

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 23 of 2005

**In the matter of
Removal of 10% Cap on FAC Charge**

**Dr Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member**

ORDER

Dated: 9th November, 2005.

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| 1. | The Tata Power Company Limited (TPC) filed an application under the provisions of Regulation 82.6 of MERC (Terms and Conditions of Tariff) Regulations, 2005 on September 12, 2005 for removal of 10% cap on FAC charges. TPC has made the prayer in its Petition that with effect from August 2005 : |
| a) | The Commission may kindly consider/allow TPC to pass the FAC on account of actual fuel cost to the distribution licensees their share on a monthly basis |
| b) | The Commission may kindly reconsider/remove the cap of 10% of variable charges of FAC rate to be considered for billing, and/or |

	c)	The Commission may kindly revise the cap/ceiling to an appropriate value, as the Commission may deem fit, and/or
	d)	The Commission may kindly reconsider/revise the period over which such FAC cap is required to be considered/calculated (currently one month).
2.		TPC in its Petition submitted that the Commission in its Order dated 11th June 2004 on the ARR and Tariff Petition of TPC for FY 2003-04 and FY 2004-05 had mentioned
		<i>"The Commission is of the opinion that in order to avoid sudden tariff shock to consumers, it is essential to cap the FAC chargeable to consumers during the month. The total FAC to be charged to the consumers during any year should not exceed 10% of the variable component of tariff or increase in Consumer Price Index (CPI) in a similar period whichever is lower."</i>
3.		<p>TPC further referred to the Commission letter dated 4th January 2005 regarding approval of FAC for June 2004 and the Commission's Order dated 4th April 2005 on Review of Commission's Order dated 11th June 2004 on the ARR and Tariff Petition of TPC for FY 2003-04 and FY 2004-05. The Commission in its Order dated 4th April 2005, directed that the total FAC to be charged to the consumers during any year should not exceed 10% of the variable component of tariff and in case the FAC chargeable during any month exceeds this limit, then TPC will carry forward the variation in costs and recover it through FAC charge in the future period.</p> <p>TPC also referred to Clause 82.6 of the MERC (Terms and Conditions of Tariff) Regulations 2005, which states, <i>"the monthly FAC charge shall not exceed 10% of the variable component of tariff or such ceiling as may be stipulated by the Commission from time to time"</i>.</p>
		<u>Movement of Fuel Prices</u>
4.		TPC submitted that during the recent times, the fuel prices particularly LSHS has shown an unprecedented rise and the price escalation of LSHS is linked to increase in the international oil prices. TPC also submitted the trends in the cost of LSHS and other fuel prices and the variations in the prices over the price prevailing in March 2004 (price considered in Tariff Order for FY 2004-05). The summary of variation in prices as submitted by TPC is given in Table below:
		Table 1: Summary of Variation in Fuel Prices

Month	Gas Price	Inc over Mar 04	LSHS Price	Inc over Mar 04	Coal Price	Inc over Mar 04
	Rs/MT	%	Rs/MT	%	Rs/MT	%
Mar-04	3886		10911		2025	
Mar-05	4017	3.4%	11367	4.2%	2374	17.2%
Apr-05	4292	10.4%	12358	13.3%	2690	32.8%
May-05	4061	4.5%	13721	25.8%	2869	41.7%
Jun-05	4405	13.4%	14091	29.1%	2674	32.0%
Jul-05	4828	24.2%	15851	45.3%	2696	33.1%
Aug-05	5023	29.3%	16989	55.7%	2675	32.1%

5. TPC submitted that the landed price of LSHS at Trombay is strongly related with the price of 180 CST Furnace Oil price and as per the projections of Goldman Sacs, the FOB price of 180 CST Furnace Oil would rise to 320 \$/MT as against existing level of 293 \$/MT. TPC further submitted that LSHS for power generation was exempted from levy of excise duty till 1st July 2005, however, Government of India has levied excise duty of 16.32% on LSHS from 2nd July 2005 onwards resulting in additional rise in price of LSHS by about Rs 2350 per tonne.
- The projected LSHS price considered by TPC for estimating the variation in cost of fuel is given in Table below:

Table 2: Projected LSHS Price

	Existing	Q3 - FY 06	Q 4 - FY 06

LSHS Price (Rs/Tonne)	18851	20953	21462
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As regard to coal price, TPC submitted that the large-scale variations in the price of coal are not expected in the near future since TPC has entered into a contract with a fixed price. The price of coal and gas considered for projections by TPC is Rs 2750 per tonne and Rs 4615 per tonne respectively.

Projections of FAC for the period Oct 05 to May 06.

6. TPC has submitted the details of estimated monthly sales, TPC's unit wise monthly generation based on merit order dispatch and the change in cost of fuel and power purchase for the period August 2005 to March 2006. The month-wise projections of variation in cost of fuel and power purchase (with reference to Tariff order) for the period August 2005 to March 2006 as submitted by TPC are shown in Table below:

Table 3 : Estimated Change in Cost of Generation and Power Purchase(Rs./ Crore)

Month	Aug-05	Sep-05	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Total
VC of Gen & PP as per TO (Rs/kWh)	1.44	1.55	1.60	1.59	1.47	1.29	1.36	1.57	1.49
Estimated VC of Gen & PP (Rs/kWh)	1.58	2.42	2.55	2.54	2.45	2.88	2.44	2.49	2.20
Change in Var. Cost (Rs/kWh)	0.14	0.86	0.95	0.95	0.98	1.58	1.08	0.92	0.71
Gen + PP (MU)	938	926	1010	912	876	805	756	919	7139
Month to Month FAC (Rs Crore)	13.22	79.95	96.11	86.64	85.52	127.5	81.66	84.88	655.5

TPC submitted that the variation in cost of fuel and power purchase as compared to Tariff Order is considerably high and is showing an increasing trend.

FAC to be recovered

7. TPC submitted that the Commission in its Order dated 4th April 2005, had retained the cap on FAC that can be charged to consumers at 10% of variable charge, which works out to 21 paise/kWh. Considering this FAC cap the recovery from FAC for the period October 05 to May 06 (to recover the variation in fuel and power purchase cost corresponding to period Aug 05 to Mar 06) leads to **unrecovered portion of FAC to Rs 309 Crore at the end of May 06**, which is about 20% of the estimated fuel bill for the period August 2005 to March 2006. TPC further submitted that such under recovery leads to the consumers bearing the Working Capital interest and eventually facing a tariff shock. TPC has also submitted the FAC rate that needs to be levied for complete recovery of FAC, which is summarised below.

Table 4 : Estimated FAC Rate (paise/kWh) for full recovery

Month	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Apr-06	May-06
FAC rate for full recovery	13.4	92.1	101.6	101.4	104.2	167.1	114.5	98.5

TPC submitted that although the rate of FAC that is required to be levied is high, the same is manageable and the consumers have been levied FAC rates of this magnitude in the past.

TPC further submitted that the FOCA rate of Maharashtra State Electricity Transmission Company Limited (MSETCL) is as high as Rs 0.48/kWh and MSETCL will be billing further increased FAC rate in the near future to TPC which will change the input cost of power purchase to a large extent.

Measures by TPC to mitigate the rise in FAC

8. TPC further submitted that they are taking following measures to mitigate the rise in FAC:

	<ul style="list-style-type: none"> • TPC has taken up the matter of rise in LSHS price due to imposition of excise duty with Ministry of Power, Government of India and requested the Commission to advise the State Government under section 86(2)(i) and (ii) of EA, 2003 to take up this issue with the appropriate authorities in the Central Govt. • Enhancement in hydro generation due to better monsoon this year.
9.	The Commission heard the parties on 4th October 2005. During the hearing, Shri T N Ramakrishnan, the representative of TPC reiterated the submissions made in the Petition and mentioned that TPC has submitted the Petition under Clause 82.6 of MERC (Terms and Conditions of Tariff Regulations), 2005. The Petition has been submitted on account of substantial increase in fuel prices due to imposition of excise duty on LSHS with effect from 1st July 2005 and substantial increase in petroleum product prices.
10.	Shri Ramakrishnan submitted that, in the present structure, the FAC cap operates uniformly for all the consumers (i.e. Distribution Licensees as well as for all retail consumers). He requested the Commission to explore the option of allowing differential cap for distribution licensees and for different categories of retail consumers. He submitted that a higher cap may be specified for Distribution Licensees, industrial consumers and railways.
11.	The Commission observed that allowing differential FAC cap would amount to change in tariff structure and hence it can only be done during the ARR and Tariff process. The Commission observed that the ARR and Tariff Petition of TPC for FY 2005-06 is being processed and variation in fuel prices during FY 2005-06 will be duly accounted while processing the ARR and Tariff Petition.
12.	Dr Patil, representing Thane Belapur Industries Association (consumer representative) submitted that the removal of cap should not be allowed and at the same time the recovery of substantial increase in fuel charges needs to be allowed periodically and hence some adhoc arrangement for increasing the cap for current year may be considered.
13.	Shri Ramakrishnan of TPC submitted that for current year FY 2005-06, the FAC cap might be increased from existing 10% to 35%.
14.	The Commission directed TPC to submit the simulations with respect to recovery of increase in fuel prices through FAC. The simulations should include various scenarios with respect to estimated monthly impact of increase in fuel prices to TPC and impact on consumers under two-three scenarios such as if FAC cap is not revised and the increase in fuel prices is allowed as pass through in Tariff Order assuming that Tariff Order will be issued in three months or later. TPC agreed to submit the simulations by 10th October 2005.
15.	TPC vide its letter dated 11th October 2005 submitted the sensitivity analysis of unrecovered FAC to various caps. TPC submitted that the estimated data for September 2005 is available, which would impact FAC recovery from November 2005 onwards and has

been incorporated in the simulations. The summary of sensitivity analysis is given in Table below:

Table 5 : Summary of Sensitivity Analysis

S.No	FAC Rate Cap (%)	Unrecovered FAC at the end of May 2006 (Rs Crore)
1	10%	267
2	20%	201
3	30%	150
4	45%	73

TPC submitted that the FAC cap of 45% provides a reasonable amount of relief to TPC.

16. TPC has filed an application under Regulation 82.6 of MERC (Terms and Conditions of Tariff) Regulations, 2005. Regulation 82.6 of MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulate, "**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**"

17. Based on the submissions made by TPC, it is observed that TPC in its original submission dated 12th September 2005 has estimated variation in cost of generation and power purchase for the month of September 2005 as Rs 79.95 Crore and considered this variation to be recovered through FAC in November 2005. In the revised submissions dated 11th October 2005, the estimated variation in cost of generation and power purchase for the month of September 2005 is considered as Rs 21.5 Crore. TPC clarified that this reduction in estimated variation in cost of generation and power purchase for the month of September 2005 is due to increase in hydro generation with respect to that considered in the original estimate. TPC further submitted that reduction in estimated variation in cost of generation and power purchase for the month of September 2005 will not affect the increase in cost of generation estimated for the months October to March 2005.

18. The Commission has noted that the TPC has considered the impact of levy of excise duty while projecting the LSHS price. Further, TPC has taken up the matter of waiver of excise duty on LSHS prices with MoP, GoI. In case, excise duty on LSHS price is waived, it will reduce the LSHS price by around 14% which will reduce the variation in cost of generation and power purchase and in turn the amount to be recovered from FAC.

19.	Based on the submissions made by TPC, it is observed that till the month of September 2005, the extent of under-recovery through FAC with 10% FAC cap is only to the extent of Rs 38 crore. The estimated under-recovery of Rs 267 Crore from FAC for FY 2005-06 is based on estimated fuel costs and TPC has considered the increase of 11% and 13% with respect to existing LSHS prices for projecting the LSHS prices for Quarter 3 and Quarter 4 of FY 2005-06 respectively.			
20.	The Commission is processing the ARR and Tariff Petition of TPC for FY 2005-06 and the variation in fuel prices during FY 2005-06 will be duly accounted while processing the ARR and Tariff Petition. Further, in the Order on ARR and Tariff Petition for FY 2005-06, the base fuel cost will be revised to reflect the prevailing fuel prices and the FAC will then be computed on the basis of revised fuel cost.			
21.	With 10% FAC cap, the total unrecovered amount of the variation in generation and power purchase is estimated by TPC as Rs 267 Crore, which works out to around 9% of estimated ARR of TPC for FY 2005-06.			
22.	Further, the Commission has recently permitted TPC to procure 175 MW power on RTC basis. During hearing TPC submitted that since this power would be procured on RTC basis, high cost oil based generation would be reduced during night time and merit order would be followed. This may reduce the projected increase in the total generation and power purchase cost for the period October 2005 to March 2006.			
23.	Considering the quantum of estimated unrecovered amount for the variation in generation and power purchase cost and considering that the ARR and Tariff Petition of TPC for FY 2005-06 is being taken up by the Commission during next few months, in which the unrecovered FAC alongwith the carrying cost for the same will be duly accounted, the Commission does not find any merit in revising the FAC cap. Further, as the FAC formula provides for the recovery of unrecovered FAC amount in the future period, in case the FAC charge to recover variation in costs during the future period is lower than the FAC Cap, hence, the sanctity of the cap should be maintained. The Commission, therefore, does not approve any modification in FAC cap and directs TPC to levy FAC charge to the consumers considering the existing cap as approved by the Commission. The Commission will consider the unrecovered FAC amount alongwith the carrying cost for the same during FY 2005-06 while processing the ARR and Tariff Petition for FY 2005-06.			
	With this Order, the Commission disposes the Application of Tata Power Company Limited.			
<table style="width: 100%; border: none;"> <tr> <td style="text-align: center; width: 33%;">Sd/- (S. B. Kulkarni)</td> <td style="text-align: center; width: 33%;">Sd/- (A. Velayutham)</td> <td style="text-align: center; width: 33%;">Sd/- (Dr Pramod Deo)</td> </tr> </table>		Sd/- (S. B. Kulkarni)	Sd/- (A. Velayutham)	Sd/- (Dr Pramod Deo)
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Member

Member

Chairman, MERC

Sd/-
(M.K. Kundu)
Director, MERC