard, the Hon'ble Appellate Tribunal for Electricity (ATE) in its Order dated November 11, 2011, in OP. No. 1 of 2011, in the matter of Tariff Revision (suo-motu action on the letter received from Ministry of Power) has also ruled that the fuel and power purchase cost is uncontrollable and should be allowed as quickly as possible. The Hon'ble Appellate Tribunal was of the view *inter alia* as follows:-

"64. We also notice that most of the State Commissions have not provided in their Regulations Fuel & Power Purchase Cost Adjustment Formula for allowing the increase in fuel and power purchase cost during the tariff year. The fuel and power purchase cost adjustment mechanism provided in most of the states is after completion of the financial year through a separate proceeding which takes a long time. **The power purchase cost is a major expenditure in the ARR of the distribution licensee. The fuel and power purchase cost is also uncontrollable and it has to be allowed as quickly as possible according to the Tariff Policy.** The Electricity Act, 2003 under Section 62(4) has specific provision for amendment of the tariff more frequently than once in any financial year in terms of Fuel Surcharge Formula specified by the Regulations. **A major part of power procured by the distribution company comes from the Central Sector Generating Companies whose tariff is regulated by the Central Commission and the State owned Generation Companies whose tariff is regulated by the State Commissions. The Central Commission in its Tariff Regulations has already provided a formula for fuel price adjustment and the charges of the generation companies are increased as and when the fuel prices are increased.** In view of the present precarious financial conditions of the distribution companies, it would be necessary that the State Commissions also to provide for Power Purchase Cost Adjustment Formula as intended in the section 62(4) of the Act to compensate the distribution companies for the increase in cost of power procurement during the financial year. In the above situation, as indicated above it has become necessary for this Tribunal to give appropriate directions, to correct this situation by invoking the powers under Section 121 of the Act which is permissible under law...

65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:

...

*(vi) Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism." (emphasis added)*

18. The Commission has analysed the FAC Vetting Reports of MSEDCL, RInfra, BEST and TPC for the months from April 2009 to December 2011, in order to assess the appropriate FAC Ceiling level at which, the Distribution Licensees would have been able to recover their entire allowable FAC and there would have been no under-recovery of FAC and related carrying costs. The simulation for this analysis has been done on an iterative basis, and the results of this analysis are given in the Table below:

**Table 3: Simulated FAC Ceiling linked to full recovery of FAC**

Sl.	Distribution Licensee	FAC Ceiling linked to full recovery of FAC (% of Variable Tariff)
1	MSEDCL	20%
2	BEST	35%
3	TPC	40%

**Note:** RInfra does not figure in the above Table, since there is no relevant data for this period, on account of RInfra's FAC being negative for most of this period

19. In view of the above, the Commission had proposed to revise the average FAC Ceiling to 25% of Variable Tariff for all the Distribution Licensees in the State of Maharashtra, and invited comments and suggestions from interested stakeholders.

### **Comments/Objections received and Commission's Ruling**

20. Most of the Distribution Licensees in the State of Maharashtra have supported the proposal to increase the FAC Ceiling to 25% and have even sought removal of the FAC Ceiling, whereas most of the consumers have objected to the proposal to increase the FAC Ceiling and have suggested that the FAC Ceiling should be retained at the existing level of 10%. The detailed suggestions and comments received from stakeholders are summarised below:

21. The Tata Power Company Limited (TPC) submitted that it is thankful to the Commission for considering revision of FAC Cap from 10% to 25% of the Variable Tariff, as the same was necessary in the light of unrecovered FAC amount with the various Utilities, which was blocking considerable quantum of funds. TPC submitted that though it was desirable to remove the cap altogether, removal of cap may lead to immediate increase in the tariff. Hence, to balance the interest of the Utility and the consumers, it is appropriate to change the Cap from 10% to 25% of the Variable Tariff.

22. The Maharashtra State Electricity Distribution Company Limited (MSEDCL) referred to the Judgment of the Hon'ble ATE dated 11 November, 2011 in OP. No. 1 of 2011 in the matter of Tariff revision, wherein the ATE had directed that the FAC mechanism should be in place in every State. MSEDCL also referred to the Tariff Policy, which states that uncontrollable costs should be recovered speedily. MSEDCL submitted that the FAC Cap needs to be removed and total FAC needs to be allowed as a pass through on monthly basis. MSEDCL added that MSEDCL has exceeded the FAC ceiling of 10% on several occasions such that the accumulated unrecovered FAC had increased to an alarming level of Rs. 1483 Crore. MSEDCL submitted that the Commission has also accepted in the past in many Orders that such Cap needs to be reconsidered based on validation on case to case basis. MSEDCL added that the question of abusing the provision and recovering higher FAC does not arise, as FAC claimed by MSEDCL is subject to post-facto approval by the Commission and any variance is adjusted in the next month's FAC. MSEDCL requested the Commission to expeditiously finalize and issue the Order for either removal of the FAC Ceiling or permit MSEDCL to recover FAC from consumers at least up to 25% of the Variable Tariff that may be applicable to such consumers.

23. BEST submitted that it appreciates the initiative taken by the Commission in this regard. BEST submitted that in the past, BEST had requested the Commission to increase

the FAC cap and even allow recovery of actual FAC without any Cap, in Case No. 52 of 2008 and Case No. 162 of 2011, respectively. BEST submitted that FAC Cap may be removed in cases where the power procurement sources have already been approved by the Commission. BEST added that Regulation 13.7 of MERC MYT Regulations, 2011 does not provide for monthly recovery of FAC and the FAC mechanism needs to be revisited in the MERC MYT Regulations, 2011.

24. Reliance Infrastructure Limited (RInfra) submitted that there should be a Ceiling for both positive as well as negative FAC, irrespective of the fact that no Ceiling has been provided in the MERC MYT Regulations, 2011. RInfra submitted that this would ensure that FAC is passed on the consumers smoothly, without causing abrupt increase or reduction in tariffs. RInfra further requested the Commission to permit all Distribution Licensees to first offset the FAC credit with any approved Regulatory Assets that the Licensee may be carrying before passing on the FAC credit to the consumers, otherwise it would amount to providing tariff reduction to the consumers during the current year on one hand, while accruing carrying cost on the Regulatory Assets on the other, which will again be passed on to the same consumers.

25. Shri Uday Kamat, on behalf of Yash Agro Energy, submitted that increasing the FAC ceiling is the need of the hour and he supports the proposal of increasing the FAC Ceiling.

26. Advocate Anil Chavan, representing ABGH Nashik, suggested the following:

- a) The total under/over recovery of FAC as well as individual consumer FAC paid or unpaid or under/over paid must be placed at the time of Tariff determination Petition for review.
- b) The FAC rate (paisa/kWh) must be mentioned in the electricity bill so that the consumers are able to verify the FAC billed.
- c) The Fuel Surcharge formula should only include the cost variation due to variation in fuel cost excluding power purchase from unapproved bilateral and other unapproved sources and also excluding transmission charges, SLDC charges, RLDC charges, UI energy charges, and excess Distribution losses.
- d) The FAC Ceiling may be increased provided that the Utilities show efficiency, transparency, reliability, accountability and avoid accumulation of arrears to achieve reasonable power tariff.

27. Shri. Ponrathnam submitted that the Fuel Surcharge formula should only include the cost variation due to the variation of fuel cost, cost increase of self-owned generation, cost increase of Central Generating Stations, and cost variation with respect to merit order dispatch. He requested the Commission not to increase the FAC ceiling; rather the Commission should consider stopping levy of FAC.

28. Prayas Energy Group submitted that it is important to ensure that FAC reflects only the costs on account of actual variation in fuel price of approved generation and not high cost power purchase arising out of inadequate or inefficient planning. Prayas added that a Ceiling on FAC recovery is essential to ensure that no costs arising out of inefficiency are being passed through this mechanism. Prayas submitted that there is no merit in the proposal to increase the FAC limit from 10% to 25% and in case there is a genuine need to increase FAC beyond the 10% Ceiling, the Commission can always approve the same post-facto. Prayas added that post facto approval of a charge, which is of direct pass-through nature, is more appropriate in ensuring accountability of the Licensee and gives the Commission scope for due analysis and scrutiny that needs to be undertaken, in case a sufficiently high ceiling is crossed. Prayas also submitted the following:

- (a) The draft Order does not provide any analysis of actual increase in variable costs (i.e. fuel costs) in recent times, and it's comparison with the prevalent FAC norm. Also, there is no segregation of increase in FAC on account of variation in interest rates on working capital, if any.
- (b) As per the draft Order, prevailing FAC ceiling for MSEDCL computed at 10% of average variable tariff works out to 39.33 paise/unit. Considering the escalation rates notified by the Central Electricity Regulatory Commission (CERC) for domestic coal (which is the predominant fuel in MSEDCL's power purchase), it is clear that the present Ceiling of FAC is mostly sufficient to cater to this variation.
- (c) Further, the Commission is already undertaking the tariff revision process for all Utilities through which increase in fuel price till date will be factored in and will become part of the revised base tariff itself. This will also address the issue regarding increase in power purchase cost of Central Sector generation on account of new CERC norms, as the revised tariff will be determined after considering the same.

(d) The MERC Tariff Regulations, 2005 are valid only till FY 2012-13. From FY 2013-14, tariff including FAC is going to be determined as per the MERC MYT Regulations, 2011 which have a different mechanism for FAC pass-through. Hence, after increasing the base tariff to account for variation in fuel price till date, there seems to be no rational justification for modifying the FAC ceiling for the next seven-eight months, as that would make the effectiveness of the tariff revision process questionable.

29. Shri. Rakshpal Abrol submitted that the Commission has proposed amendment to the FAC recovery mechanism, which was not within the scope of law. He further referred to the letter on Open Access received from the M/o Law & Justice dated 30 November, 2011, and submitted that for open access consumers the Commission cannot determine tariff, and enquired how FAC will be applicable to such consumers. He further enquired that if RInfra is incurring negative FAC then how other Utilities are having a positive FAC. He added that FAC cap is required, but only with prospective effect.

30. Shri. Pratap Hogade submitted that if the power purchase cost is reasonably approved by the Commission, the existing FAC Ceiling of 10% would not be exceeded. Further, with the expected revision in tariffs, the 10% Ceiling would be higher in paise/unit terms. He referred to the ATE's Judgment dated 11 November, 2011 wherein the ATE has observed that the tariffs for the financial year should be decided before 1st April of the tariff year, and submitted that if these directions are followed scrupulously, the issue of increase in FAC Ceiling would never arise and hence, the FAC Ceiling should be maintained at 10% and should not be revised as proposed in the draft Order.

31. Shri. Siddhartha Soni submitted that increase in FAC Ceiling would increase the tariffs of subsidized consumers and ultimately cross-subsidy will also increase. He submitted that higher proportion of pass through of high power purchase cost through the FAC mechanism would lead to unstable tariff and would hurt the cross-subsidy approach. He further added that the proposed increase in average FAC Ceiling from 10% to 25% considering all the Distribution Licensees of the State would not be sustainable because different Licensees operate in different areas and have different sorts of problems.

32. Central Railways submitted that Clause 8.3(2) of the Tariff Policy mandate all State Electricity Regulatory Commissions (SERC's) to gradually reduce the cross-subsidy by the year 2010-11. Central Railways requested the Commission to implement the same

and not to increase the FAC Ceiling beyond 10%. Central Railways further submitted that the Madhya Pradesh State Electricity Board (MPSEB) is not charging FAC at all and there is no variation in its tariff throughout the year. Central Railways requested the Commission to remove the applicability of FAC for Railways. Central Railways further added that in the worst case scenario, if at all FAC is to be levied, it should be levied once in a year and should be levied equally on all consumer categories, because FAC is meant to recover the difference in fuel cost and should be passed on to all consumers. Central Railways submitted that the Commission should retain the FAC Ceiling of 10%.

33. The Chamber of Small Industry Associations (COSIA) submitted that the hike in FAC Ceiling from 10% to 25% will open the flood gate to increase the tariff by the back door by the Distribution Companies resulting in high costs to the Micro, Small and Medium Enterprises (MSMEs). COSIA suggested that considering the hike in price of coal as well as petroleum products, the average FAC Ceiling may be restricted to 15% only.

34. Shri. Hemant Kapadia, submitted that as per Regulation 82.3 of the MERC Tariff Regulations, 2005, FAC shall be computed on the basis of actual variation in fuel cost relating to power generated from own generation or power purchased and not on the basis of estimated variation in fuel prices. He added that MSEDCL has submitted that there will be no demand supply gap by the end of 2012 and power procurement is expected to reduce in future. Hence, the increase in FAC Ceiling is not required.

35. Dr. Uday Girdhari, Marathwada Association of Small Industries and Agriculture (MASIA) submitted that instead of increasing the FAC Cap, the power procurement policy of MSEDCL is required to be monitored and controlled.

36. Shri. Nitin Kabra submitted that the Commission has very prudently decided the 10% FAC Cap. He submitted that the power purchase cost of MSEDCL is approximately 50% of the cost of supply. He added that as the FAC Cap is applied on the cost of supply, the FAC Cap effectively works out to approximately 20% of power purchase cost, which is sufficient to account for the variation in fuel charges.

37. Shri. Milind Chincholikar, Nashik Industries & Manufacturers Association (NIMA) suggested that FAC can be converted into Fuel Tax. He further suggested that Sales tax on electricity can also be converted into VAT.



38. Shri. Major P M Bhagat submitted that the increase of FAC cannot be assessed prior to the purchase of electricity. He added that according to Section 61 (d) of the Electricity Act, 2003, the Commission should safeguard the interest of the consumer by allowing the recovery of the cost of electricity in a reasonable manner.

39. Shri. T N Agrawal submitted that the existing FAC Ceiling of 10 % may be continued as it is.

40. Shri. R K Pawar, Nashik Municipal Corporation submitted that the Commission has fixed the FAC Ceiling as 10% to control the energy rates. He further submitted that MSEDCL in its Petition has not justified the removal of FAC Ceiling. He added that the FAC Ceiling should not be removed and status quo should be maintained.

41. The Commission has considered all the above suggestions and comments, and the Commission's ruling on the various issues raised by the stakeholders is as under:

- (a) As regards removal of FAC Cap proposed by the Distribution Licensees, the Commission has already expressed its view that a certain appropriate FAC ceiling is required to be stipulated, rather than removing the FAC ceiling altogether, since entire FAC incurred in a particular month cannot be allowed to be passed through without any restriction.
- (b) As regards the objection that there is no need to increase the FAC Ceiling and in case there is any under-recovery of FAC due to the existence of the FAC Ceiling, the amount of under-recovery may be passed through after post-facto vetting by the Commission, the Commission has already clarified that there has to be a balance between the interests of the consumers and the Utility, and the FAC ceiling has to be stipulated in such a manner that the FAC incurred by the Distribution Licensee under normal circumstances is allowed to be passed through to the consumers on a regular basis, subject to post-facto approval of the Commission, and only certain spikes due to steep fluctuations in fuel price or other developments may not get passed through directly within the FAC ceiling, for which separate prior approval will have to be obtained by the Distribution Licensees from the Commission. Also, the Commission's analysis shows that there has been under-recovery of FAC over the recent past periods, on account of which, the Commission suo-motu proposed increase in the FAC Ceiling.

- (c) As regards the applicability of FAC for Open Access consumers, it is clarified that the FAC will not be applicable for Open Access consumers, and the same is applicable only for consumers who are taking supply from the Licensee under its regulated business, for whom the tariff is determined by the Commission.
- (d) The components of the FAC formula and the applicability of the same for all consumer categories will continue to be in accordance with the MERC Tariff Regulations, as amended from time to time.
- (e) On the issue raised by the stakeholders that increase in FAC Ceiling would increase the tariffs of subsidized consumers and ultimately cross-subsidy will also increase, the Commission is of the view that increase in the FAC Ceiling only enables the Licensee to charge FAC upto a higher level without obtaining prior approval of the Commission, however, the increase in the FAC Ceiling should not be construed to mean that the FAC will increase upto the Ceiling level, as explained in the point (d) below. Further, it should be noted that since the FAC is being levied on a proportionate basis, levy of higher FAC will not increase the cross-subsidy levels, since the FAC is being levied in proportion to the energy charges applicable to the respective category/sub-category/consumption slab.
- (f) As regards the concern expressed by the consumers regarding the implications of increasing the FAC Ceiling, the Commission is of the view that merely because the FAC ceiling has been increased, it does not mean that the FAC levels will also increase correspondingly, as the FAC will continue to be computed as at present and validated by the Commission on a post-facto basis, and over-recovery/under-recovery, if any, will be passed on to the consumers through reduction/increase in the FAC chargeable in the subsequent months, along with associated carrying costs.
- (g) However, since the tariffs have been revised recently for MSEDCL and also for BEST, the Commission is of the view that it may not be necessary to revise the FAC Ceiling to 25%, and a Ceiling of 20% would be appropriate, since it will amount to an average FAC Ceiling of 94.91 paise/kWh for MSEDCL, 99.90 paise/kWh for TPC, 128.4 paise/kWh for RInfra, and 144.58 paise/kWh for BEST, at the prevailing retail tariffs, which appears sufficient to address the likely variation in fuel prices in future.

**42. In view of the above, the Commission hereby revises the average FAC Ceiling to 20% of Variable Tariff for all the Distribution Licensees in the State of Maharashtra. The revised FAC ceiling of 20% is the average ceiling for the Distribution Licensee as a whole, and the applicable ceiling will be different for different consumer categories/sub-categories/consumption slabs, equivalent to 20% of the variable tariff of that consumer category/sub-category/consumption slab. The revised FAC Ceiling will come into effect for the FAC allowable (to be charged to consumers) from the month of September 2012 onwards.**

With the above ruling, the suo-motu Petition in Case No. 63 of 2012 is disposed off.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman

## APPENDIX 1

**List of stakeholders who submitted their comments/suggestions in writing or made oral submissions during the public hearing held on 30 July, 2012**

<b>No.</b>	<b>Name of Person / Organization</b>
1	Maharashtra State Electricity Distribution Company Ltd.
2	Brihanmumbai Electric Supply and Transport Undertaking
3	The Tata Power Company Ltd
4	Reliance Infrastructure Ltd
5	Prayas Energy Group, Authorized Consumer Representatives
6	Shri. Verzavand N. S. Postvala, Mumbai
7	Maharashtra Veej Grahak Sanghatana
8	Konel Corporation Pvt. Ltd., Mumbai
9	Akhil Bhartiya Grahak Panchayat, Nashik
10	Shri. Raksha Pal Abrol, Authorized Consumer Representatives
11	Chamber of Small Industry Associations, Thane

**APPENDIX 2**

**List of stakeholders attended the Public Hearing held on 30 July, 2012**

<b>No.</b>	<b>Name</b>
1	Shri. Raksha Pal Abrol, Authorized Consumer Representatives
2	Shri. K N Rajagopal, BEST Undertaking
3	Shri. Satish V Bapat, MSEDCL
4	Shri. V H Wagale, TPC D
5	Shri. G Thakkar, RInfra D
6	Shri. S A Bakre, BEST Undertaking
7	Shri. A V Kadam, BEST Undertaking
8	Shri. A R Talegaonkar, BEST Undertaking
9	Shri. Kishor Patil, R Infra D
10	Shri. R K Kamble, BEST Undertaking
11	Shri. V U Kurode, BEST Undertaking
12	Shri. Kartik Kishan
13	Mrs. Shital Kharaiya
14	Shri. K Vinodraj, BEST Undertaking
15	Shri. Rajesh Shewegar
16	Shri. C B Mande, MSEDCL
17	Shri. R M Ranade