

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

Appeal No. 74 of 2015

Dated: 19th July, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member**

In the matter of

**Meghalaya Power Distribution Corporation
Limited (MePDCL)
Lum Jingshai, Short Round Road
Shillong- 793001
Meghalaya**

... Appellant

Versus

- 1. Meghalaya State Electricity Regulatory
Commission (MSERC)
New Administrative Building, 1st Floor,
Left Wing, Lower Lachumiere,
Shillong- 793001,
Meghalaya** **...Respondent No.1**
- 2. Meghalaya Energy Corporation Limited (MeECL)
Lum Jingshai, Short Round Road
Shillong- 793001
Meghalaya** **...Respondent No.2**
- 3. Byrnihat Industries Association,
13th Mile, Tamulikuchi, Byrnihat,
Ri Bhoi District, Nongpoh,
Meghalaya – 793101** **...Objector**

**Counsel for the Appellant(s): Mr. Sanjay Sen, Sr Advocate
Mr. Sakie Jakharia**

**Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Mr. D V Raghu Vamsy for R-1**

Mr. Anand K. Ganeshan
Ms. Swapna Seshadri
Mr. Sandeep Rajpurohit
Ms. Neha Garg for Objector

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed under Section 111 of the Electricity Act, 2003 to challenge the legality, validity and propriety of certain findings of the Impugned Order dated 22.12.2014 ("**Impugned Order**") passed by the Meghalaya State Electricity Regulatory Commission (MSERC) (hereinafter referred to as the '**State Commission**') in the True-up Petition for the period FY 2010-11 filed by Meghalaya Power Distribution Company Limited (MePDCL) (hereinafter referred to as the '**Appellant**'). The State Commission in the Impugned Order has denied expenditures to MePDCL under various heads which has an impact of Rs. 105.22 Cr. besides imposing a penalty of Rs. 19.99 Cr.
2. The Appellant, MePDCL was formed pursuant to the Government of Meghalaya Notification "The Meghalaya Power Sector Reforms Transfer Scheme 2010" dated 31.03.2010. Therefore, with effect from 1.04.2010, MePDCL was incorporated to undertake business of Distribution Licensee in the State of Meghalaya.

3. The Respondent No 1 is the Electricity Regulatory Commission for the State of Meghalaya exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
4. The Respondent No.2 MeECL was formed pursuant to the Government of Meghalaya Notification "The Meghalaya Power Sector Reforms Transfer Scheme 2010" dated 31.03.2010 and being the holding company pursuant thereto the assets and liabilities of Meghalaya State Electricity Board ('MeSEB') were vested in Respondent no. 2.
5. The Objector is a society registered under the Meghalaya Societies Registration Act, 1983 having its registered Office at Byrnihat, Ri-Bhoi District, Meghalaya. The Objector was formed by the different industrial units for the welfare, better functioning of its units and regularly participates in the proceedings related to determination of Annual Revenue Requirement (ARR) and tariff by the State Commission and also takes up the other issues concerning its Members.
6. Aggrieved by the Impugned Order dated 22.12.2014 passed by the State Commission, the Appellant has preferred the present appeal on the following issues:
 - a) The State Commission has disallowed a Return on Equity of Rs. 98.21 Cr in violation of the provisions in the applicable Regulation being Meghalaya State Electricity Regulatory Commission 'Terms and Conditions for Determination of Tariff Regulations, 2011' ("Tariff Regulations, 2011") and failed to take into consideration the

equity amount in Financial Statements duly audited by statutory auditors and also that in the Transfer Scheme notified by the State Government of Meghalaya without any justification;

- b) The State Commission has disallowed depreciation of Rs 2.02 Cr. out of total Rs 27.02 Cr., as claimed by the Appellant, on an incorrect basis of purported Observation in Audit Report and failed to adopt the Financial Statement audited by Statutory Auditors without any justification;
- c) The State Commission has disallowed short term power purchase cost in violation of the provisions in this regard in the Tariff Regulations, 2011;
- d) The State Commission has declined 'Prior period charges' of Rs. 2.59 Cr. although the same were uncontrollable in nature.
- e) The State Commission has unjustly imposed a penalty of Rs.19.99 Cr. on the basis of AT & C losses for the period FY 2010-11 under Tariff Regulations, 2011, thereby saddling MePDCL with a huge and onerous financial burden, being a period prior to the enactment of Regulations, 2011 and being the first year of operation of the new Distribution entity.

7. Facts of the present Appeal:

- a) From 21.01.1975, the power supply industry in Meghalaya had been under the control of the erstwhile Meghalaya State Electricity Board. Section 131 and 172 of the Electricity Act, 2003 provided

for the restructuring / reorganizing of the State Electricity Boards within a period of 2 years from its enactment in terms of the Transfer Scheme as notified by the State Government. There were various extensions provided by the Government of India, Ministry of Power to the Government of Meghalaya for carrying out the restructuring of erstwhile MeSEB.

- b) During this period on 7.12.2006 the State Commission made its first Regulation for tariff determination being, MSERC (Determination of Tariff) Regulations, 2006 ("Tariff Regulations, 2006"). The Tariff Regulations, 2006, however, did not provide for the methodology for determination of tariff.
- c) The State Commission made the MSERC (Furnishing of Details for Determination of Tariff) Regulation, 2009 ("Tariff Regulations, 2009") on 13.10.2009, which provided for the manner in which details were to be filed for determination of tariff.
- d) A consolidated Petition was filed by erstwhile MeSEB before the State Commission on 17.02.2010 for determination of Annual Revenue Requirement ("ARR") of the Board and for fixation of Tariff (Distribution) for the FY 2010-11 under the Tariff Regulations, 2006 and as per the Tariff Details Regulations, 2009 based on projections.
- e) During the pendency of the Tariff Petition for FY 2010-11 before the State Commission, Govt. of Meghalaya notified the Meghalaya Power Sector Reforms Transfer Scheme, 2010 on 31.3.2010, under which the Meghalaya State Electricity Board (MeSEB) was

reorganized and unbundled into (i) Meghalaya Electricity Corporation limited (MeECL), the Holding Company, (ii) Meghalaya Power Distribution Corporation Limited (MePDCL), the Distribution Utility; (iii) Meghalaya Power Generation Corporation Limited (MePGCL), the Generation Utility & (iv) Meghalaya Power Transmission Corporation Limited (MePTCL), the Transmission Utility as the Subsidiary Companies with effect from 01.04.2010.

The MeECL was functioning as a Holding Company and the other Utilities i.e. Appellant/ MePDCL, MePGCL and MePTCL commenced independent operation as successor entities from 01.04.2012 onwards. Although the successor entities started independent operation on 01.04.2012, independent commercial operation by the successor entities started on 01.04.2013 after separate tariff was determined for the segregated functions of the utilities.

- f) The State Commission was informed of the corporatization of MeSEB with effect from 01.04.2010 vide intimation letter dated 01.04.2010. Thereafter MeECL, being the holding company and the successor substituted MeSEB in subsequent proceedings in the Tariff Petition for the period 2010-11. On 9.06.2010, MeECL filed a revised Tariff Petition for the period 2010-11.
- g) In the said Tariff (Distribution) Petition No.1 of 2010 for the period 2010-11, and in a subsequent Revised Tariff Petition dated 9.06.2010, MeECL submitted projections in relation to specific claims on the issues raised in this Appeal.

- h) On 23.08.2010, the State Commission passed an order adjudicating upon MeECL's ARR and Tariff (Distribution) Petition bearing no. 1 of 2010 to determine the distribution tariff for FY 2010-11. This Petition was premised on a projected ARR of Rs. 461.40 Cr. out of which the State Commission has approved Rs. 419.20 Cr. as the ARR for the tariff year 2010-11.
- i) On 25.11.2010, MePDCL through a letter sought revision of cost of power purchase in view of the directions of the State Commission in the tariff order dated 23.08.2010 to MePDCL, to take effective and expeditious steps to ensure that the peak and off peak demand of the State be adequately met and required quantum of energy be provided during all period of the year. The same was rejected by the State Commission on the ground of infirmities by order dated 1.12.2010.
- j) Thereafter on 13.01.2011, MePDCL filed a Review Petition before the State Commission seeking revision of Power Purchase Cost and Employee Cost for FY 2010-11. In the said Petition MePDCL again sought inter alia revision of cost of power purchase in view of the directions of the State Commission in the tariff order dated 23.08.2010 to MePDCL. This petition is still pending before the State Commission for decision.
- k) On 10.02.2011 the State Commission notified the Meghalaya State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2011 (hereinafter referred as "Tariff Regulations, 2011") which provided for Review and Truing-Up.

- l) Meanwhile, Government of Meghalaya vide Notification dated 19.05.2011, notified that the transfer scheme of MeECL be extended for another period of one year with effect from 01.04.2011. On 31.03.2012, Government of Meghalaya issued amendment to the above mentioned transfer scheme of 2010, to transfer Assets and Liabilities including the rights, obligations and contingencies with effect from 01.04.2012. The Government of Meghalaya issued finalized transfer scheme by way of notification dated 23.12.2013 thereby notifying the revised statement of Assets and Liabilities at Rs. 767.54 Cr. as on 01.04.2010 to be vested in MeECL.
- m) On 15.09.2014, the State Commission notified the MSERC (Multi Year Tariff) Regulations, 2014 ("Tariff Regulations, 2014') wherein specific provision in relation to Truing-Up is prescribed in Regulation 1.4 which states that true-up of periods prior to FY 2015-16 shall be carried out in accordance with the Tariff Regulations, 2011.
- n) The Appellant / MePDCL filed the true up petition on 23.09.2014 in accordance with Tariff Regulations, 2011, for the ARR for the period 2010-11 based on actual audited expenditure for FY 2010-11 along with detailed Audited Annual Statement of Accounts as audited by Statutory Auditors, so that revenue gap/ surplus as may be, determined by the State Commission could be passed through Distribution Tariff.

- o) The State Commission passed the Impugned Order on 22.12.2014 conducting the truing up of the MeECL's accounts for Financial Year 2010-11. Only a Net Revenue Deficit of Rs.36.99 Cr was allowed against the Net Revenue Deficit of Rs. 266.74 Cr sought by MePDCL. Aggrieved by the observations and disallowances in the Impugned Order, the Appellant has filed the present Appeal.

8. QUESTIONS OF LAW

The Appellant has raised the following questions of law in the present appeal:

- a) Whether the disallowance of Rs. 98.21 Cr for Return on Equity is in violation of -

- i. Regulation 101 sub clause (2) of the Tariff Regulations, 2011 which provides that -

“ The equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet is not audited.”

as the State Commission has failed to take into consideration the equity amount appearing in the audited Balance Sheet nor has the State Commission taken into account the opening balances of various assets and liabilities as vested upon MeECL under the Transfer Scheme ?

- ii. Section 131(2) and Section 131 (3) (b) of the Electricity Act, 2003; and

iii. The Transfer Scheme dated 23.12.2013 which has statutory force.

b) Whether the State Commission has erred in disallowing Rs 2.02 Cr out of Depreciation of Rs 27.02 Cr as sought by MePDCL, particularly on the incorrect basis of a purported Observation in the Audit Report? Whether there was non-application of mind by the State Commission on the issue of depreciation?

c) Whether the State Commission in disallowing short-term power purchase, acted in violation of Regulation 93 sub-clause (7) of Tariff Regulations 2011, which provides that :

'In case of short-term power purchase necessitated based on unprecedented development, the licensee may resort to short term procurement.'

and further by considering short term power purchase cost source-wise instead of considering overall average short term power purchase cost for the period 2010-11?

d) Whether the State Commission has failed to apply its mind while disallowing Prior Period Expenses under the head 'Other Expenses' to the tune of Rs. 2.60 Cr. being restructuring cost and of uncontrollable in nature?

e) Whether imposition of a penalty cost Rs.19.99 Cr under Tariff Regulations 2011 on the basis of AT & C losses in onerous, burdensome and unjust particularly in view of the fact that, the concerned FY 2010-11 was the first year of operation of the successor entity post unbundling and was also a period prior to the

enactment of the Tariff Regulations 2011 and has a long term impact on the performance of a new entity and therefore runs contrary to the principle object and spirit of unbundling of erstwhile Electricity Board ?

9. We have heard at length the learned senior counsel/counsel for the parties and considered carefully their written submissions, arguments put forth during the hearings etc. Gist of the same is discussed hereunder.
10. On the specific issues raised in the present Appeal, the learned senior counsel for the Appellant has made the following submissions for our consideration:
 - i. The True-up of revenue and expenses for the period 2010-11 was to be carried out in terms of Regulation 15 of Tariff Regulations, 2011 for Review and True-up, as mandated by the proviso to Regulation 1.4 of the Tariff Regulations, 2014 which is reproduced hereunder:

"1.4 Provided that for the purpose of review or of truing up of revenues and expenses pertaining to FYs prior to 2015-16, the provisions under MSERC (Terms and Conditions for Determination of Tariff Regulations, 2011 shall apply."

This is relevant in the context that prior to the Tariff Regulations, 2011, the Regulation governing tariff determination in the State of Meghalaya was the Tariff Regulations, 2006. In the said Regulations 2006, there was no specific prescribed provision for determination of tariff or truing up or for prescribing norms.

Thereafter, by a subsequent Regulation being Tariff Regulations, 2009, forms for furnishing details for tariff determination were prescribed. Even the Tariff Regulations, 2009 did not prescribe any method for determination of tariff or truing up. Therefore, it was the Tariff Regulations, 2011 that came into effect on 10.02.2011 putting in place definite provisions for determination of tariff and truing up and for prescribing norms of operation.

- ii. The provisions for truing up as provided in the Tariff Regulations, 2011 (which actually came into effect on 10.02.2011) was made applicable for truing up the finances for all periods prior to 2015-16, which included 2010-11 being the period under consideration in this Appeal, by a subsequent Regulation being the Tariff Regulations, 2014 which came into effect on 15.09.2014.

iii. ISSUE No. 1 - Equity and Return on Equity

- a) The State Commission has failed to take into consideration the total equity amount of Rs. 903.53 Cr. after taking the effect of the Transfer Scheme dated 23.12.2013. This also reflected in Financial Statements duly audited by the Statutory Auditors. The State Commission disallowed Return on Equity of Rs. 98.21 Cr. The Return on Equity of Rs. 28.28 Cr. was allowed on an equity base of Rs. 202 Cr. The findings of the State Commission in this regard were as follows:

"Commission's Analysis

To a query the MePDCL in its letter no.MePDCL/DD/2014-15/T444/Pt-11/35 dated 24.11.2014 has furnished opening balance sheet of the Meghalaya Power Sector Reforms Transfer Scheme, 2010 (3rd amendment) notified by

government of Meghalaya in its notification no Power 79/2009 dated 23.12.2013. While deciding on the return on the equity, the Commission has taken into account the size of completed assets and assets which does not carry any liability of repayment. As considered in the Commission's order dated 23.8.10, the Commission is allowing Rs.28.28 crores as the return on equity to be passed through in the truing up of FY 2010-11.

Accordingly, the Commission has considered Return on Equity at Rs. 28.28 crores in true up for FY 2010-11.”

- b) In doing so the State Commission has violated the terms of Regulation 101 of Tariff Regulations, 2011 which specifically provides that the equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation.
- c) The State Commission has ignored the terms of the Transfer Scheme dated 23.12.2013 issued by the Government of Meghalaya which at item no. 12 reflects the Equity capital from Government of Meghalaya.
- d) The State Commission has also ignored the audited accounts for the year 2010-11 which indicated the equity amount after due process of audit.
- e) The State Commission has also rejected the entire revised equity amount as indicated in the Transfer Scheme as on 01.04.2010 and the further equity additions for the period 2010-11 as reflected in the audited balance sheet. The reasoning by State Commission is that they have taken into account the size

of completed assets and assets which do not carry any liability of repayment.

- f) Non grant of Return on Equity as per the Tariff Regulations,2011 has adversely impacted the Appellant's ability to meet operational expenditure as well as in making investments and undertaking R & M activities for development and maintenance of an efficient distribution of power system in the State.

- g) The arguments made by Respondent that the present matter is covered by the Judgment dated 17.12.2014 of this Tribunal in the matter of Appeal no. 142 of 2013 titled M/s Mawana Sugars Ltd. Vs. Punjab State Electricity Regulatory Commission is misplaced. The claim of the Appellant in the present matter arises from the specific provision in the Tariff Regulations, 2011. The Regulations of the State Commission of Punjab do not have an identical or similar provision & the Regulations under consideration are entirely different and hence the said Judgment does not apply in the case in this Appeal.

- h) The Objector referred to the variation in the figures as reflected in the various documents during the time when the deliberations on finalization of the transfer scheme were in progress. There were various extensions provided by the Government of India, Ministry of Power to the Government of Meghalaya for carrying out the restructuring of erstwhile MeSEB in line with the requirements under the Electricity Act, 2003. The State Government engaged Power Finance Corporation to commission a study to recommend

and advise on restructuring of the erstwhile Meghalaya State Electricity Board. Pursuant thereto a Cabinet Memorandum was prepared. A draft transfer scheme and opening balance sheet was proposed for the three successor entities and the same was proposed on the basis of projections for the year 2008-09 to 2011-12.

- i) On 31.03.2010 the Government of Meghalaya issued notification being "The Meghalaya Power Sector Reforms Transfer Scheme 2010" by which the MeSEB was reorganized and assets and liabilities were vested in MeECL, being the holding company, on 01.04.2010. The assets and liabilities that were to be vested on the proposed successor entities under the Transfer Scheme, 2010 were based on the figures as on 01.04.2008. The Government of Meghalaya issued finalized transfer scheme by way of notification dated 23.12.2013 thereby notifying the revised statement of Assets and Liabilities at Rs. 767.54 Cr as on 1.04.2010 to be vested in MeECL.
- j) By disallowing the Return on Equity on the equity base as claimed by the Appellant, the State Commission has violated the principles laid down by the Tribunal in the judgment dated 01.03.2012 in Appeal No. 131 of 2011 in case of Haryana Power Generating Company Limited Vs. Haryana Electricity Regulatory Commission regarding following its own regulations notified by the state regulatory commission. These principles were confirmed by this Tribunal in judgment dated 18.04.2012 in Appeal No. 102 of 2011 in case of Haryana Vidyut Prasaran Nigam Limited Vs.

Haryana Electricity Regulatory Commission. The Appellant also referred to judgment dated 14.12.2012 of this Tribunal in Appeal No. 108 of 2012 in case of Haryana Power Generating Company Limited Vs. Haryana Electricity Regulatory Commission. The State Commission also acted contrary to Section 131 of the Electricity Act, 2003.

- k) The Constitution Bench of Hon'ble Supreme Court in PTC India Ltd. Vs. Central Electricity Regulatory Commission in 2010 (4) SCC 603 has held that the Regulator has to adhere to the terms of the Regulations made by it. The Appellant has also referred to this Tribunal's judgment dated 30.11.2015 in Appeal No. 33 of 2015 in the matter of State Load Despatch Centre Vs. Gujarat Electricity Regulatory Commission & Anr. wherein this Tribunal has held that the State Commission has to follow its Regulations in view of Hon'ble Supreme Court judgment and if there is any lacuna it can always cure it by framing new regulation. Accordingly, the State Commission is bound by the Regulation 101 of the Tariff Regulations, 2011 for determination of Return on Equity of the Appellant.
- l) The counsel representing the Objector has relied on the judgments of this Tribunal in Appeal No. 142 of 2013 in case of M/s Mawana Sugars Ltd. Vs. Punjab State Regulatory Commission & Anr. and in Appeal No. 308 of 2013 in case of Chhattisgarh State Power Distribution Co. Ltd. Vs. Chhattisgarh State Electricity Regulatory Commission. There is difference in the present case and Punjab/ Chhattisgarh case regarding provisions related to Return on Equity.

- m) The State Commission has relied on the term 'pending allotment' of equity. In this context it is relevant to examine the provisions of Regulation 101 (2) which only state that 'equity amount appearing' in audited balance sheet or transfer scheme shall be taken and the same has not been made subject to allotment or non-allotment. Further, the reliance of the State Commission on the issue of allotment of the equity on the judgments of Hon'ble Supreme Court in case of Shri Gopal Jalan And Co. Vs. Calcutta Stock Exchange – (1964) 3 SCR 698 and Morgan Stanley Mutual Fund Vs. Kartick Das – (1994) 4 SCC 225 is misplaced as the same cannot have application in matters concerned under special regulations for the purpose of calculating Return on Equity. These judgments relied upon, relate to filing of returns under the Companies Act, 1956 and rights of prospective investors under Consumer Protection Act, 1986 etc. These judgments are not relevant in the present case.
- n) The loan base of Rs. 1088 Cr. appearing in balance sheet of 2010-11 has been taken for development of new hydro projects and for meeting working capital requirements. It is erroneous on part of the State Commission that the asset base of Rs. 641 Cr. was partly funded by the debt base of Rs. 1088 Cr. Further, there has been no application of mind by the State Commission in rejecting large amount of equity in view of no return to the investor, historical background of Rs. 202 Cr. as equity base etc.
- o) The contention of the State Commission that the revised petition dated 9.6.2010 by MeECL was in relation to change

in power purchase cost, depreciation, and AT&C losses due to Meghalaya Power Transfer Scheme 2010 notified on 31.3.2010 is misplaced. The said revised petition by MeECL was in respect of availability of power, change in ARR due to deferment of commissioning of Myndtu Leshka HEP. The transfer scheme was finalized on 23.12.2013 based on which true-up petition was filed on 23.9.2014 by the Appellant.

iv. ISSUE No. 2 - Depreciation

- a) The State Commission has disallowed Rs. 2.02 Cr. out of total depreciation of Rs. 27.02 Cr., as claimed by the Appellant, on an incorrect basis of purported observation in Audit Report and failed to adopt the Financial Statement audited by Statutory Auditors without any justification. In the true up petition Depreciation was computed by the Appellant in terms of Regulation 106 of the Tariff Regulations, 2011 which provides that Depreciation be calculated as per the rates specified by CERC Regulations.

- b) The State Commission has failed to adopt the audited accounts of the Appellant indicating a depreciation of Rs. 27.02 Cr. However, the State Commission in the Impugned Order, even after acknowledging that Depreciation of Rs.17.08 Cr. for FY 2010-11 was earlier allowed vide Tariff Order dated 23.08.2010 based on depreciation rates notified by CERC Regulations, 2004 which subsequently stood revised by CERC Regulations, 2009 disallowed Rs. 2.02 Cr. as the depreciation charges.

- c) The audit observations do not point any irregularity in calculation or booking of depreciation. The State Commission has also not directed to provide details of assets or records like asset registers. Accordingly, the decision of the State Commission is to be set aside.

v. **ISSUE NO. 3- Short Term Power Purchase Cost**

- a) The State Commission has disallowed short term power purchase cost of Rs. 2.39 Cr. in the Impugned Order. The same is in violation of the provisions of Regulation 93 (7) and 94 of the Tariff Regulations, 2011. The reasoning given by the State Commission is that MeECL made short term power purchases from PTCIL, SCF, RPG at a higher rate than the Commission approved rate of Rs.4.00/kWh and as per the records, no prior permission was sought for the short term purchases at a higher rate.
- b) The observation of the State Commission that no prior permission was sought earlier is incorrect. By way of letter dated 25.11.2010 MePDCL sought revision of inter alia cost of power purchase, however the same was rejected by the State Commission on the ground of infirmities by order dated 1.12.2010. Thereafter, by Review Petition dated 13.01.2011 MePDCL sought revision of inter alia cost of power purchase approved in Tariff Order dated 23.08.2010, in view of the directions of State Commission in the said tariff order to take effective and expeditious steps to ensure that the peak and off peak demand of the State be adequately met and required quantum of energy be provided during all period of the year. It was stated in said Review Petition dated

13.01.2011 that it was necessary to revise the same due to the following shortfalls:

- i) Own Generation- Shortfall of 25.22 MU in own generation due to poor monsoon and partial shutdown of Umtru Power Station on account of ongoing work related with New Umtru Power Project.
 - ii) Central Share- Shortfall of 34.70 MU due to reduction in availability from Central Share due to reduced availability from Kopli-I, Kopli-II and Khandong Power Stations.
 - iii) Reduction of share from Eastern Region by 4.98 MW with effect from 23.08.2010.
- c) In the said Review Petition, the Appellant sought revision of short term purchase approval of 98.42 MUs instead of 30 MUs and corresponding revision to Rs. 33.76 Cr. for short term power purchase instead of Rs. 12 Cr. that was earlier sought and approved in the Tariff order dated 23.08.2010.
- d) Review Petition dated 13.01.2011 of the Appellant is still pending for decision before the State Commission. Therefore, it is evident from the above that purchase of short term power was necessitated due to above stated exigencies and the same was brought to the notice of the State Commission by the Appellant from time to time.
- e) The Appellant is not barred from purchasing power at higher rates to meet exigencies or does not require prior approval of State Commission for carrying out short term purchase.

- f) In relation to purchase of power at a higher rate than the Commission approved rate of Rs.4/kWh, the State Commission in the tariff order for approval of ARR for the period 2010-11, has approved overall short term power purchase cost i.e. at Rs. 12 Cr. for purchase of 30 MUs of short term power. However, State Commission did not approve short term power purchase cost and quantum "source wise" i.e. there was no separate approval of cost and quantum for various short term sources such as PTCIL, SCF, RPG etc. From the breakup of actual short term power purchase by MeECL for the period 2010-11, it is evident that a total of 108.84 MU of short term power excluding NVVN (swapping) was procured at an average rate of Rs. 2.69/kWh at a total cost of Rs. 29.27 Cr. It can be noted that in the Impugned Order that the State Commission has actually allowed the procurement of 108.84 MU energy for the period 2010-11. Therefore, even otherwise, the overall per unit cost of short term power was well below Rs. 4/kWh the average cost as proposed in the ARR petition for period FY 2010-11. However, State Commission has wrongly considered source wise per unit rate and disallowed Rs. 2.39 Cr out of actual short term power purchase cost of Rs. 29.27 Cr. While purchasing short term power some of the procurements were made at less than Rs. 4/kWh and whereas others were above Rs. 4/kWh.
- g) The State Commission has allowed overall short term power purchase cost of Rs. 12 Cr. for 30 MU at average cost of Rs 4 per unit. The State Commission ought to have considered the average rate of the entire basket relating to short term power purchase cost instead of individual power purchase costs from

various sources. Therefore, the disallowance of short term power purchase of Rs. 2.39 Cr. is incorrect and also in violation of Regulation 93 (7) and 94 of the Tariff Regulations, 2011.

- h) The State Commission has wrongly relied on Regulation 93 (1) of the Tariff Regulations, 2011 which is applicable for medium and long term purchase of power and ignored Regulation 93 (7) based on which the Appellant can resort to short term purchases. The Appellant has also relied on this Tribunal's judgment dated 29.5.2014 in Appeal No. 258 of 2012 in case of Madhya Pradesh Poorv Kshetra Vidyut & Anr. Vs. Madhya Pradesh Electricity Regulatory Commission and judgment dated 2.8.2010 in Appeal No. 36 of 2010 in case of M P Power Trading Corporation Ltd. Vs. Madhya Pradesh Electricity Regulatory Commission regarding short term power purchase cost.

vi. ISSUE NO. 4 - Prior Period Charges

- a) The State Commission has wrongly disallowed 'Prior period charges' of Rs. 2.59 Cr. although the same were uncontrollable in nature.
- b) The prior period expenses of Rs. 2.59 Cr identified as "Other expenses" which pertain to writing off of Preliminary expense incurred by MeSEB for Corporatization, Reforms, Restructuring Expenses since FY 2005-06 onwards upto FY 2009-10. Since these expenses were not booked and claimed as part of Tariff earlier, the same ought to be allowed now as part of the prior period expense in Truing up for FY 2010-11.

- c) Prior period charges are income or expenses which arise in the current period as a result of error or omissions in the preparation of financial statements of one or more period. On account of short provisions made in previous years in the audited statement of accounts for the financial year 2005-06 to 2009-2010, the details of all prior period credits/charges/receipts/payments during the period 2005-06 to 2009-10 were submitted to the State Commission for its consideration in the True-up Petition for FY 2010-11. The total uncontrollable 'other expenses' of Rs. 2.59 Cr during the relevant prior period was on account of the following:

SN	Head	Amount (Rs)
i.	Bank Charges relating to period for revenue division William Nagar	131
ii.	Other charges relating to prior period being the Preliminary expenses written off	24937061
iii.	Bank charges of divisions under Generation utilities	264396
iv.	Bank charges of divisions under Transmission utilities	747000
v.	Bank charges of divisions under Distribution utilities	2609
	Total	25951197

- d) It may be noted that most of the expenses as indicated above were towards bank charges. While disallowing the said charges, the State Commission has not indicated any reasoning or justification

for disallowing the same.

vii. ISSUE NO. 5. Penalty on AT & C loss.

- a) The State Commission has unjustly imposed a penalty of Rs. 19.99 Cr on the basis of AT & C losses for the period FY 2010-11 under Regulation 91 of the Tariff Regulations, 2011 thereby saddling MePDCL with a huge and onerous financial burden. As the period FY 2010-11 was period prior to the enactment of the Tariff Regulations, 2011 and was the first year of operation of the new Distribution Company, the State Commission ought not to have imposed the said penalty.
- b) The State Commission after working out AT & C loss of 41.19 % as against 38.64% approved in Commission's order dated 30.09.2014 proceeded to impose a penalty of Rs. 19.99 crore for failure to cause minimum reduction in AT&C loss in FY 2010-11 as per Regulation 91 (a) of Tariff Regulations, 2011.
- c) The actual AT & C loss during FY 2009-10 was 40.01% during the period of operation of erstwhile MeSEB. In spite of the best efforts of the successor entity, MeECL was able to make a reduction to 38.85% during this period being the first year of operation of the successor entity due to constraints such as network conditions, geographical spread, consumer mix etc. In view thereof the State Commission ought to have taken a lenient view of the same and desisted from imposing the penalty provision as provided in the Tariff Regulations, 2011.

d) The present Appeal was for FY 2010-11 during which no specific regulations on methodology for determination of tariff was available. The Tariff Regulations, 2011 were made applicable for the prior period for the purpose of truing up of ARR. As such the truing up for the period 2010-11 has been carried out under a subsequent regulation being the Tariff Regulations, 2011. Therefore, no penalty can be made payable under the law which was not in force during the period 2010-11. In this regard the Appellant has referred to the judgments of Hon'ble Supreme Court in case of West Ramanand Electric Distribution Co. Ltd. Vs. State of Madras- AIR 1962 SC 1753 and in case of State of Maharashtra Vs. Kalikar Koli Subramaniam Ramaswamy- (1977) 3 SCC 525.

11. The learned counsel for the Objector has made following arguments on various issues raised in the present Appeal:

a) Equity/ Return on Equity:

- i. The main contention of the Appellant is that the State Commission is bound by the figures which are mentioned in the transfer scheme as notified by the State Government under Section 131 of the Electricity Act, namely "The Meghalaya Power Reforms Transfer Scheme", 2010 dated 31.03.2010 and the notification dated 23.12.2013. It is the contention of the Appellant that as per the transfer scheme dated 23.12.2013, the equity of the value of Rs. 767.54 Cr. were transferred to the Appellant which subsequently became Rs. 903.53 Cr. and the return on equity should be allowed on this amount.

- ii. It is not disputed that the Transfer Scheme is to be issued by the State Government and the State Commission has no role in the formulation of the terms and conditions of the reorganization of the erstwhile Meghalaya State Electricity Board under Section 131 of the Electricity Act, 2003. However, it is not that the Electricity Board is wound up and a new business is established. There is only reorganization. The Appellant is the successor for undertaking the Distribution and Retail Supply of Electricity in the State of Meghalaya. On account of re-organization, there cannot be any revaluation of the assets to be considered for the purposes of tariff. The consumers at large have already paid for the capital cost of the assets prior to reorganization and they cannot be asked to service such asset value at a higher amount upon reorganization. The value of the undertakings transferred for the purpose of tariff is the depreciated book value.
- iii. The State Commission has not restructured the Meghalaya State Electricity Board. The State Commission has only decided that the consumers cannot be asked to pay more tariff merely on account of notification of the Transfer Scheme and new values shown in the books of the Appellant.
- iv. The contention of the Appellant that the State Commission has acted against the Regulation 101 (2) of the Tariff Regulations, 2011 is also not correct. The said regulation provides that the equity appearing in the audited balance sheet OR as per the transfer Scheme Notification has to be taken into account while determining the return on equity. Further, the said Regulations came into force on 10.02.2011 and cannot be relied on by the

Appellant. In the present case, the Appellant cannot inflate the amount of equity merely by the notification of transfer scheme, show the inflated equity in its accounts and then claim that the State Commission to be bound to recognize the same and allow return on equity on the said basis. The Hon'ble Supreme Court and this Tribunal have already held that the State Commission is not bound by audited accounts with respect to tariff. The relevant judgments' are (1) West Bengal Electricity Regulatory Commission Vs. CESC Ltd. (2002) (8) SCC 715 and (2) Kerala State Electricity Board Vs. Kerala State Electricity Regulatory Commission (This Tribunal's Judgment dated 12.11.2009 in Appeal No. 94 of 2008).

- v. Therefore, Regulation 101 (2) of the Tariff Regulations, 2011 has to be given a contextual and meaningful interpretation and cannot be read in isolation. The ratio decided by this Tribunal in the judgment dated 04/03/2012 in Appeal No. 131 of 2011 - Haryana Power Generation Corporation Limited vs. Haryana Electricity Regulatory Commission and the judgment dated 18/04/2012 in Appeal No. 102 of 2011 - Haryana Vidyut Prasaran Nigam Ltd vs. Haryana Electricity Regulatory Commission do not apply to the facts of the present case. In the above cases, the ratio decided by this Tribunal was that when the Tariff Regulations of the Commission provide for the particular rate of return on equity, then the said needs to be adopted and no other rate can be adopted. However, in the present case the issue is as to on what figure the return on equity needs to be allowed namely whether it should be the actual capital assets for which the Appellant has invested as equity OR on the inflated figure

which appears in the transfer scheme. This Tribunal has already held in the Mawana Sugar case in Appeal Nos. 142 and 168 of 2013 vide judgment dated 17.12.2014 that the State Commission is not bound by the figures mentioned in the Transfer Scheme issued under Section 131 of the Electricity Act, 2003. The same analogy applies to the present case.

b) Disallowance of depreciation of Rs. 2.02 crores:

- i. The Appellant has stated that based on the rates of depreciation mentioned in the Appendix III of the CERC (Terms and Conditions of Tariff) Regulations, 2009, the depreciation works out to be Rs. 27.02 Cr. against which the State Commission has only allowed an amount of Rs. 25 Cr.
- ii. The only contention of the Appellant is that when the audited accounts reflect an amount of Rs. 27.02 Cr. the State Commission ought not to have restricted the depreciation only to Rs. 25 Cr. It has already been settled by this Tribunal and the Hon'ble Supreme Court that the State Commission is not bound by the audited accounts or the figures appearing therein. Audit only reflects that the amount has been incurred but the issue of prudence check still lies with the State Commission.
- iii. In the present case, after conducting a prudence check, and based on the observations of the audit committee report, the State Commission has decided to fix depreciation at Rs. 25 Cr. as against the claim of the Appellant for Rs. 27.02 Cr.

c) Disallowance of short-term Power Purchase cost incurred by the Appellant

- i. Regulation 93 (7) of the Tariff Regulations, 2011 only provides that in case of unprecedented developments, there is a requirement to purchase power, the licensee may resort to short term procurement.
- ii. The letter dated 25.11.2010 and the Petition stated to have been filed on 13.01.2011 by the Appellant before the State Commission was not allowed by the State Commission hence Appellant cannot contend that it had an implied permission to purchase expensive short term power.
- iii. In the Tariff Order dated 23.08.2010 for FY 2010-11, the State Commission has clearly mentioned the rate of short term power purchase as Rs. 4/kWh. Further, the Appellant was only allowed to purchase 30 MUs as against which the Appellant has purchased 108.84 MUs.
- iv. The exigencies mentioned in Regulation 93 (7) of the Tariff Regulations, 2011 were firstly not applicable for FY 2010-11 and came into force only in 2011. Further, the said Regulations only refer to emergency situations where the licensee may have to resort to short term power purchase and not general reduction in power purchase from other sources.

d) Disallowance of prior period charges of Rs. 2.59 Cr.

- i. Prior period expenses of Rs. 2.59 Cr. should not be allowed as the said expenses admittedly pertained to the years 2005-06 to 2009-10 and ought to have been booked or claimed in the relevant years.
 - ii. It is a well settled principle that as far as possible, the costs pertaining to a particular year should be recovered from the consumers of that particular year and not passed on to future consumers. This principle has been clearly laid down by the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Ltd. Vs. NTPC & Ors. (2009) 6 SCC 235.
- e) Imposition of penalty of Rs. 19.99 Cr. for non-achievement of AT & C losses for FY 2010-11.**
- i. The State Commission in the main tariff order dated 23.08.2010 had fixed the loss reduction target of 3%. The posting errors or accounting errors made by the Appellant in the audited Statement of Accounts for FY 2010-11 cannot now be used for claiming that the loss level achieved was something different from what had been submitted by the Appellant before the State Commission.
 - ii. Even if it is accepted that the Tariff Regulations, 2011 were not applicable, the non-achievement of loss level cannot be viewed lightly since it is a very important issue. Until and unless the Appellant is put to terms, it will not make efforts to control the AT& C losses.

12. On the specific issues raised in the present Appeal, the learned counsel for the State Commission has made the following submissions for our consideration-
- i. On the issue of Return on Equity (RoE), it is settled in law that shares, till their allotment, do not exist. If share capital does not even exist, there cannot be any question of allowing a Return on Equity on the same. In this regard the State Commission has quoted the judgments of the Hon'ble Supreme Court viz Shri Gopal Jalan And Co Vs. Calcutta Stock Exchange – (1964) 3 SCR 698 and Morgan Stanley Mutual Fund Vs. Kartick Das – (1994) 4 SCC 225.

Regulation 101 of the Tariff Regulations, 2011 also prescribes that equity shall be reckoned from the Transfer Scheme “or” from the Audited Accounts. If the Audited Accounts themselves show that the shares have not been allotted (i.e. they do not exist), on the Appellant's own showing, RoE could not be allowed on the same. For the purpose of RoE the capital cost of the assets which are already commissioned or “put to use” can only be considered. If the Appellant's arguments were accepted that the Return on Equity ought to be computed on the Equity Base of Rs. 902 Cr. then at least two clear consequences would arise, they are:-

(a) allowing a Return on Equity on an amount which neither exists nor represents investment in any assets put to use; and (b) that the entire assets base (as also assets which do not exist) have been funded only out of equity and no part of such assets have been funded out of debt. The Appellant could not possibly claim a RoE on

an amount of Rs. 902 Cr. on an Asset Base of Rs. 641 Cr. plus the cost on the debt of Rs. 1088 Cr.

- ii. The audited balance sheet of FY 2010-11 has shown Rs. 614.70 Cr. as completed fixed assets and if 30% of Rs. 614.70 Cr. is to be taken as funded from equity, the equity amount shall be Rs. 185 Cr. which is even less than the Rs. 202 Cr. which was considered as the original size of equity taken for determination of RoE.
- iii. It is in the above circumstances that the original equity size as approved by the State Commission in its previous orders was at Rs. 202 crores and the Appellant was allowed Rs. 28.28 Crores @ 14% as RoE. Accordingly, the State Commission has not considered the size of equity as given in the transfer schemes. The Govt. of Meghalaya in its transfer scheme has provided that assets and liabilities shall be taken as final values only after the audit is done.
- iv. The depreciation was allowed as per Tariff Regulations, 2011 which require computation as per the depreciation rates prescribed in CERC Tariff Regulations, 2009. The State Commission has not allowed the entire Rs. 27.02 Cr. as claimed in the Balance Sheet and allowed only Rs. 25 Cr. by applying prudence check by observing the auditor note which is reproduced below:

“that the assets and liabilities of the Company as on 31.3.2011 are arrived from the opening balances as on 01.04.2010 based on the transfer schemes after giving effect of subsequent transactions. There are no satisfactory assets and

liabilities in support of these balances. Therefore we are unable to determine the correctness or otherwise of the assets and liabilities as on 31.3.2011 to the extent of such transferred opening balances.

The Company has not conducted physical assets verification during the year under audit and also not identified the assets that had been retired. Due to which we are unable comment on the correctness of value of assets as on 31.3.2011.....”

- v. The State Commission has disallowed short term power purchase cost of Rs. 2.39 Cr. by considering the provisions of Regulation 93 (1) of the Tariff Regulations, 2011 which requires prior approval of the State Commission for such purchases. While doing so the State Commission has also not deviated from the principle laid down in its Order dated 23.8.2010 for FY 2010-11 wherein the Appellant was allowed short term purchase @ Rs. 4/kWh. Further, the Appellant could not assume that by merely filing a letter/petition (which was filed in November, 2010/ January, 2011 respectively), the approval is granted. Accordingly, the State Commission has limited the short term purchase of power by the Appellant to Rs. 4/kWh from individual sources.
- vi. On the issue of disallowance of prior period charges of Rs. 2.59 Cr., the State Commission has allowed prior period expenses at Rs. 3.61 Cr. for FY 2010-11 as against the demand of Rs. 12.73 Cr. During the examination of petition the State Commission required the licensee to furnish details of other expenses. The State Commission was not satisfied with the reply for prior period expenses and therefore allowed Rs. 4.19 Cr. as the total prior

period items of power purchase and employees cost. The interest charges, depreciation and other expenses were not allowed as these were not justifiable. After deducting prior period revenue of Rs.0.58 net charges were allowed at Rs. 3.61 Cr.

- vii. The State Commission vide the Impugned Order has determined the AT&C loss for FY 2010-11 at 41.19%. The AT&C losses for the immediately preceding year FY 2009-10 as approved by the State Commission in its Order dated 30.09.2014 was 38.64%. Hence the AT&C losses have increased rather than decreased. Neither of these two numbers have, in any way, been questioned or challenged by the Appellant. The Tariff Regulations, 2011 clearly spell out the penalty for non-reduction of AT&C losses. The computation of the Penalty is strictly in accordance with these Regulations. The Appellant contended that the Tariff Regulations, 2011 were notified only on 10.02.2011 i.e. towards the end of the FY in question (FY 2010-11) and hence could not have been relied upon for the imposition of the penalty for that year. On the RoE argument, the Appellant has sought to rely upon and draw strength from the 2011 Regulations itself for FY 2010-11. Hence the Appellant could not be permitted to pick-and-choose parts of the same Regulation which suit it and discard other parts which do not. Either the whole Regulations apply for the year or they do not. Even as per the Order dated 23.08.2010, the State Commission would have been fully justified in disallowing the cost of power purchase attributable to AT&C losses above 33.79% which would have resulted in a disallowance at the rate of even 7.4%. However, the State Commission has disallowed the power purchase cost for the underachievement using the base of 38.64% (being the

approved AT&C Loss for FY 2009-10) and applying the 3% norm for reduction.

In view of the above submissions it is submitted that there is no merit in the present appeal.

13. After having a careful examination of all the arguments and submissions of the rival parties on various issues raised in the present Appeal, our observations are as follows:-

a) The main issues raised by the Appellant in the present Appeal are as under -

- i. Disallowance of RoE to the extent of Rs. 98.21 Cr.
- ii. Disallowance of depreciation of Rs. 2.02 Cr.
- iii. Disallowance of short-term power purchase cost of Rs. 2.39 Cr.
- iv. Disallowance of prior period charges of Rs. 2.59 Cr.
- v. Imposition of penalty of Rs. 19.99 Cr. for non-achievement of AT&C losses for FY 2010-11.

b) On issue No. 1, i.e. Disallowance of Return on Equity to the extent of Rs. 98.21 Cr. and on the question No. 8 a) raised before us i.e. Whether the disallowance of Rs. 98.21 Cr. for Return on Equity is in violation of (i) Regulation 101 sub clause (2) of the Tariff Regulations, 2011 (ii) Section 131(2) and Section 131 (3) (b) of the Electricity Act, 2003; and (iii) The Transfer Scheme dated 23.12.2013 which has statutory force?, we observe as below:

- i. The matter pertains to True-Up of revenue and expenses of the Appellant for the period 2010-11.

- ii. The Tariff Regulations, 2011 were issued by the State Commission on 10.02.2011. Regulation 15 of the Tariff Regulations, 2011 provides for Review and True-Up of the expenses and revenues approved by the Commission in the Tariff Order which is reproduced hereunder;

“ 15. Review and Truing-Up

(1)The Commission shall undertake a ‘Review’ of the expenses and revenues approved by the Commission in the Tariff Order. While doing so, the Commission shall consider variations between approvals and revised estimates/pre-actuals of sale of electricity, income and expenditure for the relevant year and permit necessary adjustments / changes in case such variations are for adequate and justifiable reasons. Such an exercise shall be called ‘Review’.

(2)After audited accounts of a year are made available, the Commission shall undertake similar exercise as above with reference to the final actual figures as per the audited accounts. This exercise with reference to audited accounts shall be called ‘truing-Up’.

(3)The generating company or the licensee, as the case may be, shall make an application before the Commission, for ‘truing up’ of ARR of the previous year by 30th September of the following year, on the basis of audited statement of accounts and the Audit Report, thereon. The generating company or the licensee shall get their accounts audited within a specified time frame, either by the Comptroller & Auditor General of India or by a Statutory Auditor drawn from the panel of Statutory Auditors approved by the Comptroller & Auditor General of India, from time to time, to enable them to file the application for ‘truing up’ within the specified date, that is 30th September of the following year.

(4)In case the generating company or the licensee as the case may be, fails to make an application for truing-up of

the ARR of previous year by 30th September of the following year, the Commission may, undertake suo-moto 'truing up' of the ARR of previous year and direct the generating company or the licensee as the case may be to produce such data as it may direct.

(5)The surplus of revenue of any year as a result of review and truing up exercises shall be adjusted in the manner prescribed by these regulations.

(6)While approving such expenses/revenues to be adjusted in the future years as arising out of the review and / or truing up exercises, the Commission may allow the carrying costs as determined by the Commission of such expenses/revenues. Carrying costs shall be limited to the interest rate approved for working capital borrowings.

(7)For any revision in approvals, the generating company or the licensee would be required to satisfy the Commission that the revision is necessary due to conditions beyond its control.”

- iii. The Tariff Regulations, 2014 were issued by the State Commission on 15.09.2014. As per Regulation 1.4, these Regulations were made applicable for the determination of tariff w.e.f from April 1, 2015 in all cases covered under these Regulations with a provision that for the purpose of review or truing up of revenues and expenses pertaining to FYs prior to 2015-16, the provisions of Tariff Regulations, 2011 shall apply.
- iv. Hence, under current case of Truing-Up for FY 2010-11, the relevant provisions of Tariff Regulations, 2011 shall be applicable.
- v. Regulation 100 of the Tariff Regulations, 2011 deals with the

Debt: Equity Ratio. The relevant provisions are as follows:

“100. Debt-equity Ratio

(1) For the purpose of determination of tariff, the debt-equity ratio of 70:30 will be applied for all new investments during the financial year. Where equity employed is more than 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance shall be treated as loan. Where actual equity employed is less than 30%, the actual equity shall be considered.

Provided that the Commission may, in appropriate case, consider equity higher than 30% for the purpose of determination of tariff, where the distribution licensee is able to establish to the satisfaction of the Commission that deployment of equity more than 30% is in the interest of general public.

(2) The debt and equity amounts in accordance with clause (1) above shall be used for calculating interest on loan, return on equity, advance against depreciation and foreign rate variation.”

The State Commission for calculation of RoE subject to conditions as provided above, for all new investments during the financial year shall be considering the debt-equity ratio of 70:30.

- vi. Further, Regulation 101 of the Tariff Regulations, 2011 deals with the Return on Equity issue which is reproduced below;

“101. Return on Equity

(1) Return on equity shall be computed on the equity base determined in accordance with Regulation 100, at a fixed rate of 14 percent, per annum.

Provided that equity invested in a foreign currency

may be allowed a return upto the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing. The difference in actual exchange rate and the provisional exchange rate considered while determining the ARR shall be taken into consideration at the time of 'Truing up'.

(2) The equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet was not audited.

(3) The premium received while issuing share capital shall be treated as a part of equity provided the same is utilized for meeting capital expenditure.

(4) Internal resources created out of free reserves and utilized for meeting the capital expenditure shall also be treated as a part of equity."

For the purpose of present case, RoE shall be computed on equity base determined as per Regulation 100 quoted above and while doing so the State Commission will take into account the equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such balance sheet was not audited.

- vii. Let us examine the impugned findings of the State Commission. The relevant extracts are reproduced below:

“5.18. Return on Equity: *The Commission in its Tariff Order dated 23.08.2010 had approved RoE at Rs. 28.28 crore at 14% on equity of Rs. 202 crores.*

The MePDCL in its Petition has claimed Rs. 126.49 crores at 14% on equity of Rs. 903.53 crore as per audited accounts.

Commission’s Analysis

To a query the MePDCL in its letter noMePDCL/DD/2014-15/T444/Pt-11/35 dated 24.11.2014 has furnished opening balance sheet of the Meghalaya Power Sector Reforms Transfer Scheme, 2010 (3rd amendment) notified by government of Meghalaya in its notification no Power 79/2009 dated 23.12.2013. While deciding on the return on the equity, the Commission has taken into account the size of completed assets and assets which does not carry any liability of repayment. As considered in the Commission’s order dated 23.8.10, the Commission is allowing Rs.28.28 crores as the return on equity to be passed through in the truing up of FY 2010-11.

Accordingly, the Commission has considered Return on Equity at Rs. 28.28 crores in true up for FY 2010- 11.”

From the above it can be seen that the State Commission has allowed Return on Equity of Rs. 28.28 Cr. in true up for FY 2010 - 11 against the claim of MePDCL of Return of Equity of Rs. 126.49 Cr. While deciding on the Return on Equity, the State Commission has taken into account the size of completed assets and assets which do not carry any liability of repayment.

- viii. The Appellant has raised the issue that the State Commission has not followed the provisions of its own Regulations while determining the equity base for FY 2010-11, especially provisions of Regulations 101 (2) i.e. the equity amount

appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the Return on Equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet was not audited.

- ix. The Appellant while filing the True-Up Petition with the State Commission has submitted the audited balance sheet for FY 2010-11. Let us examine information available in the balance sheet on this issue. The relevant extracts from the balance sheet are reproduced below:

“2. CORPORATE INFORMATION ABOUT ASSETS & LIABILITIES TRANSFERRED FROM MEGHALAYA STATE ELECTRICITY BOARD:

As reported the assets and liabilities of Meghalaya State Electricity Board were vested to the Government of Meghalaya and re-vested by the Government to the restructures holding company on 01.04.2010.

The assets and liabilities of the Company as on 31.3.2011 are arrived from the opening balances as on 01.04.2010 taken as per transfer scheme contained in “The Meghalaya Power Reforms Transfer Scheme 2010” dated 23.12.2013 of the Government of Meghalaya after giving effect of subsequent transactions taken place during the year. The notification as above constrained all Assets and Liabilities given as block figure under major groups of heads as on 01.04.2010. There are no satisfactory details of assets and liabilities in support of these balances. Therefore we are unable to determine the correctness or otherwise of the assets and liabilities as on 31.03.2011 to the extent of such transferred opening balances.”

From the above it is clear from the remarks of the Auditors that there are no satisfactory details of assets and liabilities in support of these balances and the auditors are unable to determine the correctness or otherwise of the assets and liabilities as on 31.03.2011 to the extent of such transferred opening balances.

- x. As per Notification dated 23.12.2013 issued by Govt. of Meghalaya regarding 3rd Amendment of "The Meghalaya Power Sector Reforms Transfer Scheme, 2010", Equity Capital from MeECL/Govt. of Meghalaya as on 01.04.2010 has been indicated as Rs 767.54 Crores.

- xi. On the provisions of the Section 131 of the Electricity Act, 2003 regarding Transfer Scheme, earlier this Tribunal vide Judgment dated 17.12.2014 in Appeal No. 142 & 168 of 2013, in case of Mawana Sugar Vs. Punjab State Electricity Regulatory Commission and Bansal Alloys & Metals (P) Ltd. Vs. Punjab State Electricity Regulatory Commission & Ors. has held as below:-

"38. Admittedly, the Transfer Scheme as notified by the State Government is not under challenge. However, the State Commission is authorized to carry out a prudence check of the balance sheet. This Tribunal in the past has held that the State Commission is not bound to accept the figures as given in the audited balance sheet in toto and can determine the return on equity and other expenses after prudence check. In this case, there was no induction of fresh funds and the equity as on the date of transfer has been increased from Rs. 2946.11 crores to Rs. 6687.26 crores. The increase as explained by

PSPCL in their letter dated 26.2.2013 is on account of treating the consumer contribution and grants and subsidies towards the capital assets as standing in the audited accounts of the Electricity Board as equity. In our opinion, the State Commission should have allowed return on equity on the actual equity of Rs. 2946.11 crores to be apportioned to PSPCL and PSTCL."

In this Judgment, this Tribunal had set aside the decision of Punjab State Electricity Regulatory Commission which allowed a higher Return on Equity taking into account the additional equity mentioned in the transfer scheme after applying prudence check.

- xii. It is relevant to quote here the Regulation 121 of Tariff Regulations, 2011. The relevant extract is reproduced below:

" 121. Savings

(1) Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

(2) Nothing in these regulations shall bar the Commission from adopting, in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

(3) Nothing in these regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no regulations or codes have been framed, and the Commission may deal with

such matters, powers and functions in a manner it thinks fit in the public interest.”

From the above it can be seen that nothing in the Tariff Regulations, 2011 shall limit the inherent powers of the Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

- xiii. It is observed that the State Commission in the Impugned Order has not reasoned out in detail why it has not considered RoE on equity capital based on audited accounts/ transfer scheme. The State Commission in its submissions before this Tribunal justified its decision by quoting judgments of Hon'ble Supreme Court regarding 'pending allotment' of equity, allowing return on equity on non-existing assets and investments in any assets put to use which has been countered by the Appellant submitting that those judgments are not applicable in present case.

We observe that in the present case there is no requirement of going in to the details of the said judgments as the issue can be addressed based on the Tariff Regulations, 2011. As per the Tariff Regulations 2011, Regulation 101 (2) specifies that the equity amount appearing in the audited Balance Sheet or as per Transfer Scheme Notification will be taken into account for the purpose of calculating the return on equity for the first year of operation, subject to such modifications as may be found necessary upon audit of the accounts if such a Balance Sheet was not audited. The Auditors in the audited statement of accounts for FY 2010-11 of the Appellant has observed that

there are not satisfactory details of assets and liabilities in support of opening balances as on 01.04.2010 taken as per Transfer Scheme, 2010 dated 23.12.2013. The Auditors were unable to determine the correctness of assets and liabilities as on 31.03.2011 to the extent of such transferred opening balances.

This Tribunal in the past has held that the State Commission is not bound to accept the figures as given in the audited balance sheet as it is and can determine the return on equity and other expenses after prudence check. Further, this Tribunal in Judgment dated 17.12.2014 in Appeal No. 142 & 168 of 2013 has held that there was no induction of fresh funds and the equity amount was increased by considering consumer contribution, grants and subsidies towards capital assets as equity as per the Transfer Scheme notified by Government of Punjab and thereby disallowed Return on Equity on the said amount. In the present case as per the audited statement correctness of assets and liabilities could not established by the Auditors as per the Transfer Scheme.

Considering the observations of Auditors in Audited Statement of Accounts 2010-11, Provisions of Tariff Regulations 2011 and this Tribunal's Judgment dated 17/12/2014 in Appeal No. 142 & 168 of 2013 we found that there is no infirmity in the decision of the State Commission while determining the equity base during True-Up exercise for FY 2010-11 and there is no violation of any provisions of the Tariff Regulations, 2011, Transfer Scheme of Govt. of Meghalaya and the Electricity Act, 2003.

- xiv. Hence, this issue is decided against the Appellant.
- c) Now on Issue No 2 i.e. disallowance of Depreciation claimed and the question No. 8 b) raised for our examination i.e Whether the State Commission has erred in disallowing Rs. 2.02 Cr. out of Depreciation of Rs. 27.02 Cr. as sought by MePDCL, particularly on the incorrect basis of a purported Observation in the Audit Report? Whether there was non-application of mind by the State Commission on the issue of depreciation?, we observe as below:
- i. Regulation 106 of the Tariff Regulations, 2011 deals with the Depreciation issue. Let us first go through this Regulation as reproduced hereunder;

“ 106. Depreciation

For the purpose of tariff determination, depreciation shall be computed in the following manner:

- (a) *The asset value for the purpose of depreciation shall be equal to the cost of the assets as approved by the Commission where:*
The opening asset's value recorded in the Balance Sheet as per the Transfer Scheme Notification shall be deemed to have been approved, subject to such modifications as may be found necessary upon audit of the accounts, if such a Balance Sheet is not audited. Consumer contribution or capital subsidy/ grant etc shall be excluded from the asset value for the purpose of depreciation.
- (b) *For new assets, the approved/accepted cost for the asset value shall include foreign currency funding converted to equivalent rupee at the exchange rate prevalent on the date of foreign currency actually availed but not later than the date of commercial operation.*

.....

.....
”

For calculating depreciation the State Commission will take into account the opening asset’s value recorded in the Balance Sheet as per the Transfer Scheme Notification subject to such modifications as may be found necessary upon audit of the accounts if such balance sheet was not audited.

- ii. The State Commission in the Impugned Order has allowed depreciation as:

Rs. Cr.

Particulars	Approved by Commission in Tariff Order for FY 2010-11	Actuals furnished in the Petition	Now approved by the Commission
Depreciation	17.08	27.02	25.0

- iii. Let us analyse the observations of the auditors in the Audit report on this issue. The relevant extract is reproduced below:

“4. FIXED ASSETS AND DEPRECIATION ON FIXED ASSETS:

- i) *The Company owns both Leased as well as Freehold Land. However, **Separate classification of the cost of land between Leasehold and Freehold has not been worked out and hence amortization/depreciation on leasehold land has not been provided for in the account, the amount is thereby unascertained.***
- ii)
- iii)

Annexure to Auditors Report

1. *Fixed Assets:*

- a) *The company has not maintained proper records showing full particulars including quantitative details and situations of fixed assets.*
- b) ***The Company has not carried out physical verification of the fixed assets, and hence we are unable to comment whether any material discrepancy was noticed as such or not.***

From the above it can be seen that the auditors have indicated certain shortcomings/ information inadequacy like not conducting physical verifications of assets, no separate classification of leasehold and freehold land, etc.

- iv. As per the Tariff Regulations, 2011, the asset value for the purpose of depreciation shall be subject to such modifications as may be found necessary upon audit of the accounts.
 - v. Hence considering observations of Auditors in the Audit Report, we do not find any infirmity in the decision of the State Commission in this regard.
 - vi. Accordingly this issue is also decided against the Appellant.
- d) On the third issue i.e. Disallowance of short-term Power Purchase cost incurred by the Appellant & the question of law raised by the Appellant i.e. Question No. 8 c) placed before us i.e. Whether the State Commission in disallowing short-term power purchase, acted in violation of Regulation 93 sub-clause (7) of Tariff Regulations 2011 and

further by considering short term power purchase cost source-wise instead of considering overall average short term power purchase cost for the period 2010-11?, our observations are as follows;

- i. Regarding cost of power purchase, the State Commission in the Impugned Order has observed as follows:

“5.7.3 Commission’s Analysis

As per annual accounts for FY 2010-11 the Power Purchase Cost is Rs. 303.88 Crores which includes short term purchases of Rs.31.25 crores.

The Commission has approved short term purchases @ Rs.4.00/kWh for FY 2010-11 in Tariff order dated 23rd August 2010. The Petitioner has made short term power purchases from PTCIL, SCF, RPG at a higher rate than the Commission approved rate of Rs.4.00/kWh. As per the records, no prior permission was sought for the short term purchases at a higher rate. Accordingly, the Commission has regulated the cost of the short term purchases from these sources and disallowed Rs.2.39 crores from the cost of short term purchases. In this connection, the licensee is advised to adhere with the norms stipulated in the tariff order while making expenditures.

.....”

From the above it is clear that the State Commission has disallowed short term power purchases from PTCIL, SCF, RPG at a rate more than Rs.4.00/kWh as no prior approval was obtained by the Appellant from the State Commission for short term purchase at higher rates.

- ii. As per the Appellant, disallowance of cost of short term power purchase is in violation of Regulation 93 (7) and 94 of the Tariff Regulations, 2011.
- iii. Regulation 93(7) of Tariff Regulations 2011 provides that the Licensee may resort to short term procurement in case short term power purchase necessitated based on unprecedented development & the relevant extract is as under;

*“93. Power Purchase Cost
(7): In case of short-term power purchase necessitated based on unprecedented development, the licensee may resort to short term procurement.”*

Further Regulation 94 of the Tariff Regulations provides that Commission shall consider the need of additional power in excess of the approved requirements of power at the time of true-up & the relevant extract is as under;

*“94. Variation in Power Purchase
Power purchased by the licensee in excess of the approved requirement of power, the Commission shall consider the need for such additional power at the time of truing up of the approved tariff.”*

- iv. The Appellant has submitted various reasons for resorting to short term power purchase such as reduction in Own Generation, reduction in Central Generation and also reduction in Eastern Region Power. We have observed that the State Commission has approved the increased power purchase quantum of 108.84 MUs during the True-Up for 2010-11.

- v. Now regarding cost of short term power purchase, in the Order dated 23.08.2010 for FY 2010-11, the State Commission has approved Rs.12 Cr. for short term purchase of 30 MUs of power at the rate of Rs 4/kWh. The State Commission has reviewed the requirement of additional power during the True-Up and approved the enhanced quantum of power purchase through short term.
- vi. It is observed that the Appellant vide its letter dated 25.11.2010 and Review Petition dated 13.01.2011 approached the State Commission in respect of approval of revised energy requirements and its cost. The Tariff Regulations, 2011 were notified by the State Commission only on 10.02.2011.
- vii. Now let us analyze the requirement of prior approval of the State Commission for purchase of short term power by the Appellant. In this regard the Regulation 93 (1) of the Tariff Regulations, 2011 which is quoted by the State Commission in its submissions is reproduced below:

“93. Power Purchase Cost

(1) The Licensee shall procure power from approved sources. Additional energy required after taking into account the availability of energy from such approved sources, shall be reasonably estimated well in advance and procurement arrangements made for such long term and medium term purchases, by following standard

contractual procedures. All such purchases shall only be made with the prior approval of the State Commission.”

From the above it can be seen that the requirement of prior approval of the State Commission by the Appellant is only for Long Term and Medium Term purchases. As discussed above the Appellant can resort to short-term power purchases in accordance with Regulation 93 (7) of Tariff Regulations, 2011 and as per Regulation 94 of Tariff Regulations, 2011, the State Commission shall consider the need for such additional power at the time of truing up of the approved tariff.

- viii. The Order dated 23.08.2010 also mandates the Appellant to take effective and expeditious steps to ensure that the peak and off-peak demand of the State be adequately met and required quantum of energy be provided during all period of the year. This order is silent on the mechanism of short term purchase of power beyond the approved limits, if required.

- ix. The Tariff Regulations, 2011 were not in place at that point of time when the Appellant approached the State Commission by way of letter dated 25.11.2010 and Petition dated 13.01.2011. The Appellant was guided only by the Order dated 23.08.2010 of the State Commission. Although there was no mechanism available in the order dated 23.8.2010, the Appellant in order to fulfill the conditions stipulated in this order approached the State Commission and sought its approval for changed energy requirements in the State. It was the responsibility of the State

Commission to expeditiously dispose of the review petition of the Appellant in this regard which is still pending before it.

- x. After notification of the Tariff Regulations, 2011 on 10.02.2011 the Appellant was guided by Clause 93(7) of the said Regulations which provided short term purchases by the Appellant based on unprecedented development. Further, the Appellant has submitted that the average rate of procurement of short term energy purchase in FY 2010-11 was Rs. 2.69/kWh i.e. well below Rs. 4/kWh as approved by the State Commission in its Order dated 23.08.2010. The State Commission in the Impugned Order has rightly allowed full quantum of energy (in MUs) purchased by the Appellant as own generation (507.50 MU), Central share (953.79 MU), short term purchase (175.36 MU/ 108.84 MU including/excluding NVVN swapping).
 - xi. In view of our discussions as above, we are of the considered opinion that the State Commission is not justified in disallowing the short term purchase cost of Rs. 2.39 Cr. to the Appellant.
 - xii. Hence this issue is decided in favour of the Appellant.
- e) On the Fourth Issue i.e. Prior Period Expenses and the question No. 8 d) raised before us i.e. Whether the State Commission has failed to apply its mind while disallowing Prior Period Expenses under the head 'Other Expenses' to the tune of Rs. 2.60 Cr. being restructuring cost and of uncontrollable in nature?, we observe as below:

- i. In the Impugned Order, the State Commission has allowed prior period expenses at Rs. 3.61 Cr. for FY 2010-11 for True up against the claim of net expenses (adjusting prior period income) of Rs 12.73 Cr. by the Appellant.
- ii. The prior period expenses claimed were under the heads of Power Purchase Cost, Employee cost, Depreciation, Interest and Finance Charges, Administrative & General expenses and Other expenses.
- iii. The Appellant has claimed that the State Commission has wrongly disallowed its claim under 'Other Expenses' of Rs. 2.59 Cr. which should have been allowed being restructuring cost and of uncontrollable in nature and should have been considered by State Commission. The State Commission has not given any reasons while disallowing the same.
- iv. As per Appellant these 'Other Expenses' pertains to writing off of Preliminary expense incurred by MeSEB for Corporatization, Reforms, Restructuring Expenses since FY 2005-06 onwards upto FY 2009-10. Since these expenses were not booked and claimed as part of Tariff earlier, the same ought to be allowed now as part of the prior period expense in Truing up for FY 2010-11.
- v. We noted that the State Commission has not given any reason for disallowance of Prior period expenses while allowing Rs 3.61 Cr. out of net expenses claimed by the

Appellant of Rs 12.73 Cr. under prior period expenses. The only observation made by the State Commission in the Impugned Order was as *“To a query the MePDCL has furnished details in respect of prior period and other expenses. The Commission after considering the details allowed prior period charges at Rs. 3.61 crores for FY 2010-11.* Even the break-up of allowed expenses i.e. under which head they have been allowed has not been given by the State Commission, which should have been done by the State Commission.

- vi. Regulation 112 of the Tariff Regulations, 2011 ‘Forecast of Revenue’ under sub Regulation (2) ‘the non-tariff income’ specifies one of element as ‘Prior Period Income’ besides ‘Other Income’. Further as per Tariff Regulations, 2011, Appendix-C, ‘Formats to be filled by Distribution Licensee’ prior period expenses may be provided as per Format-1 ‘Employee Cost’, Format-4 ‘Repair and Maintenance expenses’ and Format-5 ‘A&G expenses’ and Format -7 ‘Details of loan’. Such information provided shall be considered by the State Commission while deciding the petition.
- vii. However we could not find any provision under the Tariff Regulations, 2011 to allow ‘Other Expenses’ to Distribution Licensee during True-up. In absence of any such provision for allowing ‘Other Expenses’ under ‘Prior Period Expenses’ in the True-up Order of any specific year, the State Commission has rightly disallowed the same in the Impugned Order.

viii. Accordingly, this issue is decided against the Appellant.

f) Now on the last issue i.e. imposition of penalty for non-achievement of AT&C Losses for FY 2010-11 and the question No. 8 e) raised before us i.e. Whether imposition of a penalty cost Rs.19.99 Cr under Tariff Regulations 2011 on the basis of AT & C losses in onerous, burdensome and unjust particularly in view of the fact that, the concerned FY 2010-11 was the first year of operation of the successor entity post unbundling and was also a period prior to the enactment of the Tariff Regulations 2011 and has a long term impact on the performance of a new entity and therefore runs contrary to the principle object and spirit of unbundling of erstwhile Electricity Board ?, we decide as follows:

- i. Regarding AT&C losses, the State Commission in the Tariff order dated 23.08.2010 has specified AT&C loss reduction target of 3% during FY 2010-11. AT&C losses approved during 2009-10 were 38.64% hence considering the target of 3% reduction on what was achieved in the previous year the target for AT&C losses for FY 2010-11 would work out 35.64%.
- ii. In the Impugned Order State Commission has worked out AT&C loss as per audited accounts to 41.19% and fixed the penalty for failure to achieve the minimum required reduction of AT&C loss in FY 2010-11 at Rs. 19.99 Cr. The penalty has been derived by the State Commission with respect to the target of AT&C loss at 35.64% (i.e. $41.19\% - 35.64\% = 5.55\%$).

- iii. Regulation 91 of the Tariff Regulations, 2011 deals with the AT&C losses. The relevant extract is reproduced below:

“ 91 (a) AT&C Losses

While filing a Tariff Application, the licensee shall provide complete information of the total AT & C Losses during the previous year and that projected for the year for which the application is being made, including the basis on which such losses have been worked out. (Information to be furnished in Format 2 (A) of Distribution Licensee):

Provided that it shall be obligatory on the licensee whose AT&C losses during the previous year are in excess of 30 percent, to project reduction of such losses by a minimum of 3 percent during the year for which a Tariff Application is made. Any shortfall in the projected level of AT&C losses for such year, in this regard, shall be penalized by an amount equivalent to the cost of the quantum of energy to be lost due to inability of the licensee to plan and achieve reduction of AT&C losses by a minimum of 3 percent from the previous year's level. Such amount shall be calculated at the average-over-all-unit-cost of sale of power, as approved by the Commission for such year. Provided further that failure of a licensee to reduce the AT&C losses during the previous year by 3 percent would be penalized on the same basis as stated against clause (a) above.

Provided also that in the case of a licensee whose AT&C losses during the previous year were less than 30 percent, it would be obligatory for such licensee to reduce such AT&C losses by a minimum of 1.5 percent only during the year for which a Tariff Application is made. Failure to achieve this level of reduction would be penalized in the same manner as set out in clause (a) above.

Further, provided that the overall penalty, of any, may be limited by relevant Central Guidelines, as may be notified from time to time.”

From the above the requirement of 3% reduction in AT&C losses in the year when Tariff Application is made has been specified where previous year AT&C loss is in excess of 30% is clear.

- iv. The requirement of AT&C loss reduction was very well observed by the State Commission in the Order dated 23.8.2010. Where it has mentioned that:

“(3) The Commission, therefore, directs the Petitioner to improve its organizational efficiency in the matter of billing and collection of electricity dues from all categories of consumers. It is essential for the Petitioner to control its AT&C loss from any further increase and to continue to further decrease it below the level of 33.79 percent achieved during 2008-09.”

- v. It can be seen from the above observations that the AT&C loss level achieved during previous years were much better than what has been achieved during FY 2010-11 which in the opinion of the Appellant was due to the fact that it was the initial year of operation after its formation.
- vi. We observe that in functioning of the Discoms, AT&C Loss reduction and improvement in efficiency are very important. From the perusal of the Order dated 23.08.2010 it is observed that the State Commission has emphasised for reduction in AT&C losses to bring it below the level of 33.79% achieved during 2008-09. The Tariff Regulations 2011 provide for penalty for non-achievement in reduction in AT&C losses by the Appellant. The Tariff Regulations, 2011 are applicable for true-up for the period

before 2015-16. The Tariff Regulations, 2014 were framed after seeking views of all the stakeholders including the Appellant and now at this stage the contention of the Appellant that these provisions related to reduction in AT&C losses should not be applied is not tenable. Hence, we do not find any infirmity in the penalty imposed by the State Commission on non-fulfillment of AT&C loss reduction target of 3% by the Appellant in FY 2010-11.

vii. Hence this issue is also decided against the Appellant.

ORDER

The present Appeal is allowed only in part to the extent as indicated at para 13 d) above on the issue of short term power purchase cost by the Appellant.

The Impugned Order dated 22.12.2014 passed by the State Commission is hereby upheld except to the extent of allowing short term power purchase cost incurred by the Appellant in FY 2010-11.

No order as to costs.

Pronounced in the Open Court on this **19th day of July, 2017.**

(I.J. Kapoor)
Technical Member

✓

(Mrs. Justice Ranjana P. Desai)
Chairperson

REPORTABLE/NON-REPORTABLE

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