

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION, MUMBAI

Filing No.: \_\_\_\_\_

Case No.: \_\_\_\_\_



IN THE MATTER OF

Petition for modification of the directives of Hon'ble Commission dtd 01.03.2017 for refund of FAC for the period April 16 to Oct 16 amounting to Rs. 369.54 Crs. to the Consumers and consideration of the same at the time of truing up for FY 2016-17.

IN THE MATTER OF

Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004

AND

IN THE MATTER OF

Regulation 94 of MERC (Conduct of Business) Regulation, 2004.

AND

IN THE MATTER OF

Maharashtra State Electricity Distribution Co. Ltd.....Petitioner  
Prakashgad, Plot No.G-9, Anant Kanekar Marg,  
Bandra (E), Mumbai-400051

Affidavit on behalf of Maharashtra State Electricity Distribution Company Limited.

I, Paresh Bhagwat, aged 45 Years, son of Ramchandra Bhagwat, having my office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (E), Mumbai-400051 do solemnly affirm and say as follows:

I am Chief Engineer (Power Purchase) of Maharashtra State Electricity Distribution Co. Ltd., the Petitioner in the above matter and am duly authorized by the said Petitioner to make



this affidavit.

The statements made in the enclosed review petition for \_\_\_\_\_ are based on the information received from the concerned officers of the Company and I believe them to be true.

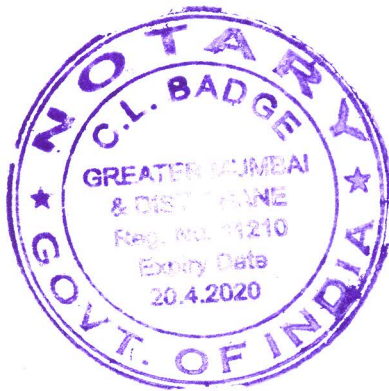
I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Petitioner is a party and where issues arising and /or relief sought are identical or similar to the issues arising in the matter pending before the Commission.

I solemnly affirm at Mumbai on this **17 MAR 2017** day of March, 2017 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

*[Handwritten Signature]*

**Deponent**

**Identified before me**



**ATTESTED BY ME**

*[Handwritten Signature]* 17/03/2017

**CHAKR KUNAL L. BADGE**  
B.A., LL.B.  
ADVOCATE HIGH COURT  
NOTARY GOVT. OF INDIA  
Bldg. No. 136/4645 Pant Nagar,  
Ghatkopar (E) Mumbai-400 015

**17 MAR 2017**







BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION, MUMBAI

Filing No.: \_\_\_\_\_

Case No.: \_\_\_\_\_

IN THE MATTER OF

Petition for modification of the directives of Hon'ble Commission dtd 01.03.2017 for refund of FAC for the period April 16 to Oct 16 amounting to Rs. 379.54 Crs. to the Consumers and consideration of the same at the time of truing up for FY 2016-17.

IN THE MATTER OF

Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004

AND

IN THE MATTER OF

Regulation 94 of MERC (Conduct of Business) Regulation, 2004.

AND

IN THE MATTER OF

Maharashtra State Electricity Distribution Co. Ltd.....Petitioner  
Prakashgad, Plot No.G-9, Anant Kanekar Marg,  
Bandra (E), Mumbai-400051

The petitioner respectfully submits as under:

**1. Background**

Maharashtra State Electricity Distribution Co. Ltd. (hereinafter to be referred to as "MSEDCL" or "the Petitioner") has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra to reorganize erstwhile Maharashtra State Electricity Board (herein after referred to as "MSEB"). The Petitioner submits that the said reorganization of the MSEB has been done by Government of Maharashtra pursuant to "Part XIII - Reorganization of Board" read with section 131 of The Electricity Act 2003. MSEDCL is a Company constituted under the provisions of

Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25th January 2005 and The Petitioner has been incorporated on 31.5.2005 with the Registrar of Companies, Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15th Sep 2005. The Petitioner is a Distribution Licensee under the provisions of the Electricity Act, 2003 (EA, 2003) having license to supply electricity in the State of Maharashtra except some parts of city of Mumbai.

**2. Introduction: Broad scope of the petition:**

The present petition is being filed by the petitioner for modification of the directives of Hon'ble Commission dtd 01.03.2017 for refund of FAC for the period April 16 to Oct 16 amounting to Rs. 379.54 Crs. to the Consumers and consideration of the same at the time of truing up for FY 2016-17.

**BRIEF FACTS**

**3. Mechanism for pass-through of gains or losses on account of uncontrollable factors:**

It is submitted that, Regulation 10 of MYT Regulations, 2015 provides as under:

*"The aggregate gain or losses to a Distribution Licensee on account of variation in cost of fuel and power purchase, covered under Regulations 9.1 shall be passed through under the FAC as an adjustment in its Tariff on a monthly basis, as specified in these Regulations and as may be determined in orders of the Commission passed under these Regulations and shall be subject to ex-post facto approval by the Commission on a quarterly basis.*

*Provided that the FAC for the first month of the first year of the Control Period shall require the prior approval of the Commission, based on prudence check;*

*Provided further that the Distribution Licensee shall submit, in the stipulated formats, details of the variation between expenses incurred and those approved by the Commission and the detailed computation and supporting documents as may be required for verification by the Commission for the first month of the first year of the Control Period for prior approval of FAC.*

*Provided also that the Distribution Licensee shall submit the details of variation in fuel costs relating to power generated from own generation stations and cost of power procured for the first month of the first year of the Control Period, after completion of the first month."*



4. **MSEDCL's MYT tariff order dated 3.11.2016**

4.1 It is submitted that, Hon'ble Commission has issued MYT Tariff order for third control period for MSEDCL in case no. 48 of 2016 on 03.11.2016.

4.2 Applicability of Order : Clause 8.41 of the tariff order dated 03.11.2016 provided that, the said order shall come into force with effect from 1<sup>st</sup> Nov 2016.

4.3 Hon Commission's Directives regarding vetting of FAC :

It is submitted that, Clause 8.35 of the order under the chapter Tariff philosophy, tariff design and category wise tariff for the 3<sup>rd</sup> control period provided as under-

***"8.35 Vetting of Fuel Adjustment Charge levied on consumers***


*The levy of ZFAC charged to different consumers and the under-recovery/over recovery of the corresponding costs will be vetted by the Commission on a post-facto basis, considering the submissions made by MSEDCL. However, for the first month after the issue of the present MYT Order, MSEDCL should obtain the Commission's prior approval for levy of ZFAC, to ensure that it is being levied correctly. MSEDCL should submit the ZFAC computations and details of under-recovery/over-recovery of fuel cost variations on a quarterly basis, within 60 days of the close of each quarter, for post-facto approval."*

5. **Hon'ble Commission's directives related to FAC of first month after issuance of tariff order:**

5.1 It is submitted that, Hon'ble Commission has directed MSEDCL to take prior approval of ZFAC for the first month of the tariff order (i.e. FAC for the month of Nov 16) and provided formats for filing FAC submissions vide its letter dated 15<sup>th</sup> Nov 2016.

5.2 It is submitted that, MSEDCL has levied FAC upto July 2016 of FY 2016-17 till the MYT order in case no 48 of 2016 is passed by Hon'ble Commission on the basis of approved power purchase Cost as per the order prevailing during this period. The tariff order dated 26.06.2015 in case no. 121 of 2014 was prevailing till the new tariff order dtd. 03.11.2016 comes into force. As such, MSEDCL has requested Hon'ble Commission for levy of FAC for the months Aug., Sept. and Oct. 2016 being the months before the 1<sup>st</sup> month of MYT order, vide its letter dated 24 November, 2016. The brief Submissions of MSEDCL in the said letter is as under.

*"MSEDCL is liable to pay to the generators the additional cost towards the variations in actual power purchase cost. As such in this situation, MSEDCL will be deprived of levying FAC for the months of Aug 2016, Sept 2016 and Oct 2016 (to be billed for Nov 2016, Dec 2016 and Jan 2016) to the consumers. Also, MSEDCL has received invoices for FAC from MSPGCL for the months Aug and Sept 16. Similarly there will be variation in power purchase cost in case of other generators for these months and also for Oct*



16. Therefore, MSEDCL has to pass on the burden of this cost under FAC mechanism to the consumers as per the provision of Regulation 10.2 of MERC MYT Regulation.

Hence, it is kindly submitted that it is necessary to MSEDCL to levy FAC on monthly basis as provided under MYT Regulations for the months of Aug 16 to Oct 16 in view of above submissions. MSEDCL will approach Hon'ble Commission for its prior approval for levy of ZFAC for the month of Nov 16."

5.3 Accordingly, MSEDCL has calculated the FAC of Aug 16 and Circular no. 237 dated 01.12.16 has issued for levy of FAC of Aug 16 to the consumers for the billing month Nov 16.

5.4 However, Hon'ble Commission vide its letter dated 01.12.2016 has rejected this proposal and also mentioned that in order to enable MSEDCL to recover accumulated FAC as on Oct 16 the Commission has accorded its approval for the following-

*MSEDCL is allowed to include accumulated FAC at the end of Oct 16 which is yet to be levied to the consumers in the FAC calculation for the month of Nov 16 (1<sup>st</sup> month of tariff order). Before such inclusion, MSEDCL should recalculate the accumulated FAC (APR to OCT 16 ) based on the revised Power Purchase Cost approved in the tariff order dated 3<sup>rd</sup> Nov 2016.*

5.5 It is submitted that, meanwhile MSEDCL has already started the billing for Nov 16 wherein FAC of Aug 2016 is included.

5.6 It is submitted that, Hon'ble Commission has thereafter by email dated 02.12.16 communicated to MSEDCL as under-


*From the web site of MSEDCL it is observed that Circular no 2137 issued on 1<sup>st</sup> Dec 16 for levying FAC to the consumers for billing month of Nov 16. MSEDCL has not taken any prior approval of the Commission of before levying such FAC.*

Hon'ble Commission has also asked MSEDCL to submit, the reasons for above, to Hon'ble Commission and to take corrective Steps in this regard.

5.7 It is submitted that, on receipt of the said email, MSEDCL has immediately stopped the levy of FAC and submitted its submissions to Hon'ble Commission vide letter no. CE/PP/36362 dtd. 06.12.2016 as under:

*By the time MSEDCL receives the letter from MERC regarding rejecting of MSEDCL proposal, MSEDCL has already calculated FAC for Aug 16 and started levy of the same to the consumers in the billing for Nov 16. However, as per the direction from Hon'ble*





*Commission, MSEDCL has withdrawn the circular no 237 dated 1.12.16 and also the FAC made zero for the billing month of Nov 16, Dec 16 and Jan 17, however the accumulated amount will be considered while calculating FAC for the month of Nov 16 i.e. 1<sup>st</sup> month after issuance of new tariff order which will be levied to the consumers in the billing after prior approval from MERC.*


**6 Hon'ble Commission's Directives in vetting report of FAC for July 2016 to Oct 2016:**

6.1 It is submitted that, Hon'ble Commission vide vetting report for the period July 2016 to Oct 2016 issued on 10.1.2017 has accorded post facto approval to MSEDCL for charging to its consumers the FAC for the month of July 16 to Oct 16 and directed as under;

*Since FAC for the period of April 16 to Oct 16 has been calculated based on the power purchase cost approved for FY 2015-16, in the prevailing tariff order dated 26.6.15, MSEDCL shall recalculate FAC for this period after considering the power purchase cost approved for FY 2016-17 in the Tariff Order dated 3<sup>rd</sup> November, 2016 in Case No. 48 of 2016 and shall adjust the resultant FAC amount which remains to be recovered/refunded in the next FAC billing process.*

6.2 It is submitted that, in this regard MSEDCL has submitted representation to Hon'ble Commission on 15.02.17 highlighting the following facts and concerns:

- 1) As the new tariff order dated 3.11.2016 is applicable from 1<sup>st</sup> Nov 16, MSEDCL is not able to collect revenue at the new tariff for the period Apr16 to Oct 16.
- 2) As per the Approved Tariff Schedule appended to the MYT tariff order dated 3.11.16, it is mentioned that these tariffs supersedes all tariff so far in force from 1<sup>st</sup> Nov 2016. Further, it is also mentioned that FAC as may be approved by Hon'ble Commission from time to time shall be applicable to all categories of consumers and be in addition to the base tariff on the basis of the formula specified by the Hon'ble Commission and computed on **monthly basis**.
- 3) Similar provisions also exists in the earlier tariff order dated 26.06.2015 (In case No.121 of 2014).
- 4) Therefore, before 1<sup>st</sup> Nov 2016, the tariff order dated 26.06.2015 was in force and since FAC is required to be computed on monthly basis the monthly FAC calculation made by MSEDCL on the basis of existing tariff order for the period April 16 to Oct 16 (tariff order dated 26.6.16) is in commensurate with the requirement of Regulation and Tariff order.

- 
- 5) Hon'ble Commission has already accorded the post facto approval for FAC calculation of MSEDCL for the month of April 2016 to Oct 2016 as per the prevailing tariff order.
  - 6) Also, as per the instruction of the Hon'ble Commission for not levying FAC for the month Aug 16 to Oct 16 vide letter dated 01.12.16, MSEDCL has deprived of legitimate revenue through FAC for this period.
  - 7) If as per the direction of Hon'ble Commission, the FAC of the period April to Oct 16 is recalculated, there will be adverse impact on the revenue of MSEDCL amounting to Rs 922.64 Crs as shown in the table. It may further worsen the financial position of MSEDCL. In such case, MSEDCL has to arrange funds by borrowing working capital from banks, the interest on which is not allowable in view of the Hon'ble Commission's stand in the tariff order in this regards.
  - 8) Further, there will not be matching of revenues with that of power purchase cost incurred by the MSEDCL for the period of Apr 16 to Oct 16.


With the above concerns, MSEDCL made following submission to Hon'ble Commission on its directives for recalculation of FAC from Apr – Oct 16 and its adjustment in next FAC Billing through the said letter -

- A. *Hon'ble Commission may approve the FAC for the month of Nov 16 (being the first month after the tariff order) considering the impact of accumulated FAC for the month Aug 16 to Oct 16 being the month for which MSEDCL has not levied FAC to the consumers instead of insisting recalculation of FAC from April 16 to Oct 16.*
- B. *Hon'ble Commission may consider any Short fall or surplus considering the request as proposed in 'a' above, in actual Revenue vis-à-vis the Approved revenue requirement at the time of true-up in the MTR, as specified in the MYT Regulation 2015.*
- C. *If the above submission of MSEDCL is not agreeable to Hon'ble Commission then MSEDCL submits that-*
  1. *Hon'ble Commission may please permit MSEDCL to recover FAC/ variation in PP cost paid to Generators including State, Central and IPPs from Apr 16 to Oct 16.*
  2. *Else, the Hon'ble Commission may please allow the interest on resultant borrowed amount at the time of true-up to be passed on to consumers.*

**7. Vetting Report of Hon'ble Commission dated 01.3.2017 on prior Approval of Nov 16 FAC:**

- 7.1 It is submitted that, Hon'ble Commission has accorded prior approval of Nov 16 FAC based on the submissions given by MSEDCL. The said prior approval has been communicated through its vetting report dated 1.3.2017. Hon'ble Commission has dealt with the issues raised by MSEDCL & has informed as under-



- 
- a) MSEDCL has contended that due to delay in issuance of Tariff order, it has not able to recover revenue at revised tariff during the period of Apr to Oct 16. The Commission in this regard said that, one of the reasons for such delay was late filing of MYT petition by MSEDCL, and the same has been described in the tariff order dated 03.11.16.
- b) FAC mechanism allowed pass through of variation in power purchase cost of Distribution licensees to its consumers. Power purchase quantum and cost approved in tariff order applicable for period under consideration is used as reference for calculating such variation in power purchase cost.
- c) MSEDCL has calculated FAC for Apr to Oct 16 as per the old tariff order dated 26.05.16(Which is for FY 2015-16). Subsequent to issuance of tariff order dated 03.11.2016 approved power purchase cost for FY 2016-17 becomes available. At the time of true up of FY 16-17 Power purchase cost approved in the new tariff order dated 3.11.2016 will be used as reference for arriving at deviation in actual power purchase cost.
- d) Therefore, if the FAC for Apr to Oct 16 which was calculated based on 2015 tariff order is not recalculated, then at the time of true up of FY 16-17 (based on 2016 tariff order) there would be large difference between revenue collected through FAC and Variation in power purchase cost. This may result in burdening the consumers/licensees with carrying cost at the time of true up. Therefore vide FAC vetting order dt 10.1.17 the Commission has directed MSEDCL to recalculate the FAC of Apr to Oct 16 based on new tariff order dt 3.11.2016. Therefore the resultant recalculated FAC needs to be passed on to the consumers without waiting for true up of 2016-17.
- e) As far as MSEDCL's request of allowing recovery of FAC paid to the generators including State, Central and IPPs concerned, The Commission stated that, Central Sector Generating plants are not regulated by this Commission. Also IPPs are governed by PPA's signed by parties. MSPGCL is governed by MYT Regulation 2015 which allows (regulation 48) it to bill the energy charges based on actual cost of generation subject to normative parameters. Hence, modification in FAC of MSPGCL would not reduce the total payout of MSEDCL towards the energy charge as same has been raised based on actual cost of generation.
- f) Further MSEDCL's request of allowing interest on resultant borrowed amount to be passed on to the consumers at the time of true up can only be dealt with as per provision of MYT Regulations, 2015 at the time of true up of FY 16-17.
- g) In view of the above the Commission is of the opinion that it would not be prudent to consider MSEDCL's request of adjusting refundable FAC for the

period of Apr to Oct 16 at the time of true up of FY 16-17 instead of refunding it now.

- h) The Commission has scrutinized the submission of MSEDCL and directed MSEDCL to refund Rs 369.54 Crs to consumers in seven equal installment with holding cost as its pertain to the period of seven months of Apr to Oct 16. The first installment of Rs 52.79 Crs along with holding cost of Rs 3.09 Crs is considered in FAC calculation for the month of Nov 16 by the Hon'ble Commission while according prior approval of FAC of Nov 16.
- i) The Net amount of FAC to be refunded calculated by the Hon'ble Commission is as under-


Particular	Amt in Rs Crs.
Recomputed FAC for Aug 16	(159.98)
Recomputed FAC for Sept16	5.45
Recomputed FAC for Oct16	(215.02)
<b>Total FAC to be levied/(refunded)</b>	<b>(369.54)</b>

- j) The schedule of installments of refund given by the Hon'ble Commission along with carrying cost starting from FAC for the month of Nov 16 is as under.

Particulars	Nov 17	Dec 17	Jan 17	Feb 17	Mar 17	Apr 17	May 17
Interest Rate	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%
Opening bal	(369.54)	(316.75)	263.96)	(211.17)	(158.38)	(105.58)	(52.79)
Refund	(52.79)	(52.79)	(52.79)	(52.79)	(52.79)	(52.79)	(52.79)
Closing Bal	(316.75)	263.96)	(211.17)	(158.38)	(105.58)	(52.79)	-
Holding Cost	(3.09)	(2.61)	(2.14)	(1.66)	(1.19)	(0.71)	(0.24)
<b>Refund with Holding Cost (Rs Crs)</b>	<b>(55.88)</b>	<b>(55.41)</b>	<b>(54.93)</b>	<b>(54.45)</b>	<b>(53.98)</b>	<b>(53.50)</b>	<b>(53.03)</b>

7.2 It is submitted that, Hon'ble Commission has accorded prior approval to FAC of Nov 16 after considering the following changes;



- 
- a) MSEDCL has considered Inter-state transmission charges as part of power purchase cost while calculating the FAC of Nov 16. However, Hon'ble Commission has excluded transmission charges while calculating FAC of Nov 16 as Z FAC mechanism allows only variation in Fuel and power Purchase Cost to be passed on to the consumers. It does not considered variation in transmission charges.
  - b) The adjustment factor of Over/under recovery of Aug 16 and accumulated FAC of Sept and Oct 16 is disallowed by Hon'ble Commission.
  - c) The variation in absolute terms is due to formula error of FAC computed on per unit basis. However as per the MSEDCL, Hon'ble Commission has not adjusted the variation in the same month but carry forward in subsequent month.

**8. MSEDCL's contentions and issues under consideration -**

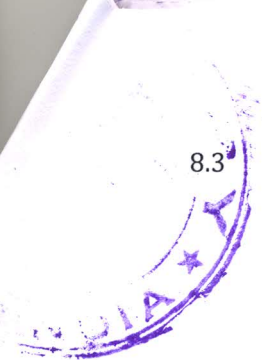
- 8.1 It is submitted that, Hon'ble Commission has revised the tariff for MSEDCL with effect from 1<sup>st</sup> November 2016; vide its Tariff Order dated 3<sup>rd</sup> November 2016 in Case No 48 of 2016. Hence, MSEDCL could recover revenue at revised tariff only from Nov 16 onwards and it has not been able to collect revenue at the new tariff for the period April 16 to October 16.
- 8.2 MSEDCL has been authorized to recover FAC in addition to applicable tariff from consumer in view of the express provision in the Tariff Order dtd. 26.06.2015 in case No. 121 of 2015 under 'Approved Tariff Schedule' appended thereto. The relevant extract is reproduced as under.

***General***

..  
..

8. *FAC as may be approved by the Commission from time to time shall be applicable to all categories of consumers and be in addition to the base tariff on the basis of the formula specified by the Commission and computed on monthly basis.*

It is therefore submitted that, before 1<sup>st</sup> Nov 2016, the tariff order dated 26.06.2015 was in force and since FAC is required to be computed on monthly basis the monthly FAC calculation made by MSEDCL on the basis of existing tariff order for the period April 16 to Oct 16 (tariff order dated 26.06.16) is in commensurate with the requirement of Regulation and Tariff order.



8.3 It is submitted that, MSEDCL has actually paid the FAC and variation in power purchase cost to Generators during the period Apr 16 to Oct 16 which can't be restricted from recovery from consumers in view of the provisions contained in Regulation 10 of MYT Regulations, 2015.

8.4 It is further submitted that, as far as FAC paid to MSPGCL is concerned, Hon'ble Commission has mentioned that MSPGCL is governed by MYT Regulations, 2015 which allows (Regulation 48) it to bill the energy charges based on actual cost of generation subject to normative performance parameters. Hence, modification in FAC of MSPGCL would not reduce the total payout of MSEDCL towards the energy charges as same has been raised based on actual cost of generation. Petitioner would like to mention regulation 48.6 which is as under;

*"any variation in price and gross calorific value of coal/ lignite or gas or liquid fuel as received at unloading point less actual stacking loss subject maximum stacking loss of 150 Kcal/kg vis-à-vis **approved values** shall be adjusted on month to month basis on the basis of average gross calorific value of coal/ lignite or gas or liquid fuel in stock received and weighted average landed cost incurred by the generating company for procurement of coal/ lignite or gas or liquid fuel as the case may be of power station.*


*Provided that in its bills , the generating company shall indicate the energy charges rate at base price of primary and secondary fuel approved by the Commission and the fuel surcharge to its separately."*

However, the directions for such retrospective adjustment on account of FAC have not been given to MSPGCL which might have been passed on to MSEDCL and other generating companies are not envisaged by Hon'ble Commission. It is submitted that, it is unfair if MSPGCL is not directed to recalculated the FAC and pass it to MSEDCL for the said period. Moreover, Hon'ble Commission is silent about the power purchase variation paid to Central sector generators and IPPs. Without addressing these issues, the direction of Hon'ble Commission for refund of FAC to consumers seems to be unfair.

Also, Hon'ble Commission is salient about higher basic energy rate paid to MSPGCL for Sept and Oct 16, whereas MSEDCL tariff revision has made applicable from 1<sup>st</sup> Nov 2016.

8.5 It is submitted that had the direction of Hon'ble Commission is considered, there will be mismatching of revenues with that of actual power purchase cost incurred by MSEDCL for the period Apr 16 to Oct 16. It is submitted that, MSEDCL will face serious financial crunch to fulfill its working capital needs. Further, if working capital loan is availed from banks, interest on such working capital is not being allowed by Hon'ble Commission. On this issue, Hon'ble Commission has mentioned that the same will be





dealt with as per MYT Regulations, 2015 at the time of truing up. Therefore, it is submitted that the directions of Hon'ble Commission will further worsen the precarious financial condition of MSEDCL as the amount of Refund of Rs. 369.54 crs is a considerable amount.

8.6 It is submitted that, moreover Hon'ble Commission has restricted MSEDCL from levying legitimate amount of FAC for the period Aug 16 to Oct 16 which has already weakened the cash flows of MSEDCL.

8.7 Hon'ble Commission has revised the Energy Charges upwards from 1st Nov 16. If adjustment on account of FAC is done in isolation without considering recovery through Energy Charges, then it would lead to under-recovery on account of Energy Charges for the period from April to Oct 16. This would, in effect, be tantamount to only a notional benefit of higher base tariff for the same period as actual realization would take place unless and until a truing up exercise carried out at the year end. Retrospective application of the revised approved power purchase cost only for FAC calculations and not for Energy Charges will result in an anomaly and call for avoidable truing up for loss or under recovery of Energy Charges for those months.

8.8 It is humbly submitted that, all costs should be considered for the relevant period only and not retrospectively as is sought to be done by Hon'ble Commission's directions. Applying FAC retrospectively is inter-alia, without any basis.

8.9 It is humbly submitted that, it would be very unfair to MSEDCL if it is required to refund the notional surplus of FAC amount for the period from Apr 16 to Oct 16 to the consumers-

A) Without receiving any refund on account of FAC/power purchase variation paid to MSPGCL and other generators for Apr to Oct 16.

B) Without being compensated for higher basic Energy charges paid to MSPGCL for Sept 16 and Oct 16 while MSEDCL tariff revision is made applicable in Nov 16.

C) Without any compensation for the short fall in basic tariff charges for the period of Apr to Oct 16 which has not been allowed to charge in the billing to the consumers.

**9. Hon'ble Commission's ruling in case no. 18 of 2005 in case of M/s. Reliance Energy Ltd:**

9.1 MSEDCL humbly submits that, Hon'ble Commission in the similar case no. 18 of 2005 in matter of petition filed by M/s Reliance Energy Ltd. in the matter of review of directions on fuel adjustment cost (FAC) charges dated 19<sup>th</sup> Jan 2005, wherein similar contentions

were made by M/s REL, has modified its decision and allowed adjustment of impound FAC at the time of truing up.

Hence MSEDCL humbly submits to Hon'ble Commission to grant similar relief to MSEDCL and modify its direction dated 01.03.2017 for refund of FAC and consider the same at the time of truing up of FY 16-17.

In view of the above MSEDCL humbly submits to the Hon'ble Commission to modify /withdraw its direction for refund of FAC and may kindly allowed MSEDCL :-

- (a) To apply the revised methodology for computation of FAC from 1<sup>st</sup> Nov 2016 instead of retrospectively from 1st April, 2016, or alternatively;
- (b) To allow MSEDCL to adjust the shortfall in Energy Charges for the period from April to Oct, 2016 against the FAC for the period from April to Oct 2016.

10) Prayers:-

The petitioner most respectfully prays to this Hon'ble Commission;

- a) To admit the petition;
- b) To stay the directives of refund of FAC adjustment amount of Rs 369.54 crores till final disposal of present case.
- c) To modify/withdraw the FAC refund of Rs 369.54 Crs. directives for the period of Apr to Oct 16 so that the FAC for the period of Apr to Oct 16 may be adjusted at the time of truing up for FY 16-17;
- d) To apply the revised methodology for computation of FAC from 1<sup>st</sup> Nov 2016 instead of retrospectively from 1<sup>st</sup> April 2016; or
- e) To allow petitioner to adjust shortfall in energy charges for the period from Apr to Oct 16 against the FAC for the period from Apr to Oct 2016; or
- f) To allow the petitioner to recover PP cost variation paid to MSPGCL and other generators during the period Apr-Oct 16;
- g) To pass such order/ orders as Hon'ble commission may deem fit considering facts and circumstances of the case and in the interest of this case;
- h) To condone any error/omission and to give opportunity to rectify the same.

  
Chief Engineer (Power Purchase)  
MSEDCL