

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 90 of 2020

Petition of MSEDCL seeking provisional recovery of its claims towards pending settlement of FBSM bills for FY 2018-19 and FY 2019-20 and differential variable charges for the period from FY 2011-12 to FY 2017-18 on account of revised WASMP rate as per the Commission's Order dated 26 September, 2019 in Case No. 297 of 2018

And

MA 37 of 2020 in Case No. 90 of 2020

Miscellaneous Application of MSEDCL seeking urgent listing of the matter and seeking directions to MSLDC to issue provisional bills for recovery of pending claims

Coram

**I.M. Bohari, Member
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

V/s.

Maharashtra State Load Dispatch Centre
Tata Power Co. Ltd.-Distribution Business
Adani Electricity Mumbai Ltd.-Distribution Business
BEST Undertaking
Mindspace Business Parks Private Limited
Gigaplex Estate Private Limited
Maharashtra Airport Development Company Ltd.

Indian Railways
Nidar Utilities Panvel LLP

..... Respondents

Appearance

For the Petitioner : Shri Ashish Singh (Adv.)

For Maharashtra State Load Dispatch Centre : Shri S. V. Jaltare (Rep.)
For Tata Power Co.-Distribution : Ms. Deepa Chavan (Adv.)
For Adani Electricity Mumbai Ltd.- Distribution : Shri Hemant Singh (Adv.)
For BEST Undertaking : Shri V.M. Kamath (Rep.)
For Mindspace Business Parks Private Limited
And Gigaplex Estate Pvt. Ltd. : Shri Nikhil Chauganjkar (Rep.)

ORDER

Date: 20 July, 2020

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 13 May, 2020 seeking immediate recovery of its claims along with carrying cost towards variable charges and fixed charges under Final Balancing and Settlement Mechanism (FBSM) on account of over drawal by Mumbai utilities during FY 2018-19 and 2019-20 and differential amount towards variable charges on account of revision in Weighted Average System Marginal Price (WASMP) rate during the period FY 2011-12 to FY 2017-18 and fixed charges as per the Order dated 26 September, 2019 passed by the Commission in Case No. 297 of 2018.
2. **The main prayers of MSEDCL are as under-**
 - i. *To admit the Petition as per the provisions of Electricity Act 2003 and Regulation mentioned in the petition.*
 - ii. *To allow immediate recovery of the estimated amount of Rs.1445.35 Cr towards provisional settlement of FBSM bills from Mumbai utilities in view of the delayed settlement of FBSM bills by MSLDC.*
 - iii. *To issue immediate directives to MSLDC accordingly to raise bill of Rs. 1445.35 Cr to Mumbai Utilities corresponding to the estimated amount.*
 - iv. *To allow carrying cost on the pending claims at applicable interest rate for the delay period as mentioned in para 23 above.*
3. **MSEDCL's Petition states as follows:**

- 3.1 MSEDCL had filed its Petition in Case No. 297 of 2018 seeking recovery of annual fixed cost component for the energy supplied to the State pool, recovery of differential amount to be recovered towards variable charges, as per the Availability Based Tariff (**ABT Order**) Order dated 17 May, 2007 in Case No 42 of 2006.
- 3.2 The Commission passed the Order on 26 September, 2019 directing Maharashtra State Load Dispatch Centre (**MSLDC**) as under:
- i. To consider the rate of power purchased from the Power Exchange and Captive Power Plants (**CPP**) for WASMP calculation for next FBSM bills with immediate effect from the date of the Order.
 - ii. To recompute the WASMP for the period from FY 2011-12 to FY 2017-18 after including the rate of power purchased from the Power Exchange and CPPs and to recalculate the imbalance pool settlement for these years and work out the associated liabilities of State Pool Participants (**SPPs**) for raising the supplementary bills for these years by 31 January, 2020.
 - iii. To compute Fixed Cost Reconciliation (**FCR**) Pool Volume and FCR Pool Value for the period from FY 2011-12 to FY 2017-18 based on principles given in the Order for issuance of the final bills for settlement of FCR among SPPs within a period of one year from the date of the Order.
- 3.3 MSEDCL has forwarded the details of rates of power purchased from power exchange and CPPs to MSLDC for re-computation of WASMP for the period from FY 2011-12 to FY 2017-18.

Non- compliance of MSLDC

- 3.4 None of the aforesaid directions has been complied with by MSLDC. The weekly FBSM bills from February 2018 onwards are kept pending by MSLDC. Since issuance of the Commission's Order dated 26 September, 2019, only 2 provisional FBSM weekly bills for Rs. 19.276 Cr. for March 2018 have been issued by MSLDC as per old methodology.
- 3.5 MSLDC's non-compliance is resulting in huge financial implications on MSEDCL's consumers and MSEDCL is deprived of its legitimate claims.
- 3.6 For procuring power from generators, MSEDCL has to open Letter of Credit (**LC**) before scheduling power. Also, the payment has to be done before due date failing which penal interest up to 18% pa is applicable. On the issue of delay in payments to the Wind Generators, the Commission has been directing MSEDCL to release the payment of Delay Payment Charges (**DPC**) and additionally, penal interest of 1.5% pm on DPC is required to be paid after due date.
- 3.7 For FBSM billing, same approach needs to be adopted. It is necessary to consider due date of 15 days from the end of the settlement period i.e. week/year as invoice date,

irrespective of whether FBSM weekly bills and annual FCR bills are raised or not, for applicability of DPC/interest payment. MSEDCL has already filed Appeal DFR NO. 2402 of 2019 before ATE challenging the Commission's Order dated 26 September, 2019.

- 3.8 The approach of MSLDC and Mumbai utilities regarding settlement and finalization of MSEDCL's claim under FBSM and compliance of directives of the Commission is casual and it has not put necessary efforts for compliance of timeline as directed by the Commission.

Pending recovery of power supplied to state pool during FY 2018-19 and FY 2019-20

- 3.9 From the weekly settlement bills issued by MSLDC for FY 2017-18 based on earlier methodology, it is observed that average pool imbalance rate is Rs. 3.24 per unit for FY 2017-18. Further, a sample calculation for block 70 of 13 November, 2017 indicates increase of @ Rs.0.47 per unit in WASMP rate upon consideration of exchange power purchase rate. However, considering the fact that MSEDCL procured power from exchange at higher rates in approximately 33 % of time blocks during the year, average rise in WASMP is considered at 1/3rd rate i.e. Rs. 0.16 per unit. Therefore, rate of Rs. 3.40 (Rs. 3.24+ Rs.0.16) per unit has been considered for estimating the impact for FY 2018-19.
- 3.10 From the Daily System Report (DSR) and Western Region Power Committee (WRPC) data of FY 2018-19, it is observed that Mumbai utilities have overdrawn about 1080 MUs from the state pool contributed by MSEDCL. As the settlement of these units are pending, MSEDCL is deprived of its legitimate claim of Rs.367.36 Cr. (excluding carrying cost) towards power supplied to pool during FY 2018-19 for which MSEDCL has already paid cost to its Contracted Generators.
- 3.11 Similarly, Mumbai utilities during FY 2019-20 have overdrawn about 1181 MUs from the state pool contributed by MSEDCL. As the settlement of these units is also pending, MSEDCL is deprived of its legitimate claim of Rs. 401.79 Cr towards power supplied to pool during FY 2019-20.

Impact of revision of WASMP during period FY 2011-12 to FY 2017-18

- 3.12 Considering the average increase in WASMP rate of @ Rs.0.16 per unit due to consideration of exchange power and CPP prices, estimated amount to be recovered from Mumbai utilities for the period from FY 2011-12 to FY 2017-18 is worked out to be Rs. 119.50 Cr.
- 3.13 MSEDCL has already paid the cost of the imbalance pool units used by Mumbai Utilities to its generators. However, the recovery of the same is pending from Mumbai Utilities due to inordinate delay of MSLDC in issuing FBSM settlement bills.

Fixed cost reconciliation for FY 2018-19 and FY 2019-20

- 3.14 The Commission in its Order in Case No. 297 of 2018 has allowed 1 year period upto September 2020 for issuing Fixed cost bills after carrying out fixed cost reconciliation for the past period from FY 2011-12 to FY 2017-18. MSLDC has not yet issued any bill of FCR as directed by the Commission.
- 3.15 Further, Mumbai utilities have continued overdrawal of MSEDCL's power during FY 2018-19 and FY 2019-20 for 1080 MUs and 1182 MUs respectively. Hence fixed cost reconciliation for FY 2018-19 and FY 2019-20 also needs to be done on immediate basis. The Commission has approved Fixed cost of Rs 1.19 per unit for FY 2018-19 and Rs 1.41 per unit for FY 2019-20 in recent MSEDCL's MYT Order. Therefore, the recoverable amount from Mumbai utilities towards fixed cost reconciliation for FY 2018-19 and FY 2019-20 has been worked out as Rs. 130.42 Cr. and Rs. 166.66 Cr. with total Rs. 297.09 Cr. (excluding carrying cost) recoverable from Mumbai Utilities.

Carrying Cost

- 3.16 Further, the carrying cost due to delay in settlement of MSEDCL claims also need to be paid by Mumbai Utilities at the applicable rate of interest for the period from actual utilization of imbalance pool units till the month in which MSLDC raises the bill for the imbalance units. Accordingly, MSEDCL has calculated the carrying cost for above mentioned pending claims as per the provisions of the ABT Order (SBI PLR plus 4 %).

Summary of pending FBSM claims

- 3.17 The summary of the pending claims of MSEDCL due to unrecovered variable cost of imbalance pool units for the period upto March 2020 alongwith carrying cost as elaborated in paragraphs above is shown as below:

Summary of pending claims of MSEDCL			
a) Variable Cost			
Period	Estimated amount Rs. Cr.	Carrying cost Rs. Cr.	Total Amount recoverable Rs. Cr.
FY 2018-19	367.36	103.18	470.54
FY 2019-20	401.79	42.02	443.81
FY 2011-12 to 2017-18	119.50	91.54	211.04
Total Pending Claims of Variable Cost	888.66	236.74	1125.40
b) FCR			
FY 2018-19	130.42	22.93	153.32
FY 2019-20	166.66	0	166.63
Total FCR claim for 2 years	297.09	22.93	319.95

Total claims receivable (a+b)	1185.75	259.67	1445.35
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- 3.18 MSEDCL is severely burdened due to non-recovery of the above-mentioned claim of @ Rs. 1445.35 Cr which is legitimate claim of MSEDCL. MSLDC is not in position to issue the regular bills in respect of the above claims within time. Hence, it is necessary to provide immediate relief to MSEDCL by raising provisional bills in respect of above claims.
- 3.19 In view of delay in issuing FBSM bills by MSLDC, the Commission is requested to issue directives to MSLDC for immediately raising the provisional FBSM bills on Mumbai Utilities for estimated dues of Rs.1445.35 Cr. towards supplying to imbalance pool as MSEDCL has already incurred cost. MSLDC shall disburse this amount recovered from Mumbai Utilities to MSEDCL on urgent basis so that financial burden on MSEDCL is reduced.
4. **On 22 May, 2020, MSEDCL filed its Miscellaneous Application with following prayers:**
- i. *To allow immediate and urgent listing of M.A through “Video Conference Facility” in view of COVID-19 as well as the Practice Direction dated 11.05.2020 issued by the Hon’ble Commission;*
 - ii. *Ad-Interim reliefs, in the form of directions to SLDC to raise provisional bills of amounts as claimed to the tune of Rs. 1445.35 Cr towards variable charges and fixed charges for FY 2018-2019 and FY 2019-2020 on account of over drawal by Mumbai Utilities and re-computation of the WASMP for the period from FY 2011-12 to FY 2017-18 alongwith Carrying Cost;*
 - iii. *Directions to the Mumbai Utilities to make immediate payments of the provisional bills raised by SLDC;*
 - iv. *Direct MSLDC to immediately comply with the Order dated 26.09.2019 passed in Case No. 297 of 2018 w.r.t raising of “Supplementary Bills”, alongwith Carrying Cost;”*
5. The Tata Power Company Ltd.-Distribution Business (**TPC-D**), Adani Electricity Mumbai Ltd.-Distribution Business (**AEML-D**) and BEST Undertaking (**BEST**) have also filed their responses to the Petition which have been taken on record and discussed issue-wise in subsequent Paragraphs. No reply has been filed by rest of the Respondents including MSLDC.
6. **At the hearing held on 29 May, 2020:**
- 6.1 Advocate for MSEDCL reiterated its submission as made out in the Petition and stated that:

- i. No adversarial prayers have been sought against the Respondents and hence the Respondents should not object to the Petition.
 - ii. Pendency of MSLDC's Petition in Case No. 59 of 2020 seeking extension for compliance of the Commission's Order in Case No. 297 of 2018 does not come in the way of implementation of Case No. 297 of 2018.
 - iii. Delay from MSLDC for settling the imbalance pool is an admitted fact. Hence, MSEDCL is seeking relief as per the FBSM Code and the Commission's Order in Case No. 297 of 2018 only. The Commission may allow any amount, as it deems fit, as an immediate recovery. The provisional amount can be adjusted with the final FBSM bills that would be raised by MSLDC in future.
 - iv. Mere filing of Appeals before the Hon'ble ATE does not mean the Commission has been rendered functus officio.
 - v. The calculations made by MSEDCL may be wrong to some extent, but its cannot be denied that the Mumbai Utilities have used the power from the Pool. Further, rather than challenging MSEDCL's calculations, the Mumbai Utilities could have made their own calculations and paid MSEDCL as per their calculations on provisional basis.
 - vi. At the behest of MSLDC, Mumbai Utilities are not paying for the power used by them and MSEDCL cannot be made to suffer on account of delay from MSLDC.
 - vii. Although there is no express provision under EA for execution of the Commission's Orders by the Commission itself, there are other provisions in EA such as Section 142 and Section 146 under which non-compliance proceeding can be initiated. MSEDCL, is not seeking to invoke these penal provisions against MSLDC, but mild dispensation is being sought.
- 6.2 Representative of MSLDC stated that MSEDCL, in its calculations has considered the DSR data which is SCADA based real time data and not metered data based on which the imbalance pool settlement takes place. He further stated that it would submit its reply shortly.
- 6.3 Representative of BEST reiterated its submission as made out in its response and stated that if, as submitted by MSLDC during the proceeding in Case No. 59 of 2020, MSLDC is expediting the regular FBSM billing, the issue would get resolved soon.
- 6.4 Advocates for TPC-D reiterated its submissions as made out in the replies and stated that:
- i. MSEDCL is seeking implementation of the Order which is pending before the Hon'ble ATE in various Appeals filed by the SPPs.
 - ii. The issue of corpus amount allowed in MYT Orders has been raised by MSEDCL only in its rejoinder and same is not part of its pleading in main Petition. The

Petition also does not mention the share of recovery from the different Distribution Licensees. Hence, the Petition is vague in nature to consider for any relief.

- iii. MSEDCL has referred to MYT Orders and sought the relief as if there are no power procurement contracts tied up by the Mumbai Utilities. None of the Mumbai Utilities has received any instruction or notice from MSLDC regarding insufficient contracts.
 - iv. FBSM mechanism and MYT Order cannot be linked together. Amount approved under MYT Orders cannot be the basis for seeking any recovery under FBSM mechanism.
 - v. MSEDCL cannot approach the Commission seeking execution of the Order passed by the Commission. As held by the Hon'ble Supreme Court in the matter of Kanwar Singh Saini Vs. Delhi High Court , when a statute has given a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of the Act.
 - vi. MSEDCL cannot seek to modify the Order in Case No. 297 of 2018 through present Petition. As held by the Hon'ble Supreme Court, in the matter of Parkland Properties Ltd. v/s. New Rajput Cooperative Group Housing Society, once an Order is passed, same cannot be varied.
 - vii. It is not clear as to under which provisions of EA, MSEDCL is seeking provisional recovery.
- 6.5 Advocate for AEML-D reiterated its submission as made out in its replies and stated that:
- i. Only MSLDC could clarify as to how much power has been drawn by Mumbai utilities.
 - ii. MYT Orders for Mumbai Utilities provide that the amount in the corpus created under these Orders could be released only after FBSM bills are raised by MSLDC. MSEDCL's prayer in present Petition is contrary to the MYT Order.
- 6.6 Advocate of MSEDCL sought permission of the Commission for filing rejoinder to the reply filed by TPC-D and BEST. The Commission allowed MSEDCL to file the rejoinder within 3 days and the Respondents were directed to file their respective sur rejoinders, if any, within four days thereafter.
7. In accordance with the Commission's directions, MSEDCL, TPC-D and AEML-D filed their respective submissions. No submission/reply was submitted by MSLDC and rest of the Parties. The Commission notes that the Parties in present Petition i.e. MSEDCL, BEST, TPC-D and AEML-D, have made multiple submissions in the form of Petition, Miscellaneous Application, Reply to the Main Petition, Reply to the Miscellaneous Application, rejoinders, Written Submissions etc. Also, multiple issues have been raised by the Parties in order to support/object the Petition. Some issues are common in nature

and some issues are raised by a particular Respondent. Hence, for the sake of brevity, the Commission has undertaken an issue-wise analysis.

8. The Commission has taken on record the following submissions of the Parties

Sr. No.	Party	Details of submissions
1	TPC-D	a. Reply dated 25 May, 2020 to Miscellaneous Application b. Reply 28 May, 2020 to the main Petition c. Written submissions dated 30 June, 2020
2	AEML-D	a. Reply dated 25 May, 2020 to Miscellaneous Application, b. Reply dated 25 May, 2020 to the main Petition c. Written submissions dated 5 June, 2020
3	BEST	a. Reply dated 28 May, 2020 to the Petition
4	MSEDCL	a. Rejoinder dated 4 June, 2020 to BEST's reply, b. Rejoinder dated 4 June, 2020 to TPC-D's reply, c. Rejoinder dated 28 May, 2020 to AEML-D's reply

9. The Commission now deals with the issues raised in the aforesaid submissions of the Parties. The Commission notes that some of the issues raised by the Parties are key issues which need to be decided first so as to arrive at decision regarding granting/ rejection of the prayer as sought by MSEDCL. The key issues raised by the Parties are as follows:

- i. Incorrect computation of claims towards imbalance pool settlement by MSEDCL
- ii. Incorrect claim computation towards FCR
- iii. Claim cannot be allowed as Appeals are pending before the Hon'ble ATE
- iv. Overdrawal by Mumbai Utilities is on account of MOD Operations
- v. Carrying cost
- vi. MYT Orders require payment only after FBSM billing
- vii. Power Purchase cost recovery has already been covered in MSEDCL's MYT Order

10. Further, there are other issue raised by the Parties which need to be addressed for completeness of the analysis. The Other issues raised by the Parties are as under:

- viii. MSLDC's delay cannot be reason for MSEDCL's Petition
- ix. No need for provisional recovery if MSLDC commences FBSM billing
- x. The Commission has become functus officio in view of Appeal before ATE

- xi. Contradictory Conduct of MSEDCL
- xii. MSEDCL's claim barred by Limitation
- xiii. MSEDCL cannot change its relief through the rejoinder submissions
- xiv. Corpus should be part of settlement process
- xv. Directions to MSLDC for Decentralized MOD
- xvi. MSEDCL's Petition in Case No. 59 of 2020 may become redundant
- xvii. Provisional settlement may result in over-recovery
- xviii. Interim relief should not be granted

11. Accordingly, the Commission is dealing with the key issues as under:

12. **Issue 1:- Incorrect computation of claims towards imbalance pool settlement by MSEDCL**

AEML-D's submissions

- 12.1 The computation made by MSEDCL in present Petition is incorrect and MSEDCL's claims of Rs. 1445.35 Cr. is overestimated. Even if it is assumed, that the figure of overdrawn energy of 1080 MUs for FY 2018-19 and 1181 MUs for FY 2019-20 as claimed by MSEDCL is correct, this energy is supplied to the State Pool and it could be drawn by the Mumbai Distribution Licensees or flown to the Regional Pool. If most of the energy supplied by MSEDCL has flown into the regional pool, then the realization from the regional pool will be linked to the frequency-based rates and not based on the FBSM or WASMP rates.
- 12.2 As per the FBSM mechanism, the net rate for imbalance energy is the summation of the rate of energy (WASMP), Net UI-I & Net UI-II. Net UI-I and Net UI-II are the charges for the deviations and it, generally, increases the rate for the SPP who is drawing power or reduces the net rate for SPP who is supplying power to the Pool. This is because while the SPP who is surplus gets WASMP in the pool rate, however, based on frequency and State position in regional pool it has to pay amount through Net-UI & II towards WRPC charges. Therefore, the rate applicable for every 15 min. time block is different, as the WASMP will vary based on the state level MOD and backing down. Also, Net UI-I and Net UI-II will vary based on the deviation rate at regional level and whether Maharashtra is under-drawing/over-drawing in Regional pool etc. However, MSEDCL has considered the base rate of Rs 3.24 /kWh, which does not consider the impact of Net UI-I and Net UI-II, and hence is far from realistic. The rate towards the amounts received from Regional pool for excess supply by MSEDCL/State is very low.

- 12.3 Further, Net UI-I and Net UI-II are already settled by MSLDC with WRPC through the corpus collected from the Licensees based on the drawl from pool for past period. Therefore, clearly a portion of the settlement has already been made and consequently the rate of settlement for State Pool will have to be adjusted accordingly.
- 12.4 Further, while submitting the representative time block, MSEDCL has chosen the rate where the WASMP is the highest and where Net UI charges are NIL. Therefore, the rate proposed by MSEDCL is not representative, and it is selected so as to indicate highest impact. The realization from the Pool varies from time to time.
- 12.5 In Case No. 297 of 2018, the Commission has directed MSLDC to revise the bills for the period starting from FY 2011-12 to FY 2017-18 based on the revised principles of WASMP. However, during most of the said period, MSEDCL was either in shortfall or largely surplus, and hence, question of purchase from power exchange and supply to Mumbai Licensees did not arise at all. Further, the energy supplied, has largely gone to the regional pool. Hence, realization is likely to be far lower for MSEDCL.
- 12.6 The amount projected by MSEDCL as losses suffered by it, cannot be said to be a final number, as accounting of total energy has not been completed till date by the MSLDC.
- 12.7 MSEDCL has sought for settlement of accounts, based on energy balance, at monthly basis, wherein the energy supplied is assumed to be drawn by the Distribution Licensees in Mumbai. The Petition is not based on 15-minute time block data, which is the basic requirement under FBSM. The rate of settlement cannot be worked out without having time-block-wise details of how much energy has flown to the Regional Pool and what is the revenue realized by MSEDCL from the same. Therefore, settlement of accounts cannot be effectuated by merely knowing the quantum of energy.
- 12.8 Further, the quantum supplied by MSEDCL needs to be trifurcated among the three Mumbai Distribution Licensees. For individual Licensee, it is not known whether the Licensee has drawn from the State pool or overdrawn from regional pool, until energy accounting under FBSM is carried out by MSLDC and bills are prepared. The total pool drawal submitted by AEML-D in MYT Tariff Petition was based on the total supply from pool which includes supply under MOD, Overdrawal from MSEDCL/any other Intra-State Licensee and overdrawal from regional pool. Hence, settlement requires 15-minute time block wise billing.
- 12.9 In view of the above, it may not be appropriate to undertake settlement based on the flat rate as suggested by MSEDCL, without realizing whether the amount is payable or not. Based on the analysis of regional pool and Utility wise position, MSLDC should suggest near realistic settlement rate for each month/year for undertaking provisional settlement (as suggested by MSEDCL) or issue bills based on actual 15 minute data at the earliest. The onus of preparing the final bills is on MSLDC. Post finalization of accounts,

MSEDCL shall be enabled to realize the said sum from the respective SPPs, subject to any challenge by the said SPP.

TPC-D's submissions

- 12.10 TPC-D has raised the similar objections and stated that while proposing the rates for the settlement, MSEDCL has proposed the base rate of Rs. 3.24/kWh, based on the FY 2017-18 bills issued by MSLDC. This rate is far from realistic. MSEDCL has chosen a particular time block on a particular day where WASMP was highest and net UI charges nil. A particular time block in a year (out of 35,040 blocks in a year) cannot in any manner be considered as a representative for computation of WASMP charges. MSEDCL's claim to compute the revised WASMP rate on the basis of one particular time block in a particular day (in a ten year time period) and extrapolating the same for an entire settlement period of 10 years comprising of 3,50,400 time blocks approximately, exhibits the irrational approach of MSEDCL to extract unjust gains.
- 12.11 The claim regarding the supply of power by MSEDCL to distribution companies in Mumbai, needs to be determined first, as such power could have flown to the regional pool and not even consumed by the consumers of Maharashtra. In such a scenario, affixing such a liability of advance payment on TPC-D, when the exact liability has not been determined, amounts to unjust enrichment for MSEDCL and against the interest of the consumers in Maharashtra.

BEST's submission

- 12.12 BEST also objected to the methodology adopted by MSEDCL for calculation of its claim and stated that 1080 MUs and 1181 MUs in FY 2018-19 and FY 2019-20 respectively assumed by MSEDCL is based on DSR data. The DSR data which is operational SCADA data of energy exchange at Mumbai transmission interface and may not actually match with the ABT meter data. The net energy decremented by discoms is to the State pool and not exclusively to the MSEDCL.

MSEDCL's rejoinder

- 12.13 MSEDCL has calculated the figures of energy overdrawn by Mumbai utilities to the best of its knowledge and with due consideration of regional pool power. For computation of same, MSEDCL has applied following methodology

State UI	Mumbai DISCOM UI	Computation of Power Taken from MSEDCL
Underdrawal	Underdrawal	Not considered
Underdrawal	Overdrawal	Mumbai OD from MSEDCL
Overdrawal	Underdrawal	Not Considered

Overdrawal	Overdrawal	If State OD less than Mumbai OD, then (Mumbai OD-State OD) from MSEDCL
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- 12.14 MSLDC has the actual 15-minute time block-wise drawal data of the three Mumbai DISCOMs. Similarly, MSLDC has 15-minute time block-wise meter data of all generation stations contracted by these 3 Mumbai DISCOMs. Further MSLDC also has 15-minute time block-wise schedule Energy data of these three DISCOMs under short Term and Power Exchange. Hence based on these data, MSLDC can easily compute exact quantum of Energy drawn by these three DISCOMs. The Commission may confirm the figures of power overdrawn by Mumbai utilities during FY 2018-19 and FY 2019-20 from state pool from MSLDC so as to remove the doubts of AEML-D regarding the quantum involved.
- 12.15 Although State net UI Energy for FY 2018-19 is only 53.7 MUs (underdrawal), whereas MSEDCL net UI energy is -1358.9 MUs, out of which 1080.8 MUs has been taken by Mumbai DISCOM from MSEDCL. Similarly, for FY 2019-20, State net UI Energy is 264.1 MUs (underdrawal), whereas MSEDCL net UI energy is -1431.6 MUs, out of which 1181.7 MUs has been taken by Mumbai DISCOMs from MSEDCL. Hence, AEML-D's claim that "*whatever energy was supplied has largely gone to the regional pool*" is not correct. Such energy has to be settled as per FBSM principle.
- 12.16 Further, by giving the summary of energy supplied by Maharashtra State to Regional Pool and Net Amount realized during FY 2018-19 and FY 2019-20, AEML-D has tried to relate the regional pool settlement net rate to wrongly indicate that net FBSM rate will be lower. But AEML-D in its own submission has stated that net regional settlement rate for FY 2017-18 is Rs (-)13.1 per unit while FBSM net settlement rate for AEML-D is varying from Rs. 2.37 to Rs. 3.17 per unit for FY 2017-18. Hence, it is clear that relating the FBSM rate with net rate of Regional pool is irrelevant. Also, in Maharashtra, pool settlement is done as per WASMP methodology which is unique in India and different than at regional level. Hence, it will be erroneous and inappropriate to link realization rates from surplus energy absorbed in regional pool with FBSM rates.
- 12.17 AEML-D has stated that as per the FBSM mechanism, the net rate for imbalance energy is the summation of the rate of energy (WASMP), Net UI-I & Net UI-II. MSEDCL states that net rate for imbalance units is not the summation of WASMP, Net UI-I and UI-II rate. Net pool charges will definitely depend upon the settlement amount in UI-I and UI-II. However, MSEDCL has calculated the tentative change in WASMP rate as per directives of the Commission in Case No. 297 of 2018. The Commission has given the directives to MSLDC for revision of the WASMP which will change imbalance pool charges and accordingly net pool charges. Increase in WASMP rate of MSEDCL will definitely increase the net settlement rate for Mumbai utilities. AEML-D is trying to mislead the Commission by raising the issue of net rate for imbalance energy.

- 12.18 Further, from weekly settlement bills issued by MSLDC on the basis of earlier methodology, it is observed that during the period FY 2017-18, pool imbalance units are 1569 MUs and total imbalance charges are Rs. 507.57 Cr, resulting into imbalance rate of Rs. 3.24 per unit. This imbalance rate is not the net settlement rate as considered by AEML-D. Further, as per sample calculation for block 70 of 13 November 2017 and considering that exchange rate will be higher for 33% of the time blocks, MSEDCL has considered an average rise in WASMP of Rs 0.16 per unit. Hence, AEML-D's submission that the rate of Rs. 3.40 (3.24+0.16) per unit is not realistic and is not consistent with the trends of actual bills is wrong and not acceptable.
- 12.19 Further, MSLDC has not followed the timeline given by the Commission for re-computation of WASMP and hence nothing is inappropriate for suggesting the provisional settlement considering the differential rate of WASMP as Rs. 0.16 per unit.
- 12.20 Further, MSEDCL has taken into account the regional power overdrawal/underdrawal conditions. However, the Commission may direct MSLDC to calculate overdrawal of Mumbai utilities from state pool which is supplied by MSEDCL for FY 2018-19 and FY 2019-20. The Commission may also direct MSLDC to issue provisional bill towards revision of WASMP for settlement of imbalance energy for the period from FY 2011-12 to FY 2017-18.
- 12.21 AEML-D has mentioned that 'settlement must only be undertaken based on final bills and the same ought to be avoided on provisional basis because of the well-known fact that settlement of bills is going to be delayed further. Such act of AEML-D is not only a delaying tactic, but it is also trying to run away from the responsibility for the immediate payment for the power which has already been consumed by it in past. It is not understood as to how the provisional payment for the power which has been already consumed by it, sold to its consumers and amount recovered from them, will add financial burden on AEML-D and its consumers.
- 12.22 Further, it is not denied by any of the Respondents that they have not over-drawn any power from MSEDCL. Only methodology followed by MSEDCL to arrive at the "Million Units" is being contended. It is submitted that MSEDCL has taken the data from "DSR" which is also available with other Distribution Licensees. It is the MSLDC, which is required to confirm the data as per the directions of the Commission.
- 12.23 Admittedly, MSLDC has not been able to comply with the directives in Case No. 297 of 2018 for FY 2011-12 to FY 2017-18. Hence it is impossible to expect that MSLDC would be able to raise FBSM bills for FY 2018-19 to FY 2019-20 in timely manner. Hence prayer was made by MSEDCL for direction to MSLDC for raising of provisional bills based on available DSR data.

12.24 The conduct of all Respondents has been to utilize the power of MSEDCL at free of cost for all these years and then dispute the figures submitted by MSEDCL by taking the shelter and support from the inability of MSLDC in timely and speedy computation.

Commission’s Analysis and Rulings

12.25 The Commission notes that in accordance with the ABT Order, the settlement of energy has to be undertaken for each 15 minute time-block and the same cannot be undertaken on an annual basis as has been done by MSEDCL. The relevant extract of the ABT Order is as follows:

“ 4.2 Trading Period

(a) The trading period denotes the period for accounting of energy exchange amongst the State Pool Participants for the purpose of commercial settlement.

*(b) As per proposed metering plan submitted by MSETCL, interface metering covering all G<>T and T<>D interface points with intra-State Transmission system shall be accomplished by September 2007. **In view of proposed metering infrastructure and capability to measure energy exchange at T<>D interface points, the trading period for the purpose of market operation shall be of 15-minute duration.***

.....

5.1 Settlement of Imbalance Pool

*(c) The MSLDC shall prepare weekly ‘Statement of Imbalance Pool Settlement’ corresponding to **energy exchange amongst the State Pool Participants for each trading period** over the weekly period of each fiscal year under consideration commencing from 1st April in accordance with the energy account reconciliation rules.....”*

12.26 Further, the WASMP for each time-block would be different based on the load generation balance at that particular time block. Moreover, as submitted by BEST, the DSR data which is operational SCADA data of energy exchange at Mumbai transmission interface, may not match with the ABT meter data which is the basis for pool settlement. Hence, based on 15 minute time block-wise data for drawal by SPPs, generation from their contracted sources, other injection from other sources, only MSLDC would be in a position to compute the liability of the decrementing SPPs and entitlement of the incrementing SPPs.

12.27 However, MSEDCL, in the absence of MSLDC’s computation of revised WASMP as directed by the Commission in Case No. 297 of 2018, has considered the flat revised imbalance rate of Rs. 3.40 per unit for variable charges and it has calculated the variable charges claims based total MUs of overdrawal from MSEDCL in FY 2018-19 and FY

2019-20 based on DSR data. It is also observed that the revised WASMP rate considered by MSEDCL is higher by about 15% as compared to Rs. 2.86 per unit assumed by the Commission in MYT Orders for the Mumbai Distribution Licensees towards their liability of FBSM pool payment for FY 2018-19 and FY 2019-20.

12.28 As regards, the issue of Net UI charges raised by AEML-D and responded by MSEDCL, the Commission notes that as per ABT Order, State imbalance pool settlement and settlement of regional UI charges are two distinct settlements prepared by MSLDC and presented on weekly basis to SPPs. The relevant extract is reproduced below:

“ 5.1 Settlement of Imbalance Pool

(a) The MSLDC shall prepare weekly ‘Statement of Imbalance Pool Settlement’ corresponding to energy exchange amongst the State Pool Participants for each trading period over the weekly period of each fiscal year under consideration commencing from 1st April in accordance with the energy account reconciliation rules.

(b) MSLDC shall present such weekly ‘Statement of Imbalance Pool Settlement’ to State Pool participants for payment within seven calendar days from the end of the week corresponding to the preceding week.

(c) The ‘Statement of Imbalance Pool Settlement’ shall clearly provide for following distinct statements of settlement:

(i) Settlement of Imbalances (energy exchange) amongst State Pool Participants.

(ii) Settlement of Net UI charges amongst the State Pool Participants.

(iii) Aggregate net position of settlement amongst the State Pool Participants.

(d) MSLDC shall raise Bills on the State Pool Participants which shall be due for payment and shall be binding on all State Pool Participants to settle the payment on weekly basis.

12.29 Thus, although net recovery from SPPs to pool includes regional charges (Net U I and Net U II charges) also, the WASMP computation which is the basis of State imbalance pool settlement, is independent of these regional charges.

12.30 **In light of the above, the Commission agrees with the contentions of Respondents that revised WASMP rate, on the basis of one particular time block in a particular day, cannot be extrapolated for the entire settlement period of 10 years comprising of 3,50,400 time blocks and entitlement /liability of the SPPs could only be ascertained in an authentic manner by MSLDC only. Accounting and settlement of imbalance pool energy is the responsibility of MSLDC only. However, at the same**

time, the Commission acknowledges the fact that the calculation made by MSEDCL is just a provisional calculation which has been done on account of MSLDC's inability to finalize the FBSM settlement as directed in Case No. 297 of 2018 and under FBSM Code. Thus, though the exact calculations are necessary to ascertain the correct amounts, there is a possibility that MSEDCL is suffering on account of the delay on part of MSLDC.

13. Issue 2- Incorrect claim computation towards FCR

AEML-D's submissions

- 13.1 As per the principles defined under the FBSM Code, the FCR settlement is applicable only if the power is overdrawn from the pool without any contract. However, if contracted capacity is backed down by the MSLDC, and power is supplied under MOD, then FCR is not applicable. It appears that MSEDCL has proposed the FCR settlement for the entire power supplied to the Pool, including the supply under MOD. Therefore, same is not in line with the principles defined under Intra-State ABT Order and the FBSM Code.
- 13.2 As held by the Commission in Order dated 30 March, 2020 in Case No. 325 of 2019, the Commission never intended to allow realization of any amounts towards FCR in a provisional manner. In this context, it is further submitted that the intent of the Commission has always been to allow realization of the FBSM amounts as per final bills to be raised by MSLDC, after adjusting for the payments which have already been made. This means that there can be no provisional settlement of FCR at all. Hence, MSEDCL's prayer with respect to provisional payment towards FCR ought to be rejected
- 13.3 Further, in the course of hearing held on 29 May, 2020, the Commission observed that MSEDCL is not asking for FCR in present Petition. As such, this issue does not survive now.

TPC-D's submissions

- 13.4 MSLDC is yet to raise FCR bills for which even the original timeline till September 2020 has not yet lapsed, as was stipulated by the Commission in Case No. 297 of 2018, thereby rendering the present Petition and the I.A. premature. Till the time MSLDC does not raise a bill for FCR on TPC-D, the liability to pay does not accrue and there is no question of carrying cost.
- 13.5 Further, for the purpose of computing fixed charge liability, if a distribution licensee's demand is greater than the availability declared by its contracted generators, then such distribution licensee shall be considered as decrementing the FCR pool and shall be liable to pay fixed charges only for this FCR over-drawal (over and above available contracted capacity). For any power which may be drawn by the licensee on account of backdown of its contracted generation capacity as per the MoD stack, the licensee is only liable to

pay Ex-Post Imbalance Pool Price i.e. the variable charges. Hence, MSEDCL's claim is not in line with the aforementioned principles.

- 13.6 MSEDCL by seeking provisional settlement of fixed charges for the period from FY 2018-19 to FY 2019-20, is seeking relief de hors the extant regulatory and statutory framework. Further, MSLDC has to raise bills as per the extant regulatory framework for any directions to be given against the distribution utilities in Mumbai region.

BEST's submission

- 13.7 MSEDCL has considered entire increment into the pool as the FCR volume, irrespective of whether Mumbai Utilities were short of capacity or otherwise. This is against the commercial principles. Every SPP increments/ decrements to the pool across different time blocks over a period of a year. The settlement must be undertaken at 15 minute trading time interval as prescribed in the ABT Order and FBSM Code and not on aggregate basis in a year as claimed by MSEDCL.

MSEDCL's rejoinder

- 13.8 The Commission, in Case No. 297 of 2018 has given 1 year period i.e. upto September 2020 for issuing FCR bills for past period from FY 2011-12 to FY 2017-18. However, even after passage of 8 months after the issuance of Order, MSLDC has not issued a single FCR bill. Hence, MSEDCL is deprived of its fixed part component of energy supplied to the state pool since August 2011. However, MSEDCL has not claimed any amount towards FCR bills for the period FY 2011-12 to FY 2017-18 in this Petition.
- 13.9 Considering the delay for settlement of fixed cost reconciliation for FY 2011-12 to FY 2017-18 and considering the fact that Mumbai utilities have continued utilizing MSEDCL's power during FY 2018-19 and FY 2019-20 for 1080 MUs and 1182 MUs respectively, and fixed cost reconciliation for FY 2018-19 and FY 2019-20 needs to be done on immediate basis. Accordingly, recoverable amount from Mumbai utilities by considering the approved per unit fixed costs for FY 2018-19 and FY 2019-20 has been worked out as Rs. 297.09 Cr.
- 13.10 Further, the timeline of September 2020 is for FCR settlement for the period from FY 2011-12 to FY 2017-18. MSEDCL has demanded provisional settlement of fixed charges for the period from FY 2018-19 to FY 2019-20. As substantial period has lapsed and MSLDC has not raised the bills for FCR for FY 2018-19 to FY 2019-20, MSEDCL's demand is neither premature nor an attempt to mislead the Commission.
- 13.11 Further, the Commission, in AEML-D's MYT Order in Case No. 325 of 2019 has allowed the claim of AEML-D for balance 80% amount towards FCR for FY 2011-12 to FY 2017-18 as pass through. The relevant para is reproduced below

“As regards AEML-D's claim for pass through of balance 80% of the Fixed Cost Reconciliation amount, the Commission is of the view that this amount is yet to be

crystallised by SLDC. Such amounts shall be payables as and when SLDC raises the final bills on the Distribution Licensees, after adjusting for the payments (20%) already made. Such payments by the Distribution Licensee against FCR reconciliation may be recovered through FAC at the appropriate time.”

- 13.12 On the similar lines, the Commission may consider proposed provisional amount as per the provisional FCR bills to be issued by MSLDC for FY 2018-19 and FY 2019-20 as a pass through in FAC and allow AEML-D to recover the same. However, MSEDCL submits that interpretation of AEML-D that the Commission never intended to allow realization of any amounts towards FCR in a provisional manner is wrong and not acceptable to MSEDCL.

Commission’s Analysis and Ruling

- 13.13 The Commission acknowledges the fact as per the Order in Case No. 297 of 2018, the timeframe for raising the FCR Bills for the past period from FY 2011-12 to FY 2017-18 is September 2020. MSLDC in its Petition in Case No. 59 of 2020 had stated that it would be able to meet this timeframe. Further, as clarified by MSEDCL, relief towards FCR for the past period from FY 2011-12 to FY 2017-18 is not a part of its Petition which is also evident from the calculation table submitted by MSEDCL in its Petition. However, MSEDCL has claimed provisional settlement of fixed charges for the period from FY 2018-19 to FY 2019-20.
- 13.14 As regards the issue raised on calculation of claims towards FCR, the Commission notes that in accordance with the ABT Order, the premise for undertaking settlement of imbalance pool and settlement of Annual fixed cost are two distinct activities. Imbalance pool settlement entails establishing energy exchange amongst the state pool participants whereas FCR Pool settlement entails establishing capacity exchange amongst the state pool participations. Settlement of imbalance pool is based on the ‘target dispatch schedule’ for the generators and the ‘target drawal schedule’ for the SPPs to be finalized by MSLDC. However, settlement of FCR is based on the excess or shortfall in ‘loss adjusted drawal’ by SPPs corresponding to a particular trading period vis-à-vis the ‘overall generation capacity’ declared to be available to SPP based on ‘forecasted availability’ furnished for the generators contracted by the concerned SPP. In addition, methodology and principles for FCR Pool computations have been further elaborated under issue-wise description, alongwith illustrations, while approving the FBSM Code. Hence, the imbalance pool volume and the FCR pool volume will be different as against same quantum. This claim of MSEDCL for settlement of FCR Pool volume for FY 2018-19 and FY 2019-20 is in absence issuance of FCR bills by MSLDC as per FBSM Code.
- 13.15 It is observed that MSEDCL has considered the FCR pool volume same as that of the imbalance pool volume and therefore the Commission is of the opinion that the amount

sought to be recovered towards the fixed charges for FY 2018-19 to FY 2019-20 is based on incorrect assumptions and note on the basis of FCR bills issued by MSLDC.

- 13.16 The Commission notes that in its Petition in Case No. 297 of 2018, MSEDCL had computed its entitlement towards FCR for the past period from FY 2011-12 to FY 2017-18 in the same manner and the Commission, in its Order, had made similar observations. Nevertheless, it is the responsibility of MSLDC to undertake FCR settlement and as per FBSM Code, such settlement needs to be undertaken within fifteen calendar days from the end of respective financial year. In the absence of MSLDC's submission, it is not clear why MSLDC has not been able to issue FCR bills for FY 2018-19 and FY 2019-20.
- 13.17 The timeframe for raising the FCR bills for FY 2018-19 and FY 2019-20 was not covered in the Commission's Order in Case No. 297 of 2018. Hence, MSEDCL's Petition did not mention any specific timeframe for raising FCR bills for FY 2018-19 and FY 2019-20. Thus, although MSEDCL's FCR computation for FY 2018-19 and FY 2019-20 may be based on incorrect premise, recovery for the amount towards this claim remains an issue.
- 13.18 **In view of the above, the Commission acknowledges the fact that the calculation made by MSEDCL towards FCR amount is just a provisional calculation which has been done on account MSLDC's inability to finalize the FCR settlement within timeframe as mentioned in ABT Order/FBSM Code and the Commission also observes that raising of bills and recovery towards FCR for FY 2018-19 and FY 2019-20 is yet to happen. In view of the above, the Commission directs MSLDC to raise FCR bills for FY 2018-19 and FY 2019-20 within two months of this Order.**

14. **Issue 3- Claim cannot be allowed as Appeals are pending before the Hon'ble ATE**

TPC-D's submission

- 14.1 Principles for WASMP computation for excluding inter-state short -term open access power (which also includes power from Power exchanges) were agreed upon by the SPPs including MSEDCL in Extraordinary MSPC Meeting held on 13 April, 2011. The SPPs have been operating with aforesaid understanding over the last 8 years approximately which are based on sound commercial principles. A change in the said understanding cannot be countenanced in law as the same is squarely against the settled principle of '*approbation and reprobation*'. In the matter of *R.N Gosain Vs. Yashpal Dhir (AIR1993SC 352)*, the Hon'ble Supreme Court of India observed that *Law does not permit a person to both approbate and reprobate*.
- 14.2 MSEDCL has also challenged the Order in Case No. 297 of 2018 before the Hon'ble ATE alongwith other utilities. The FCR principles laid down in the Order and also the direction for considering the Power Exchange Prices and CPP prices for WASMP computation are under challenge before the Hon'ble ATE. Therefore, it is an admitted position that this

Order has not attained finality. MSEDCL's action of filing the Appeal against the Order in Case No. 297 of 2018 and then approaching the Commission under the present Petition for ad-hoc implementation of an Order is an attempt to abuse the process of law.

14.3 Further, during pendency of these Appeals, MSLDC can undertake the settlement as per the existing principles only, subject to any Orders passed by the Hon'ble ATE. MSEDCL cannot at all bring any claim before the Commission for seeking any amount or amount(s) until the settlement accounts have been prepared by MSLDC.

14.4 In its Appeal before ATE challenging the Commission's above Order, MSEDCL did not seek any relief in terms of interim arrangements for the period required by MSLDC to issue bills. Therefore, admittedly MSEDCL was not aggrieved by the directions of the Commission at that time. Now, MSEDCL as an after-thought has approached the Commission seeking modification of the Order in Case No. 297 of 2018 and seeking an ad-hoc implementation of the Order, which is pending adjudication before the ATE. The Commission should not allow such abuse of process of law by MSEDCL.

AEML-D's submission

14.5 AEML-D raised the same issue of pendency of Appeals before the Hon'ble ATE.

BEST's submission

14.6 BEST has also raised the issue of pendency of Appeals before the ATE and objected to the recovery sought by MSEDCL.

MSEDCL's rejoinder

14.7 There is no denying the fact that the Order in Case No. 297 of 2018 has been challenged by MSEDCL, TPC-D as well as AEML-D, however there is "No Stay" till date in any of the Appeals. Hence, mere filing of Appeals is no ground to claim "*That the Order has not attained finality*". It is also denied that the Commission has become "Functus Officio". Assuming without admitting that the above legal position is not convincing, still MSEDCL submits that the present Petition was filed mainly on one primary issue i.e. because MSLDC has not been able to comply with the directives for FY 2011-2012 to FY 2017-2018, it is impossible to expect that MSLDC would be able to raise FBSM bills for FY 2018-19 to FY 2019-20 in reasonable time. Hence prayer was made for direction towards MSLDC for raising of Provisional bills. On this issue at least, the Commission cannot be termed as "Functus Officio".

Commission's Analysis and Ruling

14.8 The Commission notes that MSEDCL has rightly contended that even though Commission's Order in 297 of 2018 has been challenged before Hon'ble ATE by MSEDCL, TPC-D and AEML-D, but there is no stay in any of the Appeals. Further, the Commission is of the opinion that in the absence of any stay from the ATE, the Order in Case No. 297 of 2018 is in force. Hence, the Commission rejects the contention of the

Respondents that during pendency of these Appeals, MSLDC can undertake the FBSM settlement as per the existing principles only and not as per the impugned order.

14.9 Further, the Commission is of the view that mere pendency of the Appeal before higher Court should not be the reason for non-implementing the Order of the lower Court, if no stay has been granted to such an Order. The affected Party can always seek its appropriate remedy before the Court if the Order is not implemented within the stipulated timeframe.

14.10 **In view of the above, there is nothing illegal in the MSEDCL's action in approaching the Commission through present Petition during pendency of the Appeals before the ATE seeking its remedy in view of non-implementation of the Order in Case No. 297 of 2018 within the timeframe stipulated in the Order.**

15. **Issue 4:- Overdrawal by Mumbai Utilities is on account of MOD Operations**

AEML-D's submission

15.1 By using the term “overdrawal”, MSEDCL seeks to wrongly indicate that AEML-D has not arranged for power. The Distribution Licensees supply power to their respective consumers, by arranging such power from either generators or through trading licensees. However, the real time generation and supply of power, including the demand of the consumers, is dynamic, meaning thereby that there occurs a mismatch between the actual supply of electricity and demand of consumers. This results in creation of an imbalance pool, wherein one Distribution Licensee (which has demand more than supply of power) draws such shortfall power from the grid. However, the said drawal of power comes from the power flowing in the grid which is scheduled by the other Distribution Licensees. Therefore, the aforesaid drawal of power for meeting real time shortfall of power, is unscheduled/ un-planned.

15.2 Hence, it would be incorrect to state that AEML-D has overdrawn power from the pool, until the time MSLDC prepares a periodic statement thereby detailing as to which Distribution Licensee has drawn power from the imbalance pool, and which Distribution Licensee has contributed power to such pool on account of surplus power from its contracted sources or due to less consumer demand.

15.3 The power supplied through the Pool is primarily on account of the Merit Order Despatch (**MOD**) supply under the FBSM mechanism approved by the Commission. Further, AEML-D has undertaken Load-Generation balance on day ahead basis as per the provisions of the State Grid Code and the FBSM Code, and MSLDC has backed down the contracted sources of AEML-D as per the MOD principles approved under Intra-State ABT Order.

TPC-D's submission

- 15.4 TPC-D also contended that overdrawal occurs due to dynamic mismatch between the actual supply of electricity and demand of consumers and may change over a 15 minute time block, accordingly varying the liability of each distribution company. Therefore, claim (if any) against TPC-D can only be raised, once MSLDC has prepared a periodic statement thereby detailing as to which distribution licensee has drawn power from the imbalance pool, and which distribution licensee has contributed power to such pool on account of surplus power from its contracted sources or due to less consumer demand.

MSEDCL's rejoinder

- 15.5 Though AEML-D has stated that it has not overdrawn the pool power, however it has admitted that the distribution licensee which has demand more than supply of power from its contracted generators draws such shortfall power from the grid. MSEDCL submits that such drawal through unscheduled/unplanned is overdrawal by that distribution licensee.
- 15.6 MSEDCL has sought the provisional recovery towards settlement of FBSM charges for FY 2018-19 and FY 2019-20 during which Mumbai utilities have drawn MSEDCL's power and for which MSEDCL has already made the payments to its contracted generators. MSEDCL is aware that final computations will be subject to the outcome of the matters challenged before the Hon'ble ATE in FBSM matter. As the settlement of FBSM bills is delayed inordinately by MSLDC, MSEDCL has sought provisional recovery of the pending claims.

Commission's Analysis and Ruling

- 15.7 The Commission notes that operation of Day-ahead and real-time MOD, where the contracted generator of the distribution licensee is asked by MSLDC to back down, results in allocation of more economical power to such Licensee, which it draws from the imbalance Pool. This might be one of the reasons for drawal of power from pool.
- 15.8 **Notwithstanding the aforesaid, the Commission is of the view that the imbalance pool mechanism can not be treated as a source of procuring power and is only meant for settling the deviations in the real time power interchange between various pool participants. Accordingly, BEST Undertaking, AEML-D and TPC-D in their past Tariff Orders (including the recent MYT Orders) were directed that they should plan their power procurement in a way that the purchases from the imbalance pool are minimized. Further, it is important to note here that although the Respondents have tried to portray that the drawal from pool is unintentional, the fact that they have utilized and they have been utilizing the imbalance pool power for supplying to their consumers has not been denied by the Respondents. Therefore, the Commission is of the opinion that settlement of such power needs to be undertaken within a stipulated timeframe so as to compensate the incrementing SPP.**

16. **Issue 5:-Carrying cost**

AEML-D's submission

16.1 Carrying cost can only be levied from the date of issuance of bill. In the present case, no such final bills have been issued by the MSLDC, and it would be incorrect for MSEDCL to seek carrying cost retrospectively, without having a bill.

TPC-D's submission

16.2 The issue of 'carrying cost', does not arise as there has been no existing liability against the utilities in Mumbai. As on date, no occasion arises for levy of carrying cost since none of the SPPs has intentionally, or otherwise, failed to pay the bills. The FBSM Code does not provide for levy of carrying cost for any amount for which no demand has been made in accordance with the prescribed procedure. Hence, levying of carrying cost on decrementing utilities cannot be allowed.

16.3 TPC-D has paid all the variable charges invoices raised by MSLDC for the past period i.e. FY 2011-12 to FY 2017-18.

MSEDCL's rejoinder

16.4 MSEDCL has claimed carrying cost as per its calculations and submissions which are made before the ATE. However, it is important to note that MSEDCL in its entire Petition has claimed recoveries under the fundamental basis of "Approved FBSM and mandate of Order in Case No. 297 of 2018. "

16.5 Further, the Commission in its Order in Case No. 297 of 2018, on the issue of carrying cost, has ruled as under:

"6.In case of re-computed imbalance pool settlement, the carrying cost shall be due from the date of respective weekly bills which have already been raised by MSLDC towards the imbalance pool settlement. In case of fixed charge reconciliation pool, the carrying cost shall be due from the timeframe as mentioned in the FBSM Code i.e. from the end of fifteen calendar days from the end of the respective financial year. The carrying cost shall be computed till the period the respective bills are raised by MSLDC."

16.6 MSEDCL is entitled for carrying cost as per the aforesaid direction. The Commission, in the Order, has also held that:

"105 (ii) It is settled principle that carrying cost is generally payable under following circumstances:

(a) claim of legitimate expenditure accepted but recovery is deferred, e.g. interest on regulatory assets;

(b) claim not approved/settled within a reasonable time; and

(c) disallowed by the Commission but subsequently allowed by the superior authority.”

- 16.7 MSLDC has not raised the FBSM settlement bills for the period FY 2018-19 and FY 2019-20 within a week after completion of week, resulting in financial impact on the MSEDCL. Further, MSEDCL has already made the payments to its generators. Hence, MSEDCL requests the Commission to allow carrying cost from the date on which weekly bill for variable charges was due for issuance.
- 16.8 The said submission is without prejudice to the issue of carrying cost as raised by MSEDCL before the Hon'ble ATE.

Commission's Analysis and Ruling

- 16.9 From the aforesaid contentions of both the Petitioners and Respondent on the carrying cost issue, it is observed that both the Petitioner and Respondents are taking a stand which is in deviation of the ruling given by the Commission in Case No. 297 of 2018 on the carrying cost issue. This ruling has been reproduced at para. 16.5 above. This ruling clearly states that carrying cost due on imbalance pool settlement for supplementary bills is allowed from the date of respective bills already raised by MSLDC and not from the date it was due for issuance as claimed by MSEDCL. Only in case of FCR, the carrying cost is allowed from the timeframe of issuance of FCR as mentioned in FBSM Code.
- 16.10 The Commission notes that in Case No. 297 of 2018, MSEDCL had requested the Commission to allow carrying cost from the month in which the MSEDCL's power had been contributed to imbalance pool and had been actually utilized by Mumbai Utilities till the date of payment. The Commission did not accept the above request. However, it is observed that while computing its claims for both variable and fixed charges for FY 2018-19 and FY 2019-20, MSEDCL has taken into consideration the carrying cost which is in deviation of the ruling of the Commission in Case No. 297 of 2018. MSEDCL has admitted that it has claimed carrying cost as per its calculations and submissions which are made before the Hon'ble ATE.
- 16.11 As regards claim of MSEDCL for supplementary variable charges of FY 2011-12 to FY 2017-18, the period considered for carrying cost calculation is not clear as no backup computation has been provided alongwith the Petition. If MSEDCL has considered the period of actual utilization of power by decrementing licensee as mentioned in the Petition, then this is not consistent with the stand taken by the Commission in Case No. 297 of 2018.
- 16.12 **Thus although both the Petitioner and the Respondents may not be agreeable to the Commission's stand on carrying cost issue and both TPC-D and MSEDCL have challenged the Commission's ruling on this issue before the ATE, it is observed that the Appeals are yet to be decided by ATE and the Order in Case No. 297 of 2018 is in force. Therefore, the carrying cost computation under FBSM settlement needs to**

be undertaken in line of the ruling given by the Commission in Case No. 297 of 2018. Further, as acknowledged by the Commission in earlier part of the Order, in absence of FBSM settlement by MSLDC in timeframe stipulated in the Case No. 297 of 2018, MSEDCL has come up with its own computation for provisional recovery.

17. The Commission notes that, in addition to the above, following two key issues have been raised by the Respondents while objecting the provisional recovery sought by MSEDCL:

- i. MYT Orders require payment only after billing.
- ii. Power Purchase cost recovery has already been covered in MSEDCL's MYT Order.

18. The Commission is of the view that these issues are going to the root of primary relief of provisional recovery sought by MSEDCL. Accordingly, these issues need to be examined in a combined manner vis-à-vis the case presented by MSEDCL for provisional recovery which is essentially on account of MSLDC's non-implementation of the Commission's directions in Case No. 297 of 2018 in the stipulated timeframe. On these two issues, the Commission has recorded submissions of the Parties first, then the Commission has provided its analysis as under:

18.1 Issue 6:- MYT Orders requires payment only after FBSM billing

AEML-D's submission

18.2 While issuing the MYT Tariff Order dated 30 March 2020 in Case No. 325 of 2019, the Commission has allowed the recovery of FBSM charges for FY 2018-19 and FY 2019-20. However, the Commission did not envisage any provisional payment to MSEDCL based on the corpus amount included in the ARR of the Distribution Licensee. Instead, the Commission has directed that AEML-D shall continue to hold the amount with it and make payment as per FBSM bills, and the difference vis-à-vis the actual bills is to be adjusted in FAC. Same is true for FCR billing also.

18.3 Thus, through the MYT Orders, the Commission has taken a view that Mumbai Utilities shall continue to hold the amount with them and make payment as per FBSM bills. Such a view cannot be changed in the present proceeding.

18.4 It is a settled principle of law that a court of law is bound by its own views undertaken in previous Order, unless the said view is set aside modified by a higher court/ forum. In this context, reference be made to the judgement of the Hon'ble Supreme Court in S.I. Rooplal and Anr. v. Lt. Governor Through Chief Secretary, Delhi and Ors., reported in 2000 (1) SCC 644.

18.5 Further, the provision of holding cost also indicates that the amount is to be recovered in Tariffs of FY 2020-21 and held on with by the Licensees till the time it is settled against FBSM bills as finalized by MSLDC.

- 18.6 Further, the aforesaid Corpus amount is not included as revenue in the ARR of MSEDCL for FY 2020-21 as per MSEDCL's MYT Order in Case No. 322 of 2019. This clarifies the intent of the Commission that this amount would be used as corpus to settle against the FBSM bills and till the time such bills are prepared by MSLDC, the Licensees need to hold the corpus. Hence, the argument of MSEDCL qua corpus amount, is liable to be rejected.
- 18.7 On account of the ongoing outbreak of COVID-19 global pandemic, the revenue collection of AEML-D has taken a serious hit, and daily cash collection has reduced by 45% to 50%. Therefore, it has become difficult for the AEML-D to even sustain its daily operations. In fact, inclusion of this Corpus fund of Rs. 419.42 Cr. in the ARR has actually acted as a blessing in disguise during the present time, as otherwise, Tariff would be even lower and cash flow would be even further restricted.
- 18.8 Further, the corpus amount is approved as an addition to the ARR of FY 2020-21 and hence, the same is not available with AEML-D. Same is being recovered through the Tariffs of FY 2020-21 and collected accordingly. Due to significant revenue reduction due to Covid-19 pandemic, even though the corpus amount is allowed in the ARR, no amount being collected against the same and no surplus is accruing with AEML-D for inclusion of this corpus in the ARR.
- 18.9 Hence, any payment towards FBSM energy drawal on provisional basis ought not to be allowed, and the same should be made on actual presentment and finalization of FBSM bills.

BEST's submission

- 18.10 BEST also stated that in its MYT Order for BEST in Case No. 324 of 2019, the Commission approved the FBSM payment impact for FY 2017-18 to FY 2019-20 as a separate fund in cost of power purchase for FY 2020-21 and determined Tariff accordingly. BEST has been directed to make payment of FBSM bills through this fund and not to load such bill amount in FAC computation unless actual bill amount of FBSM is more than above fund. The year 2020-21 has just commenced and the approved fund amount from consumer's retail Tariff is yet to be recovered by BEST.
- 18.11 Due to spread of Covid 19 in the State and lock-down ordered in Mumbai, demand of BEST's area of distribution has substantially reduced. This has adversely impacted the revenue of BEST on account of reduction in sale of electricity and electricity bill collection thereon. It may likely to take considerable period to normalize the demand scenario and picking up of economic development thereof. Therefore, any additional financial burden due to grant of any Ad-interim relief sought by MSEDCL will have further financial impact to BEST, which is already undergoing financial hardship.
- 18.12 Further, based on FBSM bills received by BEST in every month, the expenditure has been planned and provided for in the BEST's budget. It would become difficult to suddenly

generate fund at this stage for payment of the bill of huge amount that may be raised by MSPC towards claim of MSEDCL.

- 18.13 The Commission is requested to issue suitable directions to MSLDC to expedite the process of commercial settlement of Imbalance pool and expedite issuance of Supplementary FBSM and Final FCR bills in line with directions issued by the Commission in its Order dated 26 September, 2019 and not to deviate from specified set procedure since the amount involve is very high. This will enable BEST to make necessary payment towards correct liable dues under FBSM.

TPC-D's submission

- 18.14 The Commission vide MYT Tariff Order dated 30 March, 2020 for TPC-D, has considered the impact in the ARR of Mumbai utilities for FBSM payment towards the liability for FBSM settlement for FY 2018-19 and FY 2019-20 and approved the same over and above the approved power purchase cost. However, same does not mean that TPC-D would have to pay the same to MSEDCL without proper liability being affixed by MSLDC on TPC-D. Further, the MYT Order has envisaged that the FBSM payment would take place only in FY 2020-21.

- 18.15 Further, without prejudice, if MSEDCL's submissions in relation to the recovery of FBSM charges by TPC-D, would have been true, then accepting such reasoning will be analogous to allowing claim of a generating company against any distribution company just by mere reason that the power procurement cost have been allowed in the ARR of the distribution company and the generating company need not establish supply of power or raise the bill for such power. Such reasoning will completely demolish the commercial basis in the power sector, rendering the entire regulatory disputes framework redundant.

MSEDCL's rejoinder

- 18.16 The Commission has already considered the impact in the ARR of Mumbai utilities for FBSM payment towards the liability for FBSM settlement for FY 2018-19 and FY 2019-20 and accordingly approved the same over and above the approved power purchase cost. The summary of the amounts approved by the Commission in the ARR of Mumbai Utilities towards FBSM settlement in the relevant MYT Orders are given below:

Sr. No.	Order Reference	Utility	FY 2018-19			FY 2019-20	Total cost approved for FY 2018-19 & 2019-20 Rs. Cr.
			MUs	Rate per unit Rs.	Cost approved Rs. Cr.	Cost approved Rs Cr.	

1	Order dated 30 March 2020 in Case No. 324 of 2019	BEST	414.22	2.86	119	119	238
2	Order dated 30 March 2020 in Case No. 325 of 2019	AEML-D	733.26	2.86	209.71	209.71	419.42
3	Order dated 30 March 2020 in Case No. 326 of 2019	Tata-D	450.95	2.86	128.97	128.97	257.94
TOTAL			1598.43		457.68	457.68	915.36

- 18.17 Further, from AEML-D's submission, it is clear that AEML-D is taking undue benefit of the such realized corpus amount by utilizing the same for other purposes, as MSLDC has failed to raise the bills towards FBSM settlement for FY 2018-19 and FY 2019-20.
- 18.18 MSEDCL further submits that the revenue collection of MSEDCL has also taken a serious hit on account of the ongoing outbreak of COVID-19 global pandemic and inability of MSLDC to raise the FBSM settlement bills has worsen the situation.
- 18.19 Considering the approval for recovery of FBSM charges by the Commission for Mumbai utilities for FY 2018-19 and FY 2019-20 in their MYT Orders and further considering the delay involved in the matter for raising the FBSM settlement bills by MSLDC, MSEDCL requests the Commission to direct MSLDC to raise provisional bills as per submission in the MSEDCL's Petition.
- 18.20 As the Commission has already approved the above amounts totaling to Rs. 915.36 Cr. in the ARR of Mumbai Utilities towards cost of energy utilized from FBSM pool and allowed recovery of the amounts in FY 2020-21, it is not open for the Respondents, not to pay the said amount even after passage of more than two (2) years.
- 18.21 In view of the above, the Commission is requested to direct MSLDC to raise provisional bills for FY 2018-19 and FY 2019-20 or in the alternative direct the Respondents to pay the amounts as already approved in the MYT Orders subject to final bills raised by MSLDC.
- 18.22 **Issue 7:- Power Purchase cost recovery has already been covered in MSEDCL's MYT Order**
TPC-D's submission
- 18.23 MSEDCL has also claimed that it has made the payment to its generators for procurement of power but the same has not been recovered. However, vide MYT Order dated 30 March, 2020, entire cost of power procurement for the past years have been allowed to

be recovered by the Commission. MSEDCL itself has submitted that the entire recovery by way of FBSM bills will be passed on to the consumers through FAC. Thus, MSEDCL is not deprived of its claims as is claimed in the Petition. Mere issue that remains is a matter of adjustment of accounts and FBSM claims of MSEDCL to be passed on to the consumer through FAC.

MSEDCL’s rejoinder

18.24 MSEDCL being reasonable, accepted delayed settlement of weekly FBSM bills after two years and still waiting for FCR reconciliation since FY 2011-12. MSEDCL’s claims being not settled within the reasonable time, MSEDCL does not agree with the submission of TPC-D that MSEDCL’s claims are unwarranted. The Commission, in MYT Order, has considered Rs.1006.08 Cr. as ‘FBSM Revenue’. The relevant extract is reproduced below:

“ *Table 4-31: FBSM Revenue considered as per DSR for FY 2018-19 as submitted by MSEDCL*

<i>Particulars</i>	<i>Amount (Rs Cr.)</i>
<i>Variable Cost as per MERC Order 297 of 2018</i>	<i>615.87</i>
<i>Fixed cost booked in SAP against receivable bills</i>	<i>101.21</i>
<i>FBSM Bills for FY 2016-17 booked in FY 2018-19</i>	<i>275.76</i>
<i>FBSM Bills for FY 2017-18 booked in FY 2018-19</i>	<i>13.25</i>
<i>Total considered in FY 2018-19</i>	<i>1,006.08</i>

18.25 The above amount has been considered as ‘Revenue’ by the Commission, not the ‘cost’ as claimed by TPC-D. Moreover, this revenue is realized during FY 2018-19 towards the past period FBSM settlement i.e. variable charges for FY 2016-17 and FY 2017-18 as per the Daily Order issued by the Commission on 21 December, 2018 in Case No. 297 of 2018 and Fixed charges as per Daily Orders issues by the Commission on 15 January, 2019 and 6 February, 2019 in Case No. 297 of 2018. Accounting practice has been followed by MSEDCL to consider past period revenue realized in FY 2018-19. This amount is not at all related with the present claims for FY 2018-19 and FY 2019-20. Being revenue, Rs. 1006.08 Cr. was not on account of recovery from MSEDCL’s consumers as claimed by TPC-D.

18.26 Most of the MSEDCL’s claim amount in present Petition is pertaining to the period from FY 2018-19 to 2019-20. TPC-D is trying to mislead the Commission by linking past period revenue accounted for in FY 2018-19 pursuant to Daily Orders issued by the Commission in Case No. 297 of 2018 with present claims of MSEDCL.

Commission's Analysis and Ruling on Issue 6 and Issue 7

18.27 The Commission has examined the submissions of the Parties and notes that following facts/observations are emerging:

- i. In its Case No. 297 of 2018, in respect of variable charges for the imbalance pool, the Commission has directed as under:

"3. Maharashtra State Load Dispatch Centre is directed to consider the rate of power purchased from the Power Exchange and Captive Power Plants (CPPs) for Weighted Average System Marginal Price (WASMP) calculation for next Final Balancing Settlement Mechanism Code (FBSM) bills with immediate effect from this Order.

"4. Maharashtra State Load Dispatch Centre is further directed to recompute the WASMP for the period from FY 2011-12 to FY 2017-18 after including the rate of power purchased from the Power Exchange and CPPs. Thereafter, Maharashtra State Load Dispatch Centre shall recalculate the imbalance pool settlement for these years in accordance with the applicable principles laid down in the Availability Based Tariff (ABT) Order and FBSM and work out the associated liabilities of State Pool Participants (SPPs) for raising the supplementary bills for these years. The above activity shall be completed by Maharashtra State Load Dispatch Centre by 31 January, 2020."

- ii. MSLDC could not meet the aforesaid timeframe given by the Commission and though its Petition, in Case No. 59 of 2020, it approached the Commission seeking an extension till 31 July, 2021 for raising the supplementary bills for the past period from FY 2011-12 to FY 2017-18 due to revised WASMP. MSLDC, in its Petition highlighted the software related issues faced by it. MSLDC, in its original Petition, did not specifically mention any timeframe as far as regular FBSM (which had been stopped since February, 2018) billing were concerned. As no FBSM recovery was foreseen by MSEDCL in near future, MSEDCL thought it appropriate to approach the Commission pointing out the aforesaid fact and sought provisional recovery stating that it requires to pay its contracted generators within a stipulated timeframe and non-recovery of FBSM amount is making it financially stressed.
- iii. Thus, delay of FBSM settlement is an admitted fact by all the concerned. Further, although all the Respondent have claimed that imbalance pool power is being drawn as a result of Day-ahead schedule and real time MOD, but none of the Respondents has denied the fact such power has been supplied to their respective consumers as a part of meeting their obligations as a distribution licensee. In Tariff Orders, these Respondents have been claiming the quantum as well as cost towards the imbalance pool power.

iv. The Commission, in MYT Orders for these Mumbai Utilities /Licensees (due to energy decrement in imbalance pool) has created a fund for payment of FBSM bills to be raised by MSLDC for power drawn from imbalance pool in FY 2018-19 and FY 2019-20. The relevant extract of the Commission's Order in Case No. 325 of 2019 (MYT Order for AEML-D) is given below:

“ 6.7.1 FBSM Pool Cost for FY 2018-19 and FY 2019-20

AEML-D has not considered any cost towards energy decrement from Imbalance Pool in FY 2018-19 and FY 2019-20, since MSLDC has issued the provisional FBSM bills till February 2018 only. The impact of this cost of energy decrement in FY 2018-19 and FY 2019-20 will be realized in future, which will then have to be recovered from consumers and passed on to MSLDC. AEML-D proposes to set off the cumulative surplus in the Supply Business against the provisional cost of the FBSM Pool decrement in FY 2018-19 and FY 2019-20.

For estimating the provisional cost of the FBSM Pool decrement in FY 2018-19, AEML-D has considered the derived FBSM Pool quantum for FY 2018-19 and the variable rate of ADTPS for FY 2018-19. Similarly, for FY 2019-20, AEML-D has considered the derived FBSM Pool quantum for H1 of FY 2019-20 and the variable rate of ADTPS for H1 of FY 2019-20. No provision towards FBSM Pool cost for H2 of FY 2019-20 has been made at present, since AEML-D has not forecast any separate Pool decrement in H2 of FY 2019-20 and the same is subsumed in the short-term power purchase estimated for H2 of FY 2019-20.

AEML-D submitted that the above amounts have not been included in the Truing up of FY 2018-19 and FY 2019-20, as these costs are provisional and including these amounts in the respective power purchase cost for FY 2018-19 and FY 2019-20 would have increased the Revenue Gap/decreased the Revenue Surplus of corresponding years. This would have attracted carrying cost till FY 2019-20.

Commission's Analysis and Ruling

AEML-D has submitted that the ARR of FY 2018-19 and FY 2019-20 is suppressed in the absence of FBSM Pool cost in both the years. The Commission finds merit in AEML-D's submission that passing on this surplus to consumers in the tariffs for 4th Control Period shall decrease the retail tariff initially, but the same cost will then get included in the FAC, when the revised energy bills are raised by MSLDC.

The Commission has estimated the likely impact of above aspect on AEML-D for FY 2018-19 and FY 2019-20, as under. The Commission has applied

*the FBSM rate of Rs. 2.86/kWh based on latest data on the pool imbalance purchase of 733.26 MU for FY 2018-19 to estimate the likely FBSM claim, which works out to Rs. 209.71 Crore. Similar, FBSM impact of Rs. 209.71 Crore is considered for FY 2019-20 also. **Overall, the Commission considers FBSM payment of Rs. 419.42 Crore for FY 2020-21.***

Approval of likely impact of FBSM payment by the Commission is over and above the power purchase cost approved by the Commission, to provide buffer to the Distribution Licensee in case payments are required to be made for the past period. This will not be considered as part of power purchase cost for calculation of FAC. AEML-D should make payment of FBSM bills through this Fund and should not load such bill amount in FAC computation. In case actual bill amount of FBSM is more than the above Fund, such incremental amount may be considered for FAC computation. As this Fund is being provided over and above the approved power purchase cost, the Holding cost on such Fund shall be computed at the time of true-up, based on complete data and calculations to be submitted by AEML-D.

- v. Similar dispensation has been given in MYT Orders for BEST and TPC-D.
- vi. It is true that through MYT Orders, it is envisaged that the payment towards FBSM Bills for FY 2018-19 and FY 2019-20 would be made through the funds created for that purpose and as such, no provisional recovery was envisaged in MYT Orders. However, as pointed out by MSEDCL, the subsequent developments cannot be ignored. As mentioned earlier, regular FBSM billing has been stopped by MSLDC after issuance of the Commission's Order in Case No. 297 of 2018. The earlier lag of about one and half year was further increased. Further, in its main Petition, there was no mention of proposed timeframe for completion of FBSM billing for FY 2018-19 and FY 2019-20 in its Petition in Case No. 59 of 2020. These factors have underlined the need for provisional recovery of the FBSM amount for FY 2018-19 and FY 2019-20.
- vii. MSLDC, vide its submission dated 1 July, 2020 in Case No. 59 of 2020, has submitted its proposed plan for completion of FBSM billing. The said plan has been taken on record by the Commission in its Order dated 8 July, 2020 in Case No. 59 of 2020. As per the aforesaid plan, the regular FBSM billing (i.e. FBSM billing from 26 February, 2018 i.e. date when the last FBSM bill was raised, till 4 October, 2020 i.e. date after which commercial implementation of DSM Regulations is planned to be commenced.). As per the plan, the said activity would be commenced from July 2020 and targeted to be completed in December 2020.
- viii. Further, the Commission notes that MSLDC, in its proposed plan has envisaged that it would commence the activity of raising supplementary variable charges bills

for the past period from FY 2011-12 to FY 2017-18 with revised WASMP, in January, 2021 and same would be completed in October 2021. The Commission, through its Order dated 8 July, 2020, has directed MSLDC to complete both these activities by 31 March, 2020.

- ix. However, in case MSLDC is not able to adhere to the plan, the issue raised in present Petition could be raised again. Further, in such circumstances, TPC-D, BEST and AEML-D would have recovered the FBSM charges from consumers through Tariff for FY 2020-21 and this amount would get accumulated with these Licensees.
- x. Further, as regards the supplementary bills for the past period from FY 2011-12 to FY 2017-18, the Commission notes that under Case No. 297 of 2018, carrying cost is payable from the date of respective weekly bills which have already been raised by MSLDC towards the imbalance pool settlement. Hence, there would be an impact on consumers on account of additional carrying cost if there is delay in completion of activity of raising of supplementary bills. Therefore, if some amount is directed to be raised on provisional basis towards these charges, the impact of carrying cost would get minimized.

18.28 In view of the foregoing, the Commission is of the view that the prayer sought by MSEDCL seeking directions to MSLDC for provisional recovery needs consideration of the Commission.

18.29 Further, TPC-D has contended that as the entire power purchase expenses have been approved in MSEDCL's MYT Order, MSEDCL cannot contend that it is deprived of the claims made in the present Petition. On this contention, the Commission is of the view that even if it is assumed that MSEDCL has received entire power purchase expenses through the MYT Order, an early FBSM settlement for FY 2018-19 and FY 2019-20 would benefit the consumers in terms of negative FAC. Further, as mentioned earlier, if FBSM billing for FY 2018-19 and FY 2019-20 gets delayed, it would result in recovery of FBSM charges from consumers of Mumbai Utilities through Tariff for FY 2020-21 and accumulation of the amount with Mumbai Licensees. Thus, even if it is assumed that MSEDCL has been allowed entire power purchase expenses through its MYT Order, provisional recovery of FBSM amount for FY 2018-19 and FY 2019-20 from Mumbai Utilities would benefit the consumers of Maharashtra from whom additionally recovery has been effected.

18.30 AEML-D has contended that through the MYT Orders, the Commission has taken a view that Mumbai Utilities shall continue to hold the amount with it and make payment as per FBSM bills. Such a view cannot be changed in the present proceeding. The Commission is of the opinion that it may be said that a view has been taken on a certain issue, if analysis has been made on the issue for taking a view on that particular issue. In MYT Orders, there was no such occasion to take a view on payment upon receipt of FBSM bills vis-à-vis payment on provisional basis. Further, the issue of delay in issuance of FBSM Bills

by MSLDC is also a concern. Hence, there is no merit in AEML-D's contention that the Commission, through MYT Orders has taken a considered view which cannot be changed through present proceeding.

19. **In light of the above circumstances, the Commission is of the opinion that provisional recovery needs to be given towards both the FBSM amount for FY 2018-19 and FY 2019-20 as well as towards the supplementary bills for FY 2011-12 to FY 2017-18.**
20. The Commission notes that vide Daily Order dated 21 December, 2018 in Case No. 297 of 2018, the Commission had directed MSLDC to settle MSEDCL's demand by working out provisional recovery of variable charges of FBSM pool for FY 2016-17 and FY 2017-18 as Mumbai Licensees had recovered the FBSM cost for these years from their consumers through MTR Orders. The Commission is of the view that a similar dispensation may be allowed in present Petition also.
21. The Respondents have stated that if the prayer of provisional billing as sought by MSEDCL is granted, there would be an adverse impact on them considering the reduction in revenue on account of present Covid 19 pandemic. Further, AEML-D has pointed out the fund directed to be allowed in MYT Orders for Mumbai Utilities would build up through Tariff recovery in FY 2020-21 and the same is presently not available with them. The Commission is of the view that one cannot ignore the fact MSEDCL would also be equally affected due to revenue reduction on account of present circumstances of COVID-19 pandemic. Further, as discussed in earlier paragraph, the need for provisional billing has been established which is also in consumers' interest. **In light of the above, in order to balance the interest of all Parties, the Commission deems it fit to allow recovery in two phases instead of an immediate recovery as sought by MSEDCL. Hence, the Commission directs as under:**
 - i. As Mumbai Utilities, vide their respective MYT Orders, have been allowed variable charges under FBSM for 2 years i.e. FY 2018-19 and FY 2019-20, through the buffer fund which would be built through Tariff receivable for FY 2020-21, MSLDC shall work out the provisional recovery of variable charges for FY 2018-19 for the amount mentioned in the MYT Orders and raise the provisional bills on decrementing SPPs for FY 2018-19 by 31 October, 2020.
 - ii. Similarly, for FY 2019-20, MSLDC shall work out the provisional recovery of variable charges for FY 2019-20 for the decrementing SPP's for the amount mentioned in the respective MYT Orders by raising two six monthly bills. For the first half of FY 2019-20, the provisional bill shall be raised by 31 December 2020 and for the second half the bill shall be raised by 30 April 2021 (since the recovery of tariff under respective MYT Orders of Mumbai Utilities will be receivable by March 2021).

- iii. MSLDC shall raise the final FBSM variable charges bills for FY 2018-19 and FY 2019-20 as per the directions of the Commission in Case No. 59 of 2020. The amount received through provisional bills shall be reconciled and adjusted while raising the final bills.
- iv. As regards the supplementary bills for past period from FY 2011-12 to FY 2017-18, it is observed that the amount is yet to be finalized. MSEDCL, in present Petition has computed Rs. 211.04 Cr. towards these charges including carrying cost. The Respondents have questioned the correctness of the above computation and the Commission also notes that the computation is not in strict consistency with the Commission's Order in Case No. 297 of 2018 /ABT Order, more so since MSEDCL may not have all the data and the capability/infrastructure for accurate computation and also since it is ultimately the responsibility of MSLDC to compute the same. It has already been mentioned in earlier part of the Order and also recorded in Order dated 8 July, 2020 in Case No. 59 of 2020 that it would take more time for MSLDC to complete the computations and this delay would have impact on consumers in terms of additional carrying cost. Hence, in order to balance the interests, the Commission deems it fit to allow 50% of the imbalance pool settlement amount computed by MSEDCL for past period, as a provisional amount that should be paid at present, by the decrementing SPP's to incrementing SPP's. This amount shall be for the past period from FY 2011-12 to FY 2017-18. This amount needs to be bifurcated among the decrementing SPPs for billing purpose. In absence of MSLDC's computation for supplementary bills for this past period, the bifurcation among the SPPs is not known at this moment. However, the Commission notes that variable charge FBSM billing till FY 2017-18 has been completed by MSLDC. For further period, MSLDC is yet to raise the bills. Hence, under such circumstances the Commission is of the view that the liability of decrementing SPPs for entire FY 2017-18 may be taken as reference on a provisional basis. Hence, 50% of the imbalance pool settlement amount computed by MSEDCL for past period shall be apportioned among the Mumbai Utilities in the same ratio of their liability for FY 2017-18 towards variable charges. MSLDC shall raise the provisional bills towards these charges within 15 days of the Order. The amount received against the provisional bills may be adjusted in final supplementary bills to be raised by MSLDC for FY 2011-12 to FY 2017-18.
- v. The amount received from the decrementing SPPs towards the provisional billing as mentioned above shall be disbursed to incrementing SPP on immediate basis.
- vi. MSLDC shall follow methodology and principles laid down under Case No. 297 of 2018. MSLDC shall issue the final bills for settlement of fixed charge

reconciliation for FY 2018-19 and FY 2019-20 amongst SPPs within two months of the Order by including the carrying cost.

22. **As mentioned earlier, additional issues have been raised which need to be addressed for completeness of analysis. The Commission has undertaken analysis of these issues as under:**

23. **Issue 8:- MSLDC's delay cannot be reason for MSEDCL's Petition**

23.1 BEST has stated that MSLDC needs to comply with the directions of the Commission for issuance of Supplementary bills based on recomputed WASMP for FY 2011-12 to FY 2017-18 in a specific timeframe. The delay on part of MSLDC in compliance of the Commission's directions should not be a reason for filing of present Petition by MSEDCL.

23.2 In response, MSEDCL stated that the Commission has consciously decided a reasonable time period of 4 months for re-computation of FBSM bills for the period from FY 2011-12 to FY 2017-18 and directed MSLDC for re-computation of WASMP considering exchange power and CPP power and issue of supplementary bills till 31 January 2020 for the above period. Further, inaction of MSLDC to issue Supplementary bills for commercial settlement of differential variable cost for the period from FY 2011-12 to FY 2017-18 has resulted into financial implications on MSEDCL in getting its legitimate claim for supplying its contracted power to the state pool and hence to Mumbai utilities. Therefore, MSEDCL had to file this Petition for getting recovery of its legitimate claims and there is no alternative apart from issue of provisional bills by MSLDC.

23.3 The Commission notes that it is because of MSLDC's delay in implementation of the Commission's directions in Case No. 297 of 2018 in stipulated timeframe, MSEDCL had to file present Petition. Had MSLDC complied with the Commission's directions in the due timeframe, there would have been no occasion for MSEDCL to file present Petition seeking provisional recovery. Hence, the Commission does not find any merit in the aforesaid contention of BEST.

24. **Issue 9:- No need for provisional recovery if MSLDC commences FBSM billing**

24.1 AEML-D stated that during the course of hearing on 29 May, 2020, the Commission made an observation that while MSLDC can take more time to upgrade its software, it should continue to raise provisional bills based on the existing software even for the current period, without incorporating the directions of the Commission, in Case No. 297 of 2018. As per AEML-D, the Commission, during course of hearing, further observed that fresh bills would then only be required to be issued in future for the differential amount on account of the revised billing methodology pursuant to the Order. Thus, when the recovery/ cash flow of MSEDCL can be addressed through the issuance of provisional

bills, for current period, based on the existing software, then there remains no urgency for directing MSLDC to issue provisional bills based upon the revised methodology provided in the Case No. 297 of 2018.

24.2 On this contention, the Commission is of the view that, as mentioned earlier, in case MSLDC is not able to adhere to its own plan of FBSM bills for FY 2018-19 and FY 2019-20, the same issue may arise again in future. Also, provisional billing for the past period is necessary as this would reduce the carrying cost burden on consumers and balance the interest of all the Parties.

25. **Issue 10:- The Commission has become a functus officio in view of the Appeal before ATE**

25.1 TPC-D has contended that MSEDCL is seeking the modification of the Order in Case No. 297 of 2018 to that extent it is seeking, directions against MSLDC to raise interim bills under the earlier methodology. This Order categorically provides for determination of liability by MSLDC and after that bills being raised by MSLDC on the so identified decrementing utility, based on such determination of liability. The said Order does not provide for any ad hoc payments without identifying the decrementing entity as suggested by MSEDCL in the present Petition. The Commission has also been rendered functus officio as far as this Order is concerned. Therefore, the Petition is not maintainable.

25.2 TPC-D has cited a Judgment in the matter of *State Bank of India Vs. S.N. Goyal AIR 2008 SC 2594*, wherein the Hon'ble Supreme Court of India observed as under:

“19.....

A quasi judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become functus officio. The order dated 18.1.1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the Appointing Authority became functus officio when he signed the note on dated 18.1.1995.”

25.3 TPC-D further stated that the Commission in Case No. 297 of 2018 has directed MSLDC to compute that FBSM bills including rate of power purchased from the Power Exchange and CPPs for WASMP. The Commission cannot issue an Order substantially modifying its earlier finding. Further, MSEDCL's present Petition seeking modification of the Order

is not only against the principles of *functus officio*, but also the well settled principle of *fait accompli*.

25.4 The Commission does not agree with the contention that MSEDCL, through the present Petition is seeking modification of the Order in Case No. 297 of 2018. Rather, it has approached the Commission in light of the non-implementation or delay in implementation of the Commission's directions in stipulated timeframe. Hence, there is a different cause of action on account of which a fresh Petition has been filed. There is no prayer of MSEDCL seeking modification of the Order in Case No. 297 of 2018.

26. **Issue 11:- Contradictory Conduct of MSEDCL**

26.1 TPC-D has raised questions on the contradictory conduct of MSEDCL and stated that MSDCL had filed Case No. 297 of 2018 for seeking retrospective amendment to computation methodology under the FBSM mechanism, contrary to the practices adopted and agreed upon between the SPPs and FBSM Code, after a delay of approximately eight years. Thereafter, MSEDCL challenged this Order before the Hon'ble ATE. Now, MSEDCL has approached the Commission seeking premature implementation of the Order in Case No. 297 of 2018, whilst there are multiple proceedings pending before the Commission (i.e. Case No. 59 of 2020) and various Appeals before the ATE.

26.2 TPC-D further stated that MSEDCL, during the period between FY 2011-12 to FY 2017-18, did not raise any dispute before the Commission on its claims raised in present Petition. Rather, MSEDCL actively participated as a member of Maharashtra State Power Committee (MSPC) and agreed and acted upon several commercial principles for implementation of FBSM mechanism. MSEDCL had been sleeping over the said issue for approximately eight years, therefore MSEDCL's claims are barred by the doctrine of 'delay and laches'. MSEDCL's conduct in the MSPC meetings and acceptance of WASMP dues between FY 2011-12 to FY 2017-18 suggests that any right to additional claim on the basis of revised methodology has been waived-off by the MSEDCL.

26.3 TPC-D further stated that MSEDCL, after availing the benefits and acting upon the earlier agreed commercial principles, has now changed its stance to derive unjust enrichment. MSEDCL's own conduct is also contrary to settled principle of law that "*one who approbates cannot reprobate*", which is based on the maxim *qui approbat non approbat*. (Ref. R.N Gosain Vs. Yashpal Dhir (AIR1993SC 352))

26.4 In response, MSEDCL stated that TPC-D is ignoring the fact that weekly bills for FY 2011-12 to FY 2017-18 has been settled as per the old methodology of the Commission and were not the final bills. Further, the Commission in the Order in Case No. 297 of 2018 has directed MSLDC to revise the weekly FBSM bills as per directives of the Commission for the period from FY 2011-12 to FY 2017-18. Hence, MSEDCL's contentions that rights (if any) are waived off by the act of MSEDCL is without any merit.

As regards TPC-D's contention regarding retrospective amendment of the regulatory framework, MSEDCL stated that the Commission in the Order has already decided the computation methodology. MSEDCL has not sought any amendment to that computation methodology through present Petition but has only sought provisional settlement against the claims due and not settled in given timeline. Claiming the provisional settlement of the FBSM dues, receivable for MSEDCL as per approved directives of the Commission, that too because of the delayed settlement of the same by MSLDC, is not at all abuse for the process of law.

26.5 The Commission finds merit in MSEDCL's submission as through present Petition, MSEDCL is seeking its relief on account of non-implementation or delay in implementation of the Commission's Order in Case No. 297 of 2018 by MSLDC and no new claims or modification of the Order have been raised by it.

27. **Issue 12 :- MSEDCL's claim barred by Limitation**

27.1 TPC-D has also raised the issue of limitation for objecting the relief sought by MSEDCL in present Petition. TPC-D has stated that MSEDCL's claims are barred by limitation. Even if it was assumed that the FBSM Code entitled MSEDCL to claim under a particular methodology, then also such right has been barred by limitation (in so far as it relates to FY 2011-12 to FY 2014-15), as any right to any claim under a Regulation /Order ought to have been exercised/sought implementation within the limitation period.

27.2 In response, MSEDCL stated that the issue of "Delay and Laches" and "Limitation" as raised by TPC-D has already been decided by the Commission in the Order wherein the Commission held as under:

"103. In this context, the Commission is of the view that the present proceeding is not a dispute proceedings among the Parties. Rather, the issue that arose here is regarding the implementation of the directions given by the Commission in ABT Order and the FBSM code for settlement to be carried out in line with approved principles stipulated under ABT Order and FBSM Code on account of imbalance pool and FCR pool. Hence, there is no merit in TPC-D's claim that the claims made by MSEDCL are time-barred.

27.3 The issues of limitation, delay and laches as well as powers of the Commission w.r.t licensees has also been laid down by the Commission in its Order dated 8 August, 2018 in Case No. 160/2018 (*Dhariwal Industries Limited & Anr Versus Global Energy Private Limited*) wherein the Commission has observed that the law of limitation would apply to the Commission only in respect of its judicial power under Section 86(1)(f) of EA and not to the Regulatory or Administrative Powers/functions.

27.4 Apart from above, MSEDCL has been continuously raising its concerns in the MSPC meetings which is duly on record in the Order in Case No. 297 of 2018. The objection on the limitation, delay and laches is ill-founded not only on law as referred above but also on facts.

27.5 In this context, the Commission is of the view that TPC-D had raised the issue of limitation, particularly for the recovery of differential variable charges claim for the past period and recovery of FCR claims for the past period during proceeding in Case No. 297 of 2018 also. As pointed out by MSEDCL, the Commission has already taken a view in Case No. 297 of 2018 that such objection did not have any merit. Further, there is no additional claims made by MSEDCL which pertains to the past period and MSEDCL is seeking provisional recovery of the claims in accordance with the Commission's Order in Case No. 297 of 2018. Hence, the Commission is of the view that the issue of limitation as raised by TPC-D is not relevant in present Petition.

28. Issue 13:- MSEDCL cannot change its relief through the rejoinder submissions

28.1 TPC-D has stated that present Petition should be dismissed as MSEDCL, through its rejoinder, has changed its relief. TPC-D has stated that the principles of natural justice demand that pleadings shall portray the case of the litigant. Such pleadings cannot be a part of the rejoinder. MSEDCL, by way of its rejoinder, sought directions against MSLDC to raise provisional bills and also pressing that its claims are limited to the period from FY 2018-19 to FY 2019-20, and FCR claims regarding the past period is not sought under the Petition, whilst a bare reading of the Petition posits that the claims of Rs. 1445 Cr. sought under the Petition includes the FCR charges for the past period. Thus, MSEDCL, by way of its rejoinder, has attempted to change its reliefs sought under the Petition, without amending the Petition or the prayers. Such bypassing of procedural requirements cannot be allowed. Instead of seeking such new claims by way of the rejoinder, MSEDCL ought to have withdrawn the present Petition with liberty to file a fresh Petition. Such conduct of MSEDCL cannot be condoned and the Petition may be dismissed on this ground alone.

28.2 In this context, the Commission notes that MSEDCL, in its Petition had not sought recovery of FCR charges for the past period from FY 2011-12 to FY 2017-18. Therefore, it is incorrect to state that MSEDCL has changed its relief at the rejoinder stage. Nevertheless, the Commission is of the view that after filing of the Petition, at later stage, if part of the relief is not pressed or is stated to be dropped, the Court can very well adjudicate rest of the reliefs. Hence, the Commission does not find any merit in the aforesaid contention raised by TPC-D.

29. Issue 14 :- Corpus should be part of settlement process

- 29.1 The Commission further notes that the Respondents have suggested that corpus amount paid by them should also form part of settlement process. TPC-D has stated that in view of the delayed settlement of the FBSM bills, MSLDC had requested advance payment from all licensees to meet the payment obligations towards WRPC bills. The corpus and advance amount paid by TPC-D to the MSLDC Pool Account is approximately Rs 56.11 Crores, which will also form part of this entire settlement process. AEML-D has raised the same issue pertaining to approximately Rs. 86 Cr. paid by it as an advance amount.
- 29.2 On this issue, the Commission notes that the corpus under FBSM is primarily aimed at meeting the requirement of working capital as there is a gap between two settlements on account of time period of preparing imbalance pool settlement, raising of bills and due date for payment. It also takes care of the payment obligations towards regional settlement. Accordingly, ideally this corpus amount should not form part of the settlement process. However, MSPC may decide upon it considering the principles laid down under ABT Order and FBSM Code.

30. **Issue 15:- Directions to MSLDC for Decentralized MOD**

- 30.1 The Commission notes that MSEDCL in its rejoinder, has stated that MSEDCL in Case No. 297 of 2018 had requested the Commission for immediate implementation of Decentralized MOD. However, the Commission had rejected MSEDCL's request, citing the necessity of the preparatory activities for commencement of the commercial implementation of MERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2019 which has been notified on 1 March, 2019. MSEDCL further stated that till date, these Regulations are not yet implemented. Considering the present situation, it is observed that DSM Regulations may not be implemented before September 2020. This delay in implementation of DSM Regulations will further burden MSEDCL due to non-recovery of amounts as per FBSM on account of use of MSEDCL's power under FBSM by other SPPs. MSEDCL has requested the Commission to direct MSLDC to operate De-centralized MoD i.e. Discom wise MoD in place of the state MoD which will reduce the financial burden due to real time deviations by other SPPs on MSEDCL and will be more effective in managing load generation balance in real time.
- 30.2 On this issue, the Commission notes that the operation of De-centralized MoD i.e. Discom wise MoD cannot be directed for commencement if relevant Regulations/procedure are not in place. The provision for De-centralized MoD i.e. Discom-wise MoD has been stipulated in the MERC DSM Regulations 2019 and the Scheduling and Dispatch Code stipulated under these MERC DSM Regulations.
- 30.3 After reviewing the current status of preparedness of implementation of DSM Regulations and also considering the present situation of prevailing COVID-19 pandemic, the Commission, vide its Order dated 5 June, 2020 has notified that the date for coming into force of commercial arrangement of these Regulations shall be 5 October, 2020 or such

other date as may be notified by the Commission depending upon periodic reviews of the status by the Commission at appropriate stages. The Commission has further stated that Energy Accounting framework of FBSM under relevant Orders of the Commission shall be continued till such time. Hence, unless and until commercial implementation of DSM Regulations begins, De-centralized MoD i.e. Discom wise MoD operation as requested by MSEDCL cannot be directed.

31. Issue 16:- MSEDCL's Petition in Case No. 59 of 2020 may become redundant

31.1 The Commission notes that TPC-D has objected to the present Petition filed by MSEDCL citing the pendency of Case No. 59 of 2020 filed by MSLDC. TPC-D stated that MSLDC has filed Case No. 59 of 2019 before the Commission seeking time extension in implementing the directions of the Commission, detailing the difficulties it is facing in implementing Case No. 297 of 2018. Now, by way of present Petition, MSEDCL is attempting to make the Case No. 59 of 2020 redundant, which is impermissible under law. Accordingly, any step taken by MSEDCL to implement the Order in Case No. 297 of 2018, prior the adjudication of Case No. 59 of 2020, shall be premature and cannot be allowed.

31.2 In response, MSEDCL has stated that TPC-D has failed to understand the present Petition in its entirety. Present Petition filed by MSEDCL covers two issues. First issue is in respect of past period between FY 2011-12 to FY 2017-18 for which a direction has already been given to MSLDC by the Commission in Case No. 297 of 2018. The said directions, till date, has not been followed by MSLDC. Hence, it is difficult to expect that MSLDC would be able to raise FBSM bills for FY 2018-19 to FY 2019-20. Hence prayer was made by MSEDCL for direction to MSLDC for raising of Provisional bills. Another issue pertains to the period of FY 2018-19 to FY 2019-20 which is not covered under Case No. 297 of 2018 in the sense, that no direction is given to MSLDC for the said period although under the FBSM Code, MSLDC is mandated to raise bills in a timely manner.

31.3 In this context, the Commission notes that TPC-D essentially objected to adjudication of present Petition before deciding MSLDC's Case No. 59 of 2020. However, since MSLDC's Case No. 59 of 2020 has already been disposed off earlier to the present case vide Order dated 8 July, 2020, nothing survives in TPC-D's objection.

32. Issues 17:- Provisional settlement may result in over-recovery

32.1 The Commission notes that TPC-D and AEML-D have objected to MSEDCL's prayer for provisional recovery stating that such provisional recovery may result in over-recovery from decrementing SPPs. AEML-D stated that provisional settlement was allowed by the Commission vide Daily Order dated 21 December, 2018 in Case No. 297 of 2018 and provisional amount of Rs. 302 Cr. was paid to MSEDCL, whereas the likely amount payable to MSEDCL was Rs. 242 Cr. (including Rs. 222 Cr. towards actual

amount and Rs. 20 Cr. towards the likely amount). The excess amount, along with appropriate carrying cost, is yet to be reconciled and refunded by MSLDC. TPC-D also raised the same issue and stated that provisional amount of Rs. 125.24 Cr. has been paid by it whereas likely amount payable was Rs. 116.01 Cr. (including Rs. 108.01 Cr. towards actual amount and Rs. 8 Cr. towards likely amount). The excess amount of Rs. 9.23 Cr. along with appropriate carrying cost, is yet to be reconciled and refunded by MSLDC. Hence, MSEDCL cannot be permitted to cause unjust enrichment for itself under the garb of compliance of Order in Case No. 297 of 2018.

32.2 In response, MSEDCL stated that the calculations cited by AEML-D are based on earlier methodology i.e. without considering revised WASMP as per directives of the Commission in Case No. 297 of 2018. Further, MSLDC has not yet issued revised bills as per the Order for the period 2017-18. Once, MSLDC issues bills and final computations, excess amount if any can always be settled. Further, MSEDCL has also challenged before the ATE, some of the principles laid down in Case No. 297 of 2018 and it is yet not finalized. Hence MSEDCL has requested for settlement on provisional basis till the revised bills are issued.

32.3 The Commission notes that vide its Daily Order dated 21 December, 2018 in Case No. 297 of 2018, MSLDC was directed to settle the MSEDCL demand of Rs. 989.41 crores by working out a provisional recovery of variable cost from FBSM pool for FY 2016-17 and FY 2017-18 with contributions from Mumbai Utilities pending final settlement of FBSM bills in due course. As FBSM billing for FY 2016-17 had already been completed, MSLDC raised the following bills based on variable cost to be recovered from the respective utilities for FY 2017-18:

Utility	AEML-D	BEST	TPC-D	Total
Amount is Rs. Cr.	302.66	187.97	125.24	615.87

32.4 TPC-D and AEML-D has cited the subsequent amount arrived based on FBSM bills for FY 2017-18 and stated that there has been over-recovery from them.

32.5 In this context, the Commission notes that if some amount is allowed on provisional basis, there would always be the case of either under-recovery or over-recovery when final amount is crystallized. The difference needs to be reconciled alongwith the applicable carrying /holding cost. Hence, merely because under-recovery or over-recovery has happened in past, the same cannot be considered as valid ground for objecting provisional recovery if there are other justification(s) for allowing the same.

33. Issue 18:- Interim relief should not be granted

- 33.1 TPC-D has raised its objection to the interim relief sought by MSEDCL stating that three basic criteria for interim relief such as prima facie case, balance of convenience and irreparable injury to the petitioner are not fulfilled in MSEDCL's Miscellaneous Application.
- 33.2 In response, MSEDCL has clarified that the Miscellaneous Application was filed only to seek urgent hearing in the matter as per the "Practice Direction" issued by the Commission. There was no other purpose which the Miscellaneous Application sought to achieve. This was categorically clarified during the course of hearing dated 29 May, 2020. Hence all objections on this issue needs to be rejected by the Commission.
- 33.3 The Commission notes that now since main Petition is being disposed off, nothing survives in Miscellaneous Application filed by MSEDCL. Hence, TPC-D's above objection does not survive any more.
34. Hence the following Order:

ORDER

- 1. The Case No. 90 of 2020 is partly allowed and disposed off alongwith Miscellaneous Application No. 37 of 2020 in Case No. 90 of 2020.**
- 2. Maharashtra State Load Dispatch Centre shall, by 31 October 2020, raise provisional bills for variable charges for FY 2018-19, on the decrementing State Pool Participants for the amount mentioned in the Multi Year Tariff (MYT) Orders of the respective Distribution Licensees.**
- 3. Similarly, for FY 2019-20, Maharashtra State Load Dispatch Centre shall work out the provisional recovery of variable charges for FY 2019-20 for the decrementing SPP's for the amount mentioned in the respective MYT Orders by raising two six monthly bills. For the first half of FY 2019-20, the provisional bill shall be raised by 31 December 2020 and for the second half the bill shall be raised by 30 April 2021(since the recovery will be completed by March 2021).**
- 4. Maharashtra State Load Dispatch Centre shall raise the final FBSM variable charges bills for FY 2018-19 and FY 2019-20 as per the directions of the Commission in Case No. 59 of 2020. The amount received through provisional bills shall be reconciled adjusted while raising the final bills.**
- 5. As regards the supplementary variable charges bills for past period from FY 2011-12 to FY 2017-18, Maharashtra State Load Dispatch Centre shall raise the provisional bills towards these charges within 15 days of the Order, amounting to 50% imbalance pool settlement amount computed by Maharashtra State Electricity Distribution Co. Ltd. in present Petition. This amount shall be apportioned among the Mumbai Utilities in the same ratio of their liability towards variable charges for FY 2017-18.**

The amount received against these provisional bills may be adjusted in final supplementary bills to be raised by Maharashtra State Load Dispatch Centre for FY 2011-12 to FY 2017-18.

6. The amount received from the decrementing State Pool Participants towards the provisional billing as mentioned above shall be disbursed to incrementing State Pool Participants on immediate basis.
7. Maharashtra State Load Dispatch Centre, within two months from this order, shall issue Final Bills for settlement of Fixed Cost Reconciliation (including carrying cost) for the period FY 2018-19 and FY 2019-20 by following the methodology and principles laid down under Case No. 297 of 2018.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

