

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 113 of 2009

**In the matter of
Proposal of MSEDCL for change in methodology of levy of
Fuel Adjustment Cost (FAC)**

**Shri V.P. Raja, Chairman
Shri S.B.Kulkarni, Member
Shri V.L. Sonavane, Member**

ORDER

Dated: 19th July 2010

The Maharashtra State Electricity Distribution Co Ltd (“MSEDCL”) submitted a Petition under affidavit on 15th January, 2010 to the Commission, for change in methodology of levy of Fuel Adjustment Cost (FAC), by proposing exemption of BPL and Agriculture Consumer categories from levy of FAC and thereafter levy of FAC proportionately on the remaining consumer categories. The following are the main prayers of the Petitioner:

“

1. As per Regulation 85.1 of the Tariff Regulations, Hon’ble Commission may, pass such general or specific order to include such provision in the Tariff Regulations, 2005 as may be necessary to remove the difficulty arising in giving effect to any of the provisions of the said Regulations.



2. *May permit the Petitioner to pass on adjustments due to changes in the cost of power procurement to the consumer, excluding the consumers belonging to BPL and Agricultural category consumers and may please further permit the Petitioner to levy FAC on remaining categories of consumers in proportion to the Base Tariff (Energy charge) OR Average Billing Rate (ABR) as may be applicable to respective consumer category; as per suggested methodology in the foregoing paragraphs*
3. *In case the Hon'ble Commission is not inclined to exempt the categories of consumers as proposed, the Hon'ble Commission may please permit the Petitioner to pass on adjustments due to changes in the cost of power procurement to the consumers in proportion to the Base Tariff (Energy charge) OR Average Billing Rate (ABR) as may be applicable to respective consumer category; as per suggested methodology in the foregoing paragraphs."*

2. Vide the above petition, MSEDCL submitted that while petitions pertaining to the same matter had earlier been submitted by the petitioner and was dealt with by the Commission vide its Orders in the matter of Case 102 of 2008 and Case 103 of 2008, considering the importance of the issue and in consumer interest, MSEDCL in this Petition was requesting the Commission to consider the matter with the fresh proposal for exemption of BPL and Agriculture from levy of FAC and thereafter levy of FAC proportionately on the remaining consumer categories.

3. A hearing was held in the matter on 31st March, 2010 in the presence of the Consumer representatives authorised under Section 94(3) of the Electricity Act, 2003. Shri. Abhijit Deshpande, ED (Comm), Shri. N.G. Naru, C.E. (Com) and Shri. S.V. Bapat, S.E. (TRC) appeared on behalf of MSEDCL. Shri. N.D. Patil and Shri. Raghunath Mane appeared on behalf of the Maharashtra Rajya Veej Grahak Shetkari Sabha. Shri. N. Ponrathnam of M/s Vel Induction Hardening appeared as Consumer Representative.

4. Shri. Deshpande appearing on behalf of MSEDCL, submitted that the present petition pertains to change in methodology of Levy of Fuel Adjustment Cost (FAC), by proposing exemption of BPL and Agriculture categories of consumers from levy of FAC and thereafter levy of FAC proportionately on the remaining consumer categories.



5. Shri. Deshpande submitted that earlier a Petition was filed MSEDCL in Case No. 102 of 2008 seeking review of regulations relating to Fuel Adjustment Cost Formula as specified in the MERC (Terms and Conditions of Tariff) Regulations, 2005, and MSEDCL had also filed another petition in Case 103 of 2008 in the matter of levy of Fuel Adjustment Cost (FAC) charge proportionate to the base tariff with similar prayers and the Commission had issued the orders in these cases on 30th March 2009 and 2nd April 2009 respectively, wherein it was observed by the Commission that the prayers put up by MSEDCL in the above mentioned cases could not be considered since these required amendment in the regulations.

6. Shri Deshpande further submitted that under Section 62 (4) the Commission is empowered to specify fuel surcharge formula and accordingly, the Commission has already specified the same in its Tariff Regulations. The FAC was applicable from 1st September 2005 and Regulation 82.6 specifically states that ***“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”***. Here itself the regulation had specified a cap of 10% of variable component of a consumer category as the maximum chargeable Fuel adjustment charge in any particular month. There is no reference in the said Regulations for the quantum to be variable based on any other criteria.

7. Shri Deshpande concluded his argument with a request to consider the prayers put up by MSEDCL.

8. Shri Ponnarathnam, Consumer Representative, in his affidavit submitted that the Commission has already issued Orders in Case no. 102 of 2008 and Case no. 103 of 2008 and hence this is a case where the doctrine of *“Res Judicata”* would apply, and therefore, the same should not be taken up again in the present proceedings.



9. Shri Ponnarathnam further submitted that Section 45(2)(a) of the Electricity Act, 2003 provides as follows :

“The charges for the electricity supplied by a distribution licensee shall be fixed in accordance with the methods and principles as may be specified by the State Commission.”

Shri Ponnarathnam submitted that accordingly the Commission had issued the MERC (Terms and Conditions of Tariff), Regulations 2005 wherein the modality of charging FAC had been specified. Shri Ponnarathnam further submitted that in his view Fuel adjustment charge should be applicable only on the variation in the fuel costs and not on the variations on the entire variable cost of generation. Shri Ponnarathnam submitted that proportionate levy / preferential levy as suggested by the petitioner should not be allowed and that the Fuel adjustment cost should be included in the energy charges and determined at the time of ARR only.

10. The Commission is of the view that the present petition and prayers made therein is covered by the Commission’s Order dated April 2, 2009 in Case No. 103 of 2008 in the matter of Petition filed by MSEDCL for levy of Fuel Adjustment Cost (FAC) charge proportionate to the base tariff. The decision in the said Order dated April 2, 2009 would operate as *resjudicata* in the present petition.

11. In view of the Commission’s Order dated April 2, 2009 in Case No. 103 of 2008, the present petition stands dismissed. However, if MSEDCL includes these aspects in its forthcoming ARR application, the same could be addressed therein.

Sd/-
(V L Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K N Khawarey)
Secretary, MERC