

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.com
Website: www.mercindia.com

Case No. 72 of 2011

In the matter of
Implementation of Hon’ble Appellate Tribunal for Electricity’s Judgment dated 27th April,
2011 in Appeal No. 191 of 2009 – MSPGCL v/s MERC & Ors.

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

ORDER

Dated: July 26, 2011

1. Background :

- 1.1. In exercise of powers conferred under Section 61 & 62 of the Electricity Act, 2003 and in accordance with the Maharashtra Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2005, the Commission on April 25, 2007 issued Multi Year Tariff (MYT) Order in Case No. 68 of 2006 in respect of the Maharashtra State Power Generation Co. Ltd (“MSPGCL”) for the first Control Period from FY 2007-08 to FY 2009-10 and tariff for the year 2007-08.
- 1.2. MSPGCL filed appeals against Commission’s Order dated September 7, 2006 and April 25, 2007 bearing Appeal Nos. 86 and 87 of 2007 respectively before the Hon’ble Appellate Tribunal for Electricity (“ATE”). The Hon’ble ATE, by Order dated April 10, 2008 allowed the appeals partly and remitted the matter back to the Commission for re-determination of the tariff of the MSPGCL. The Hon’ble ATE also directed MSPGCL to engage an independent agency to conduct a study to assess the achievable Performance Parameters of the MSPGCL’s thermal power plants.
- 1.3. On November 4, 2008 the Commission appointed Central Power Research Institute (CPRI) to carry out detailed study of the MSPGCL’s plants.
- 1.4. MSPGCL filed Case No. 115 of 2008 with the Commission for trueing up for FY 2007-08, Annual Performance Review (APR) for FY 2008-09 and tariff determination for FY

2009-10. The Commission after Public Hearing passed an Order in Case No. 115 of 2008 on August 17, 2009. Subsequently, MSPGCL filed an appeal against the said Order before The Hon'ble ATE.

- 1.5. However, during the proceedings of the Appeal, the Hon'ble ATE permitted the truing up exercise by the Commission. Subsequently, by Order dated January 19, 2010 the Commission decided to hold the Public Hearing on some of the items of true-up. The Commission after the Public Hearing passed the true-up Order dated March 5, 2010 in Case No. 16 of 2008.
- 1.6. On April 27, 2011, the Hon'ble ATE passed the judgment on Appeal No. 191 of 2009 in connection with Order on Case No. 16 of 2008 and Case No. 115 of 2008. This Order relates to implementation of directions as issued in the Appeal No. 191 of 2009 by the Hon'ble ATE.
- 1.7. Based on the direction of the Hon'ble ATE, the Commission conducted hearing on June 10, 2011 and additional submissions were requested from MSPGCL on the respective matters. Subsequently, further hearings on the same matter were held on June 28, 2011 & July 08, 2011. The Commission after having heard MSPGCL and details provided issues this Order to revise the capital expenditure and the corresponding tariff.

2. Observations of the Hon'able ATE

- 2.1. In its judgment delivered on April 27, 2011 in the matter of Appeal 191 of 2009 filed by MSPGCL against the Order on Case No. 16 of 2008 and Case No. 115 of 2008, as stated above, the Hon'ble ATE has deliberated on the above topics as follows :
 - 1) Truing up not taken up expeditiously.
 - 2) Truing up of Operation & Maintenance expenses with erroneous computation of base year figures for arriving at the O&M expenses for subsequent years.
 - 3) Truing up for fuel costs for the years 2005-06 to 2007-08.
 - 4) Carrying cost for deferred true up.
 - 5) Non-consideration of Deferred Tax Liability for computation of Return on Equity.
 - 6) Non consideration of station-wise Advance Against Depreciation.
 - 7) Reactive Energy Charges.
 - 8) Erroneous period of spread for bad and doubtful debts.
 - 9) Erroneous Disapproval of Interest on Working Capital.

After considering the above mentioned issues, the findings of the Hon'ble ATE are summarized below:

- 2.2. **Truing up not taken up expeditiously:** The Hon'ble ATE has observed that the delay on account of instituting the study by CPRI was due to limited response from the bidders and consequent extension of the bid. Thus, the Commission cannot be held responsible for such delay. Moreover, scheduling the second hearing was correct and in the interest of principles of natural justice.
- 2.3. **True-up of O&M with erroneous computation of base year figures:** The Hon'ble ATE has observed that the regulations do not deal with the issues of gross and net O&M expenses and has chosen not to interfere with the Orders of State Commission in this regard. However, it is specified that MSPGCL is at the liberty to raise the issue before the State Commission for consideration in subsequent True Up/Tariff Petition and the State Commission shall consider the same so that MSPGCL is not denied of the legitimate O&M expenses on account of booking of the O&M expenses on capital works.
- 2.4. **True-up for fuel costs:** The Hon'ble ATE has specified that it is in agreement with the methodology used by the State Commission for the true-up.
- 2.5. **Carrying cost for deferred true-up:** The Hon'ble ATE has decided that the Commission has correctly allowed carrying cost for the period the recovery amount was deferred.
- 2.6. **Non-consideration of Deferred Tax Liability for computation of RoE:** The Hon'ble ATE has decided in favour of the approach adopted by the Commission for not considering the deferred tax liability in the equity.
- 2.7. **Non consideration of station-wise Advance Against Depreciation (AAD):** In this case, the Hon'ble ATE has decided in favour of MSPGCL and has directed Commission to determine station-wise AAD.
- 2.8. **Reactive Energy Charges:** The Hon'ble ATE has upheld the findings of the Commission in this regard.
- 2.9. **Erroneous period of spread for bad and doubtful debts:** The Hon'ble ATE has specified that the Commission has correctly implemented the directions regarding spread for bad and doubtful debts and has decided against MSPGCL.

2.10. **Erroneous Disapproval of Interest on Working Capital:** The Hon'ble ATE has decided the issue in favour of MSPGCL and has directed the Commission to approve the Interest on Working Capital as per the decision by ATE in its Judgment dated May 28, 2009 in Appeal No. 111 of 2008 in the matter of Reliance Infrastructure Ltd. vs. MERC & Ors.

3. **Impact of judgment of the Hon'able Appellate Tribunal for Electricity:** Based on the directives and the guidelines received from the Hon'ble ATE, the Commission has revisited the issues. The findings are as given below:

3.1. **Determination of Advance Against Depreciation**

3.2. MSPGCL has submitted that it has been filing for tariff determination power station wise. Thus MSPGCL has been seeking Advance Against Depreciation (AAD) in cases where the loan repayment in respect of a particular year exceeds the depreciation according to Regulation 32.3. MSPGCL submitted that the Commission has wrongly denied AAD for FY 2007-08 considering that the actual depreciation for the MSPGCL as a whole is higher than the actual loan repayment for the company.

3.3. The Hon'ble ATE has noted that:

“The Regulation 32.3 clearly indicates that the AAD is permissible in respect of a generating station where the actual amount of loan repayment in a financial year exceeds the amount of allowable depreciation in respect of such generating station, for such financial year.”

Moreover the Hon'ble ATE has specified that:

“i) In the entire tariff exercise the tariff is being determined station-wise. All the components of tariff are determined for each station. The availability at which a generating station recovers its full fixed cost is also determined station-wise. Regulation 32.3 also provides for AAD specific to a generating station. Therefore, it is logical that AAD is also allowed station-wise and not company as a whole. AAD results in front loading of the tariff but the balance depreciation after repayment of loan is appropriately adjusted for AAD so that the total depreciation allowed to a generating station remains the same. If the Regulations provide for AAD for a generating station, it should not be denied on some other grounds which do not form part of the Regulation.

ii) The second contention of the Respondent No. 1 is that the State Commission adopted similar approach for AAD in earlier tariff order. In our opinion each tariff proceeding is a separate and distinct cause of action. Failure of the Appellant to challenge an issue in earlier tariff order does not bar the Appellant to challenge that issue in a subsequent tariff order.

iii) According to the Appellant same generic loans were taken by the erstwhile Maharashtra State Electricity Board prior to its reorganization which have been allocated station-wise. In our opinion the Appellant's contention of allocating such loans station-wise is the correct approach. The station-wise interest on loan and tariff of the generating stations of the Appellant is also being determined on the basis of such allocated loans and specific loans taken for a generating station. Thus actual repayment of such allocated loans can also be apportioned power station-wise."

"In view of the above we decide this issue in favour of the Appellant and direct the State Commission to determine station-wise AAD."

3.4. In consideration of the above directions, the Commission has computed station-wise AAD and the corresponding carrying cost. The summary of the revised AAD computation is provided in the table below:

Table 1: Advance Against Depreciation for FY2006-07 (All figures are in Rs. Crore)

Station	Repayment	Depreciation	Advance Against Depreciation
Koradi	48.63	27.70	20.93
Nasik	6.98	20.34	0.00
Bhusawal	2.89	10.99	0.00
Parli	6.86	23.08	0.00
Chandrapur	12.60	113.91	0.00
Paras	0.05	1.20	0.00
K'kheda	178.21	81.59	96.62
Uran	6.78	53.80	0.00
Hydro	6.95	3.03	3.92
Total			121.46

Table 2: Advance Against Depreciation for FY2007-08 (All figures are in Rs. Crore)

Station	Repayment	Depreciation	Advance Against Depreciation
Koradi	41.39	28.41	12.97
Nasik	6.86	20.13	0.00
Bhusawal	3.17	13.20	0.00
Parli	7.51	10.96	0.00
Chandrapur	20.00	117.37	0.00
Paras	0.05	1.23	0.00
Khaperkheda	119.52	82.24	37.28
Uran	18.72	58.53	0.00
Hydro	12.82	6.60	6.22
Total			56.47

3.5. Determination of Interest on Working Capital

3.6. MSPGCL submitted to the Hon'ble ATE that the State Commission has wrongly disallowed interest on Working Capital without considering that the working capital requirement was met through the internal accruals. The State Commission has treated such interest as efficiency gain to be shared with the consumer.

3.7. The Hon'ble ATE has specified that the precedence to the earlier judgment dated 28.5.2009 in Appeal No. 111 of 2008 in the matter of Reliance Infrastructure Ltd. vs. MERC & Ors is applicable and hence the computation for interest on working capital needs to be revised. The relevant extracts of the judgment are reproduced below:

"6) It is submitted on behalf of the appellant that when working capital is funded through internal sources of the appellant, the internal funds also carry cost. It is further submitted that such funds employed elsewhere would have carried interest income.

7) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on working capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as working capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any

expenditure towards interest on working capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals and the cost of generating such accruals. The cost of such accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on working capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on working capital as per Regulation 19 has merit”.

3.8. As per the judgment of the Hon'ble ATE the Commission directed the MSPGCL to submit the detail of the internal Accrual utilized for funding the Working Capital. The Commission also directed to submit the opportunity cost of such internal accrual, if any, used for funding the Working Capital.

3.9. In its reply MSPGCL only submitted the cash flow statement for FY 2006-07 & FY 2007-08. The extract of the submission made by MSPGCL is provided below.

“Working Capital Funding details for FY 2006-07

Cash Flow Workings for year ending FY 2006-07”

.....

“As can be ascertained from the cash flow workings for year ending FY 2006-07, there was an increase in working capital and taxes of Rs 538.76 Cr which was funded through working capital loan of Rs 274.25 Cr and balance from internal accrual”

.....

“Working Capital Funding details for FY 2007-08

Cash Flow Workings for year ending FY 2007-08

“As can be ascertained from the cash flow workings for year ending FY 2007-08, there was an increase in working capital and taxes of Rs 526.12 Cr which was funded through working capital loan of Rs 397.00Cr and balance from internal accrual”

- 3.10. As the submission made by the MSPGCL was not to the satisfaction of the Commission, the Commission further directed the MSPGCL to submit the detail of daily utilization of internal accruals for funding the Working Capital Requirement.
- 3.11. In reply to the above MSPGCL stated that it would not be possible to provide daily utilization of the internal accruals for funding Working Capital. MSPGCL further submitted that it will not be possible provide even monthly or quarterly data showing the details of utilization of internal accruals for funding Working Capital as their Accounting System does not capture such daily/ monthly/ quarterly data. Further the MSPGCL submitted that they do not have any system to capture the transaction of internal accruals on a daily basis.
- 3.12. Considering the above facts and the directions given by Hon'ble ATE, the Commission has considered the year end internal accruals provided by MSPGCL for computation of Interest on Working Capital. While doing so the Commission has considered Rs. 264.51 Crore & Rs. 129.12 Crore as the quantum of internal accruals used for the Working Capital for the FY 2006-07 & FY 2007-08 respectively.
- 3.13. Further, the Commission observes that the Hon'ble ATE, in its judgment cited above, had specifically directed to find out "source of internal accruals" and then ascertain the cost of generating such accruals. As MSPGCL was not able to establish the source of funding of remaining Working Capital, the Commission therefore considers the remaining Interest on Working Capital as the efficiency gain and MSPGCL is therefore entitled to keep the 2/3rd (two third) of the remaining Interest on Working Capital and pass on the remaining 1/3rd to the Consumers. The summary of the calculation is given below.

Table 3: Interest on Working Capital

Sl. No	All Figure in Rs. Crore	2006-07	2007-08
1	Normative IoWC	199.63	242.01
2	Actual IoWC	10.62	28.87
3	Internal l Accruals used for funding Working Capital	264.51	129.12
4	SBI PLR Rate in %	10.75%	11.50%
5	Interest on Internal Accruals	28.43	14.85
6	Efficiency gain	160.58	198.29
7	Efficiency gain to be given to MSPGCL	107.05	132.19
8	Efficiency gain to be given to Consumer	53.53	66.10

9	MSPGCL total Entitlement	146.10	175.91
10	Already Given to MSPGCL in Case 16 of 2008	136.63	170.96
11	To be given to MSPGCL	9.48	4.95

4. Carrying Cost & Net Impact

4.1. As regards the allowance of carrying cost, the Commission has allowed the same in accordance with the ruling given by the Hon'ble ATE in another matter, in its Judgment in Appeal No. 117 of 2008 filed by Reliance Infrastructure Ltd.- Distribution Business-(RInfra-D) against the Commission's Order dated June 4, 2008 on APR Petition for FY 2007-08. The relevant extract of the said Judgment regarding carrying cost is reproduced as under:

“47. As the MERC Regulations deploy the Short Term Prime Lending Rate of State Bank of India for working out interest on Working Capital there is no reason why the same yardstick is not used when it comes to applying interest rate on deferred payments. The licensee shall have to arrange the amount of deferred payment in the same way as the Working Capital. We, therefore, direct the Commission to allow Short Term Prime Lending Rate of SBI for deferred payments and incorporate the same while carrying out the truing up exercise for the year 2008-09.”

4.2. Accordingly, the Commission has allowed the carrying cost based on the SBI PLR rate as approved by the Commission for the respective year in various APR Orders on the under-recovered amount. The detailed calculation is summarized in the table below:

Table 4: Carrying Cost (All figures are in Rs. Crore)

	2006-07	2007-08	2008-09	2009-10	2010-11	Till First Quarter of FY 2011-12
Opening	0	145.01	230.17	259.52	293.26	329.18
AAD	121.46	56.47	-	-	-	-
IowC	9.47	4.95	-	-	-	-
SBI PLR Rate (%)	10.75%	11.50%	12.75%	13.00%	12.25%	13.25%
Carrying Cost	14.08	23.74	29.35	33.74	35.92	10.90
Final Amount	145.01	230.17	259.52	293.26	329.18	340.09

5. Recovery of under-recovered amount from MSEDCL

5.1. As regards the recovery of amount of previous years, the Commission hereby allows MSPGCL to recover the approved amount of Rs. 340.09 Crore in 6 equal monthly installments from MSEDCL, in order to avoid any tariff shock to the consumers.

With this Order, the Commission disposes of MSPGCL's Petition in Case No. 72 of 2011.

Sd/-
(Vijay. L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman

Sd/-
(P.B. Patil)
Registrar