

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.174 of 2011

IN THE MATTER OF
Petition filed by Adani Power Maharashtra Limited for approval of its Aggregate
Revenue Requirement for FY 2011-12

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

Date: March 27, 2012

ORDER

In accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005 and upon direction from the Maharashtra Electricity Regulatory Commission (hereinafter referred as “MERC” or “the Commission”), the Adani Power Maharashtra Limited’s Transmission Business (APML-T), submitted its application for approval of Aggregate Revenue Requirement (ARR) for FY 2011-12, under affidavit. The Commission, in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and after taking into consideration all the submissions made by APML-T, issues raised during the Public Hearing, and all other relevant material, passes the following Order.

1. BACKGROUND AND BRIEF HISTORY

A Petition has been filed by Adani Power Maharashtra Limited's Transmission Business (APML-T), for approval of its ARR for FY 2011-12, under Sections 61 and 62 of the Electricity Act, 2003 and as per MERC (Terms and Conditions of Tariff) Regulations, 2005.

APML-T has been granted Transmission Licence No. 2 of 2009 by the Commission vide Order dated July 6, 2009, which was subsequently amended vide Order dated March 30, 2011. The amended licence authorises APML-T to establish and operate the following transmission lines inclusive of related infrastructure:

- 400 kV D/C Transmission line with Quad conductor from Tiroda (Gondia) to proposed 400 kV Warora Switching station
- 2 Nos. 400 kV bays for the above D/C Transmission lines at Tiroda project Switchyard
- 2 Nos. 400 kV bays for termination of 400 kV D/C Tiroda-Warora Transmission line at Warora Switching station

1.1 MERC TARIFF REGULATIONS, 2005

The Commission, in exercise of the powers conferred by the EA 2003, notified the MERC Tariff Regulations, 2005 on August 26, 2005. These Regulations superseded the MERC (Terms and Conditions of Tariff) Regulations, 2004.

1.2 MERC MYT REGULATIONS, 2011

The Commission, in exercise of the powers conferred by the EA 2003, notified the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011, (hereinafter referred as the MERC MYT Regulations, 2011) on February 4, 2011. Unless otherwise specified, the MERC MYT Regulations, 2011 are applicable for the second Control Period starting from FY 2011-12 to FY 2015-16. The said Regulations were amended MERC (Multi Year Tariff) (First Amendment) Regulations, 2011 notified on October 21, 2011.

1.3 PETITION FOR APPROVAL OF ARR FOR FY 2011-12, ADMISSION OF THE PETITION AND PUBLIC PROCESS

Pursuant to notification of MERC (Multi Year Tariff) Regulations, 2011 on February 4, 2011, the Commission vide letter dated March 25, 2011 directed all Utilities to submit their Business Plan and MYT Petition for the second Control Period from FY 2011-12 to FY

2015-16, latest by March 31, 2011. APML-T submitted its Business Plan and MYT Petition together, for the second Control Period under affidavit on April 13, 2011.

Pursuant to notification of first amendment of MYT Regulations on October 21, 2011, the Commission vide letter dated November 4, 2011 communicated that the Order on APML-T's Petition for approval of the Business Plan is likely to be issued only in the last quarter of FY 2011-12 upon due regulatory process. Since MYT Petition can only be filed after the Commission issues its Order on the Petition for approval of Business Plan, the Commission did not find it appropriate to determine the ARR for FY 2011-12 under the MERC MYT Regulations 2011 and thus, directed APML-T to submit its ARR and Tariff Petition for FY 2011-12 as per the MERC Tariff Regulations, 2005. APML-T submitted its Petition for approval of ARR for FY 2011-12 under affidavit on November 29, 2011. The Commission communicated the preliminary data gaps identified during the Technical Validation Session (TVS) on the ARR Petition for FY 2011-12, held on December 30, 2011. The list of individuals, who participated in the Technical Validation Session, is provided at **Appendix-1**. Based on the preliminary data gaps identified and further directives of the Commission, APML-T vide its submission dated January 10, 2012, filed its consolidated revised Petition incorporating the Commission's comments as per the preliminary data gaps.

APML-T's prayers are as follows:

"

- a. *Approve Aggregate Revenue Requirement (ARR) and Tariff for FY 2011-12 for the licensed transmission business of APML-T as submitted herewith;*
- b. *Allow APML-T to continue recovery of the transmission charges for FY 2012-13 on provisional basis based on the approved ARR for FY 2011-12 in case of delay in approval of tariff under its MYT Petition."*

Further, APML-T made additional submissions under affidavit on January 19, 2012 for inclusion of the following prayer in its petition for approval of its ARR for FY 2011-12:

" Include ARR of APML-T for recovery of the transmission charges for FY 2011-12 in the Hon'ble Commission's Transmission Tariff Order to be issued for FY 2011-12 OR issue any other suitable direction for timely recovery of its ARR, subsequent to its approval under this Petition"

The Commission admitted the Petition of APML-T on February 1, 2012. In accordance with Section 64 of the EA 2003, the Commission directed APML-T to publish its Petition in the prescribed abridged form and manner, to ensure adequate public participation. The

Commission also directed APML-T to reply expeditiously to all the suggestions and objections received from stakeholders on its Petition. APML-T issued the Public Notice in newspapers inviting suggestions and objections from stakeholders on its Petition for approval of its ARR for FY 2011-12. The Public Notice was published in Indian Express (English), Lokmat Times Nagpur (English), Loksatta (Marathi) and The Deshonnati (Marathi) newspapers on February 4, 2012. The copies of APML-T's Petition and its summary were made available for inspection/purchase to members of the public at APML-T's offices and on APML's website (www.adanipower.com). The copy of the Public Notice and Executive Summary of the Petition was also available on the website of the Commission (www.mercindia.org.in) in downloadable format. The Public Notice specified that the suggestions and objections, either in English or Marathi, may be filed in the form of affidavit along with the proof of service on APML-T.

The Commission did not receive any written suggestions or objections on the said Petition. The Public Hearing was held on March 2, 2012 at 15:00 hours at the Commission's Office. The list of persons who participated in the Public hearing is provided in **Appendix – 2**.

The Commission has ensured that the due process as contemplated under the law to ensure transparency and public participation was followed at every stage meticulously and adequate opportunity was given to all the persons concerned to file their say in the matter.

2. ARR Petition by APML-T

APML-T, in the present Petition, submitted that MSETCL had identified the proposed 400 kV Tiroda-Warora Transmission Line project as a part of the State Transmission Utility Network Plan for the period from FY 2010-11 to FY 2014-15.

Further, in accordance with the directives of the Commission under its Order granting transmission licence to APML-T (at Para 21 (a)) dated July 6, 2009 to award the contracts for execution of transmission system components through competitive procurement route, APML – T had conducted International Competitive Bidding (ICB) process for selection of contractors for design, supply, erection and testing and commissioning of the same transmission lines. APML-T stated that the 400 kV Tiroda-Warora Transmission Line project has already been awarded and its construction is under progress with expected completion by end of February 2012. Subsequently, during Public Hearing held on March 2, 2012, APML-T submitted that the said transmission project is expected to be commissioned in May 2012.

APML-T had initially estimated the total project cost inclusive of IDC to be Rs. 622.38 Crore. For the same, APML-T had approached the Commission for in-principle clearance of

capital expenditure scheme for which the Commission vide its letter dated September 21, 2010 granted in-principle approval of capital expenditure of Rs. 620.07 Crore.

AMPL-T submitted in the present Petition that due to the change in route length from earlier stated 200 km to 219 km to avoid coal mine and forest areas in line route resulting in non-receipt of forest clearance and resistance of farmers and other locals, the total estimated project cost has been reworked to be Rs. 677.41 Crore.

The revised capital expenditure as submitted by APML-T in the current Petition is given in the Table below:

Table: Capital Cost approved in-principle by the Commission and revised Capital Cost considered by APML for the current ARR Petition (Rs Crore)

Sl. No.	Particulars	In-Principle Approved by Commission	Revised Cost Estimate by APML-T
1	Preliminary and Pre-Operative	1.65	1.50
2	EPC Cost	471.38	516.73
2.1	<i>Supply Cost</i>	359.65	391.80
2.2	<i>Erection cost</i>	108.29	121.50
2.3	<i>Type Test</i>	3.44	3.43
3.	Non-EPC cost	12.00	12.00
3.1	<i>Consultancy (considered in Sl.No.1)</i>	0.00	0.00
3.2	<i>Cost towards Terminal Bays</i>		
	<i>400kV Line Bays at Tiroda</i>	12.00	12.00
3.3	<i>Right of Way (considered in</i>	0.00	0.00
3.4	<i>Design cost (considered in Sl.No.5)</i>	0.00	0.00
3.5	<i>Compensatory land for forest</i>	0.00	0.00
3.6	<i>Detailed Survey (considered in Sl.No.2.2)</i>	0.00	0.00
4	Overheads	41.23	47.00
5	Escalation towards completion cost	29.10	15.00
6	Contingency	14.55	5.00
7	Interest during Construction	36.96	61.53

Sl. No.	Particulars	In-Principle Approved by Commission	Revised Cost Estimate by APML-T
8	Cost towards terminal bays at Warora	13.20	18.66
	Total Project Cost	620.07	677.41

Based on expected COD of the project (by end of February 2012, as mentioned above) and the revised Capital Cost, Equity Component and Normative Debt, APML - T has proposed the Aggregate Revenue Requirement for FY 2011-12 in accordance with the MERC Tariff Regulations, 2005 as given in the Table below:

Table: Aggregate Revenue Requirement submitted by APML-T for FY 2011-12
(Rs Crore)

Sl.	Particulars	FY 2011-12
1.	Operation & Maintenance Expenses	0.51
1.1	<i>Employee Expenses</i>	<i>0.18</i>
1.2	<i>Administration and General Expenses</i>	<i>0.29</i>
1.3	<i>Repair and Maintenance Expenses</i>	<i>0.04</i>
2	Depreciation, including advance against depreciation	1.48
3	Interest on Long-term Loan Capital	5.03
4	Interest on Working Capital	0.20
5	Other Expenses	0.13
6	Income Tax	0.34
7	Contribution to Contingency Reserves	0.28
8	Total Revenue Expenditure	7.97
9	Add: Return on Equity Capital	2.37
10	Less: Non tariff Income	0.00
11	Less: Income from Other Business	0.00
12	Aggregate Revenue Requirement from transmission tariff	10.33

3. APML-T's submissions during the Public Hearing

During the Public hearing held on March 2, 2012, APML-T submitted that the completion of the proposed 400 kV D/C Tiroda-Warora line and its associated transmission infrastructure has got delayed owing to delay in forest clearance and other issues related to local resistance. Further, APML-T submitted that the said transmission project is expected to be commissioned in May 2012.

The status update for project execution and erection of the 400 kV D/C Tiroda-Warora line as submitted by APML-T during the public hearing is shown in the Table below:

Table: Status Update of 400 kV D/C Tiroda-Warora Line

Particulars	Units	Quantity	Completed	% Completed
Check Survey	Km	219	219	100
Tower Foundation	Nos.	588	573	97.6
Tower Erection	Nos.	588	573	97.6
Stringing	km	219	185	84.5

Further, APML-T submitted that the construction of the two Bays at Tiroda substation are physically complete and those at Warora substation are scheduled to be completed by May 2012.

APML-T requested the Commission that pending the Order on Business Plan and subsequent MYT process, it may grant approval for recovery of provisional tariff for FY 2012-13. APML-T submitted that approving a provisional tariff would ensure timely recovery for APML-T from the date of commissioning of its assets and thus, enable APML-T to fulfil its obligation towards lenders.

4. Commission's Ruling

Having heard the Petitioner and after considering the materials placed on record in the matter, the Commission rules as follows:

(a) The Commission had earlier directed APML-T to submit its ARR Petition for FY 2011-12 as per MERC Tariff Regulations, 2005 vide its letter dated November 4, 2011 based on the submission made by APML that the Date of Commercial Operation of the transmission system of APML-T would be around December 2011. However, as submitted by APML-T during the public hearing, the commissioning of the proposed transmission infrastructure is not expected to take place during FY 2011-12, i.e., the proposed transmission infrastructure would not be put to use during FY 2011-12. The Commission has also noted the present status of project execution and erection activities and the Petitioner's submission that expected commissioning for the transmission project is likely to be during May 2012. In accordance with the MERC Tariff Regulations, 2005, the ARR for FY 2011-12 cannot be approved by the Commission unless the transmission project is commissioned and the transmission assets are put to use, since all capital related costs can be allowed only after the assets are put to use.

(b) Further, it is also pertinent to refer to the relevant clauses of the Bulk Power Transmission Agreement (BPTA) executed between APML-T, MSETCL and MSEDCL and subsequent clarification issued by MSETCL on the BPTA. The said Agreement was executed on January 4, 2011, subsequent to the Power Purchase Agreement for 1320 MW between MSEDCL and Adani Power Maharashtra Limited-Generation Business. Further, the effective date of the Agreement is mentioned as August 14, 2012. The relevant clause of BPTA is reproduced below:

"2.1 Effective Date

Unless agreed to advance the Effective Date of this Agreement with mutual consent between the parties to the document, the Effective Date of this Agreement shall be 14th August 2012."

Subsequent to executing the Agreement, MSETCL, vide its letter dated February 17, 2011, had provided a clarification regarding the Effective Date as following.

"Payment of transmission charges for making available Long Term Transmission Capacity Rights prior to the above Effective Date to Transmission System User shall

*be governed by MERC Orders & Regulations issued from time to time, **provided that the transmission line is put to commercial use.**”(Emphasis Added)*

The above clause and subsequent clarification on the 'Effective Date', provides the basis for recovery of transmission charge for a period from the date of commercial use of the transmission line and the Effective Date. However, the above clause and subsequent clarification also emphasise on payment of transmission charges by Transmission System User only after the Date of Commercial Operation of the transmission system of APML-T.

(c) In view of the above, the Commission is not inclined to approve the ARR of APML-T for FY 2011-12 as petitioned. The Commission reiterates that the ARR of APML-T shall only be recoverable subsequent to the date of commissioning of the proposed Transmission project and subject to Commission's approval of the same. In this context, the additional prayer to the current Petition of APML-T, submitted under affidavit on January 19, 2012, for inclusion of the ARR for FY 2011-12 in the Transmission Tariff Order to be issued for FY 2011-12 or to issue any other suitable direction for timely recovery of APML-T's ARR, subsequent to its approval under this Petition, has also become redundant.

(d) As regards APML-T's prayer requesting to allow continued recovery of the transmission charges for FY 2012-13 on provisional basis based on approved ARR for FY 2011-12, the Commission is of the view that, since approval of ARR for FY 2011-12 is not being undertaken by the Commission for reasons detailed above, the recovery of transmission charges for FY 2012-13 based on the approved ARR for FY 2011-12 does not arise. The Commission reiterates that the recovery of the transmission charges for FY 2012-13 shall be based on approved ARR for FY 2012-13.

(e) The Commission vide its aforesaid letter dated November 4, 2011, had also conveyed that the ARR for FY 2012-13 to FY 2015-16 would be determined based on the MYT Petition to be filed in accordance with the MERC MYT Regulations, 2011. Further, the Commission's views on projection of ARR components for FY 2012-13 have been elaborated in the separate Order being issued on the MYT Business Plan Petition filed by APML-T in Case No. 60 of 2011. APML-T will have to file its MYT Petition covering ARR projections for FY 2012-13 to FY 2015-16, which shall be scrutinised and approved by the Commission upon due regulatory process, which shall form part of the Total Transmission System Charges (TTSC) of the intra-State transmission system to be determined for FY 2012-13 under the Intra-State Transmission Tariff Order for the year. The recovery of transmission charges of APML-T for FY 2012-13 shall be based on the aforementioned Intra-State Transmission Tariff Order for FY 2012-13 to be issued by the Commission and would be applicable in case of APML-T from the month subsequent to the month in which the transmission system project of APML-T is commissioned.

With the above, APML-T's Petition in Case No. 174 of 2011 stands dismissed.

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(Vijay L. Sonavane)

Member

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(V. P. Raja)

Chairman

Appendix-1**List of individuals who attended the Technical Validation Session held on December 30, 2011**

Sr. No.	Name	Institution
1	Shri. R K Madan	Adani Power Maharashtra Limited
2	Shri. Jignesh Langalia	Adani Power Maharashtra Limited
3	Shri. Karthik Kumar	Adani Power Maharashtra Limited
4	Shri. Anirban Banerjee	Price Waterhouse Coopers

Appendix-2**List of individuals who participated in the Public Hearing held on March 2, 2012**

Sr. No.	Name	Institution
1	Shri. R K Madan	Adani Power Maharashtra Limited
2	Shri. Karthik Kumar	Adani Power Maharashtra Limited
3	Shri. Mehul Rupera	Adani Power Maharashtra Limited
4	Shri Dipesh Bhandane	Adani Power Maharashtra Limited
5	Shri Anirban Banerjee	Price Waterhouse Coopers
6	Shri Umesh Agarwal	Price Waterhouse Coopers