

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 45 OF 2014**

**Dated: 4<sup>th</sup> December, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**IN THE MATTER OF**

1. Paschim Gujarat Vij Company Limited,  
Off. Nana Mava Main Road,  
Laxminagar, Rajkot – 360 004
2. Dakshin Gujarat Vij Company Limited,  
Nana Varachha Road,  
Kapodara, Surat – 395 006
3. Uttar Gujarat Vij Company Limited,  
UGVCL Regd. & Corporate Office,  
Visnagar Road, Mehsana – 384 001
4. Madhya Gujarat Vij Company Limited  
Sardar Patel, Vidyut Bhavan Race Course,  
Vadodara – 390 0007, Gujarat
5. Gujarat Urja Vikas Nigam Limited  
Sardar Patel, Vidyut Bhavan Race Course,  
Vadodara – 390 0007, Gujarat .... Appellants

***VERSUS***

Gujarat Electricity Regulatory Commission  
6<sup>th</sup> Floor, GIFT ONE, Road 5 C, Zone 5,  
GIFT City, Gandhinagar – 382355 .... Respondent

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondent(s)... Ms. Suparna Srivastava  
Mr. S.R. Pandey &  
Mr. R. Parmar (Reps.) for R-1

## **J U D G M E N T**

### **PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. The present Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Paschim Gujarat Vij Company Limited and four others namely; Dakshin Gujarat Vij Company Limited, Uttar Gujarat Vij Company Limited, Madhya Gujarat Vij Company Limited and Gujarat Urja Vikas Nigam Limited (in short, the '**Appellants**'), against the impugned order, dated 16.4.2013, passed by the Gujarat Electricity Regulatory Commission (in short, the '**State Commission**') in Petition Nos. 1283, 1284, 1285 and 1286 of 2013, whereby the State Commission has decided the Annual Revenue Requirements for the year 2013-14 and Truing-up of the financials of the Appellants for the Tariff Year 2011-12.

2. The Appellants are companies incorporated under the provisions of the Companies Act, 1956 having their respective registered offices in the State of Gujarat. The Appellants are the unbundled entities of the erstwhile Gujarat Electricity Board. The Appellants No. 1 to 4 are the distribution licensees in the State of Gujarat having been vested with the functions of distribution and retail supply of electricity in their respective areas of operation in the State. The Appellant No. 5 is a trading licensee engaged in the business of bulk purchase and bulk sale of electricity essentially to Appellants 1 to 4. The power purchases are made by the distribution licensees for onward distribution and retail supply to consumers in the State.

3. that the Respondent, State Commission is the State Electricity Regulatory Commission for the State of Gujarat exercising powers and discharging functions under the provisions of the Electricity Act, 2003 read with the Gujarat Electricity Industry (Re-organization and Regulation) Act, 2003.

4. The relevant facts giving rise to the present Appeal are stated as under:

- (a) that the State Commission, on 22.3.2011, notified the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter called **MYT Regulations**) applicable for the tariff period from 1.4.2011 to 31.3.2016.
- (b) that the Appellants filed petitions for determination of tariff under the MYT Regulations, 2011 for the above control period, namely, the FY 2011-12 to FY 2015-16. The Appellants sought for extension of time for filing the above petitions pending the finalization of the Multiyear Tariff Regulations, which time was duly allowed by the State Commission
- (c) that the State Commission, on 6.9.2011, issued the MYT order for the Appellants in which tariff order, the State Commission duly considered the reasons given by the Appellants for the delay in filing the tariff petition and condoned the delay, accepted the petition and passed the order. In this regard, the relevant extract from the earlier order, dated 6.9.2011 reads as under:

**“Petition belated**

**Objection:** *Some of the stakeholders have pointed out that the filing of the petition is delayed by more than seven months. It was not submitted on 30th November, 2010, as per Regulation 9.2 of Tariff Regulations, 2007. Hence, it may be rejected.*

**Response of the Petitioner:** *The petitioner has submitted that, for the 2nd control period FY 2011-12 to FY 2015-16, the MYT petition filing due date was 30 November, 2010. This was extended by the Commission up to 31st December, 2010. In the month of December, 2010, the Commission issued the discussion paper on MYT Regulations, 2011. Comments were invited from the stakeholders. The MYT Regulations, 2011 were consequently issued on 22 March, 2011 and were made effective from 1st April 2011. The petitioner filed the petition based on the MYT Regulations, 2011. Also, the consultation with the State Government for subsidy support took some time. The Commission*

*is empowered to condone justifiable delays under Clause 85 of the Conduct of Business Regulations, 2004.*

***Commission's View: In view of the circumstances mentioned by the petitioner the delay is condoned. However, the petitioner is directed to file such petition, in future, within the time prescribed by the relevant Regulations."***

- (d) that the State Commission, vide its order dated 21.10.2011, in Petition No 1080 of 2011 allowed M/s Adani Power Limited, a generating company supplying power to the Appellant No. 5, to recover the extra tariff on account of the Change in Law. Accordingly, the Appellants had to meet the financial out-flow of Rs 255.43 crores and the same was to be allowed by the State Commission as a pass through in the tariff. This amount of Rs.255.43 crores was included in the accounts as 'Exceptional Item'.
- (e) that on 24.1.2013, the Appellants filed the individual petition before the State Commission for truing up of the financials for FY 2011-12 and determination of tariff for FY 2013-14. The petition was to be filed by 30.11.2012 in regard to the tariff for FY 2013-14. The Appellants were not in a position to file the tariff petition by the above time i.e. 30.11.2012. Hence, the Appellants applied for the extension of time for filing the tariff petition, which was extended up to 25.1.2013 by the State Commission. Upon technical validation sessions held, public hearings and clarifications were sought and, thereafter, the State Commission, passed the impugned order, dated 16.4.2013, as detailed above. In the impugned order, the State Commission, however, disallowed a revenue of Rs. 288.33 crores for the tariff year 2011-12 and Rs. 320.82 crores for the tariff year 2013-14 on the ground that the Appellants had delayed the filing of the tariff petition for the respective years and the entire revenue gap for the same needs to be borne by the Appellants. In the impugned order, the State Commission decided that an amount of Rs. 255.43 crores is an excess

recovery by the Appellant No. 5 from Appellants No. 1 to 4 in the bulk supply tariff during the FY 2011-12. Consequently, the State Commission adjusted the said amount of Rs. 255.43 crores in the Annual Revenue Requirements of the Appellants.

- (f) that the Appellants No. 1 to 4, on 21.5.2013, filed the Review Petitions being Petition Nos. 1314, 1315, 1317 and 1318 of 2013, before the State Commission, seeking review of the impugned order, dated 16.4.2013, which have been rejected by the State Commission, vide its order, dated 30.10.2013. Consequently, the instant Appeal has been filed before this Appellate Tribunal on 11.12.2013.
- (g) that the decision of the State Commission to disallow the revenue requirements of the Appellants on account of alleged delay in filing of the tariff petition is contrary to the provisions of the Electricity Act, 2003, the National Tariff Policy and also the settled legal position and even if there is a delay attributable to the licensees for filing of tariff petitions, the claim to be disallowed is the carrying cost and not the revenue gap itself.
- (h) that the amount of Rs. 255.43 crores was incorrectly arrived at by the State Commission as it considered the power purchase cost of the Appellant No.5 (power trader) only as per the audited accounts under the head 'Power Purchase Cost'. The Appellant No. 5 had incurred additional liability towards M/s Adani Power Limited, which was consequent to the claim of M/s Adani Power Limited for change in law on account of change and customs duty etc., which was allowed by the State Commission by its order, dated 21.10.2011, in terms of which, the additional amounts became due towards the power purchased from M/s Adani Power Limited by the Distribution Licensees (Appellant No.1 to 4) and the same was shown under the head

'Exceptional Item' in the audited accounts of the Appellant No. 5. The amount was not taken into account by the State Commission while truing up the financials of the Appellants.

5. We have heard Mr. M.G. Ramachandran, the learned counsel for the Appellants-petitioners and Ms. Suparna Srivastava, the learned counsel for Respondent. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions filed by the rival parties.

6. The following two issues are involved in the instant Appeal:

**(A) Whether the State Commission has erred in arriving at the surplus of Rs.255.43 crores for FY 2011-12 based on the amount shown under the power purchase cost in the audited accounts without considering the amount shown under the head "Exceptional Items" in the audited accounts?**

**(B) Whether the State Commission has erred in disallowing the revenue gap for FY 2011-12 & 2013-14 on account of delay in filing of tariff petitions by the Appellants (despite the decision of this Appellate Tribunal holding that only carrying cost is not to be considered for such delays)?**

**Our issue-wise considerations are as follows:**

7. Since, both these issues (A) & (B) are interconnected, we are considering and deciding them together.

7.1 The following submissions, on issue (A), have been made by the Appellants:

(a) that the State Commission has erred in disallowing an amount of Rs. 255.43 crores as alleged surplus in the hands of the Appellants/Distribution Licensees (Appellant No.1 to 4) on the basis that it was not shown in the audited accounts under the head 'Power Purchase Cost'. The power purchase cost considered by the State Commission did not include the amount payable to M/s Adani Power Limited on account of the

change in law, as allowed by the State Commission vide its earlier order, dated 21.10.2011, in Petition No 1080 of 2011. The State Commission has erred in not considering the same while truing up the financials of the Appellants for the year 2011-12.

- (b) that the State Commission has failed to appreciate that the amount of Rs. 255.43 crores was duly audited and depicted in the audited accounts of the Appellants. The audit for the Appellants is undertaken by the Comptroller and Auditor General of India and there can be no issue as to the veracity of the amount depicted or the liability of the Appellants to pay such amounts. There can also be no question of prudence check of the amount so payable as the same was by virtue of the specific order, dated 21.10.2011, passed by the State Commission. In the circumstances, the State Commission ought to have allowed the same and not artificially reduce the power purchase cost of the Appellants.
- (c) that the State Commission has wrongly decided that an amount of Rs.255.43 crores is an excess recovery by the Appellant No.5 from the remaining Appellants No. 1 to 4 in the bulk supply tariff during the year 2011-12. Consequently, the State Commission has proceeded to adjust the said amount of Rs.255.43 crores in the Annual Revenue Requirements of the Appellants for the said year.
- (d) that the State Commission has considered the power purchase cost of the Appellant No.5 only as per the head 'Power Purchase Cost' in the Audited Accounts overlooking the head "Exceptional Amount".
- (e) that the State Commission has failed to appreciate that the basis, on which the entire power purchase cost of the Appellants is allowed, should be the same as the basis on

which the cost payable to M/s Adani Power Limited is to be allowed. The Annual Revenue Requirements, as well as the accounts of the Appellants are on accrual basis and the same is adopted for the purposes of considering the Annual Revenue Requirements of the Appellants. In the circumstances, the State Commission has erred in not considering the amount of Rs. 255.43 crores towards the power purchase cost of the Appellants and thereby artificially reducing the Annual Revenue Requirements of the Appellants. The amount of Rs.255.43 crores is clearly reflected in the audited accounts of the Appellant No.5 and has been paid only as per the directions of the State Commission. Hence, there was no reason for disallowing the same.

- (f) that as per the provisions of the MYT Regulations, 2011, “Change in Law” is recognized as an uncontrollable item. Regulation 23 of the MYT Regulations, 2011 of the State clearly says that the term “uncontrollable factors” shall comprise the factors like, Force Majeure events and Change in Law, judicial pronouncements and orders of the Central Government, State Government or Commission, which were beyond the control of the Applicant and could not be mitigated by the Applicant. Regulation 24 of State MYT Regulations, 2011 provides for mechanism for pass through of gains or losses on account of uncontrollable factors. The approved aggregate gain or loss to the Generating Company or Transmission Licensee or Distribution Licensee on account of uncontrollable factors shall be passed through as an adjustment in the tariff of the Generating Company or Transmission Licensee or Distribution Licensee over such period as may be specified in the order of the Commission passed under these Regulations. Regulation 24 further provides that the Generating Company or Transmission Licensee or Distribution Licensee shall submit such details of the variation between expenses incurred and revenue earned

and the figures approved by the Commission, in the prescribed format to the Commission, along with the detailed computations and supporting documents as may be required for verification by the Commission. Regulation 24.3 of Regulation 24, further provides that nothing contained in this Regulation shall apply in respect of any gain or loss arising out of variations in the price of fuel and power purchase, which shall be dealt with as specified by the Commission from time to time. In this way, the State Commission by following the provisions of Regulations 23 & 24 of State MYT Regulations, 2011, ought to have allowed the amount of Rs. 255.43 crores, which has been paid by the Appellants as power purchase cost to Adani Power Limited and needs to be included in the tariff.

7.2 Regarding the issue (B) of disallowing the revenue gap for FY 2011-12 & 2013-14 on account of delay in filing of tariff petitions by the Appellants, the following submissions have been made on behalf of the Appellants:

- (a) that for the year 2011-12, the MYT Regulations, 2011 of the State Commission had been notified only on 22.3.2011 w.e.f. 1.4.2011. It was only when the MYT Regulations, 2011 were notified that the tariff petitions could have been filed and considered. In the said order, the State Commission upon appreciating the reasons for the delay had condoned the delay in filing the petitions. Hence, the question of disallowance of the amount claimed including the carrying cost, does not arise as the delay was satisfactorily explained and accepted by the State Commission in the earlier orders
- (b) that even for the year 2012-13, the Appellants had properly explained the reasons for delay in filing the tariff petition. Considering the difficulties in assimilating the required information, the Appellants had requested the State Commission to extend the date of filing of the tariff petition, and the State Commission had extended the time of filing till

25.1.2013. Once the State Commission has extended the time, there could not be any disallowance on the basis of delay. The Appellants had filed the tariff petitions before the State Commission on 24.1.2013, within the extended period allowed by the State Commission. Based on the above, and after conducting validation sessions, public hearing etc, the tariff order was passed by the State Commission on 16.4.2013 effective from 1.4.2013. In these circumstances, the claim should have been allowed with full carrying cost.

- (c) that this Appellate Tribunal in its judgment, dated 19.9.2007, the case of Maharashtra State Electricity Distribution Company Ltd. vs. Maharashtra Electricity Regulatory Commission in Appeal No 70 of 2007 and also in its judgment, dated 8.12.2008, in the case of Himachal Pradesh State Electricity Board vs. Himachal Pradesh Electricity Regulatory Commission in Appeal No 209 of 2006 and also the Full Bench decision, dated 11.11.2011, in OP No. 1 of 2011, held that all that can be disallowed to the licensee on account of delay in filing of the tariff petition is the carrying cost as the carrying cost represents the time value of money. The cost itself does not get allowed on assuming that the delay is on account of default of the licensees.
- (d) that this Appellate Tribunal, in its judgment, dated 30.5.2014, in Appeal Nos. 147, 148 and 150 of 2013, captioned as Torrent Power Limited vs. Gujarat Electricity Regulatory Commission, reiterating the same view has observed as under:

“69. Summary of our findings:

- (i) Disallowance of approved revenue gap: This issue is decided in terms of the findings of this Tribunal in Appeal No. 70 of 2007. Accordingly, the revenue gap for FY 2011-12 and 2013-14 has to be allowed to the Appellant. However, carrying cost, if any, for the period of delay in filing the ARR/tariff petition shall not be allowed.

(ii) Disallowance of carrying cost: This issue is decided in favour of the Appellant in terms of findings of this Tribunal in Appeal No. 190 of 2011.”

- (e) that the State Commission has failed to appreciate that for the year 2013-14, the tariff orders had been passed on 16.4.2013, and there was no delay whatsoever in the implementation of the tariff order and the same was made applicable from the first bill raised by the Appellants for the month of April, 2013. In the circumstances, the State Commission has erred in holding that there was a delay in the proceedings attributable to the Appellants and, thereby, the State Commission has disallowed the amount of Rs. 288.33 crores for FY 2011-12 and Rs.320.87 crores for FY 2013-14.
- (f) that the State Commission has erred in relying on Para 8.1.7 of the National Tariff Policy to disallow the revenue gap to the Appellants for the said years 2011-12 and 2013-14 on account of alleged delay in the filing of tariff petitions.

7.3 **Per contra**, on both the issues, the following arguments have been made on behalf of the State Commission:

- (a) that the State Commission, in its Review Order, dated 30.10.2013, passed in the afore-stated Review Petitions regarding the adjustments of Rs.255.43 crores as excess recovery by Appellant No. 5 from the DISCOMs observed that the State Commission in its order, dated 21.10.2011, in Petition No. 1080 of 2011, Adani Power Ltd. v/s GUVNL had held that the Adani Power Ltd is entitled to raise the supplementary bills in respect of Custom Duty paid/payable by it in terms of Government of India Notifications on the quantum of electricity supplied by it to the GUVNL. Further, Adani Power Ltd. is also eligible to receive Clean Energy Cess and Green Cess at the rate prescribed by the applicable Government Notifications. Consequently, the Appellant No. 5/GUVNL has booked

Rs.253.60 crores under the head of 'Exceptional Items' in Note 27 in its Accounts towards Custom Duty, Green Energy Cess and Clean Energy Cess stating that the said amount may be recoverable from subsidiary distribution companies. The Commission had not considered the expenses of Rs. 253.60 crores towards Custom Duty, while truing-up of revenue and further there was no clarity whether this amount is actually paid to generator or only a provision has been made. Even during the course of the hearing of the main petition before the State Commission, none of the Appellants submitted any documentary evidence regarding payment of this amount. The State Commission dismissed the Review Petitions of the Appellants seeking review of the impugned order on the ground of absence of evidence on record specifying that an amount of Rs. 253.60 crores was paid by the Appellants to Adani Power Limited. While passing the Review Order, the State Commission observed as under:

“However, we clarify that the petitioners are at a liberty to claim the above expenses of Rs. 253.60 crore if any made by it in the next True-up/ARR tariff petition filed for FY 2014-15 with supporting documents.”

- (b) that the State Commission has rightly adjusted Rs.255.43 crores in the net consolidated revenue gap for FY 2011-12 being excess recovery by Appellant No.5 from the distribution licensees (Appellant Nos. 1 to 4) towards power purchase cost.
- (c) that the State Commission has considered the consolidated revenue gap of the distribution licensees for FY 2011-12, after truing up of 2011-12 as Rs.543.76 crores. While determining the ARR for FY 2013-14 in the MYT order, dated 6.9.2011, the State Commission has considered the GUVNL/Appellant No.5's, cost of four paise per unit to be added to power purchase cost of each Distribution Licensee. The Annual Report of Appellant No.5 for FY 2011-12 indicates that the total energy purchased by the Appellant No.5 is 65827 MUs. The cost of the Appellant

No.5 to be added to power purchase cost works out to Rs.263.31 crores but, on verifying the figures of expenses and revenue of power purchase, it emerges that the Appellant No.5 had charged Rs.551.65 crores to Distribution Licensees. The cost recovered by the Appellant No.5 from the remaining Appellant i.e. Appellant No. 1 to 4/Distribution Licensees, is Rs.518.74 crores and excess cost recovered by the Appellant No.5 from Appellant No.1 to 4 is Rs.255.43 crores. In this view of the matter, the State Commission, in the impugned order, decided to adjust the excess recovery of Rs.255.43 crores in net revenue gap of FY 2011-12 amongst Distribution Licensees in proportion to the energy procured. The State Commission had also revised the tariffs for FY 2011-12 to get additional revenue of Rs.611.88 crores on an annualized basis, on consideration of the consolidated revenue gap of the four Distribution Licensees at Rs.606.67 crores in its MYT order, dated 6.9.2011.

- (d) that the State Commission, in the impugned order, observed that the actual consolidated net gap of Rs.288.33 crore for the four Distribution Licensees (Appellant No. 1 to 4) for FY 2011-12 is due to delay of about six months in filing of the tariff petitions for FY 2011-12 by the Distribution Licensees and, consequently, late implementation of the revised tariff.
- (e) that the State Commission, in the impugned order, also observed that the Distribution Licensees are not punctual in filing the tariff petitions within the stipulated time. Various consumer organizations repeatedly represented during the course of the hearings that the consumers should not be burdened on account of default by the Distribution Licensees.
- (f) that the Distribution Licensees/Appellant Nos.1 to 4, for the ARR for FY 2013-14 also filed the tariff petitions by delay of 55 days. The State Commission extended the time period and condoned the delay in filing the tariff petition for the determination of tariff. The condonation of delay is to consider

the petition on merit instead of rejecting it straight away. But it does not imply acceptance of revenue gap due to delayed filing of the tariff petition.

- (g) that the State Commission, looking to the representations from various consumer organizations about burdening the consumers due to default by the Distribution Licensees, the State Commission has decided to consider only proportionate gap for FY 2013-14 for determination of tariff. In other words, the estimated gap is reduced in proportion to the period of delay in filing the tariff petition. Accordingly, out of the total consolidated gap of the four Distribution Licensees of Rs.2129.09 crores, the State Commission has considered a consolidate gap of Rs. 1808.27 crores for the determination of tariff for FY 2013-14 and disallowed the gap of Rs. 320.82 crores because of delay in filing the tariff petitions by the Distribution Licensees.
- (h) that according to the mandate in Para 8.1.7 of the Tariff Policy, any gap on account of delay in filing was to be on account of the licensee, the State Commission has rightly declined to carry forward the consolidated revenue gap occasioned due to delay in tariff filing by the Appellants.
- (i) that the State Commission, in the impugned order, observed that condonation of delay in filing the tariff petition was only for the purpose of considering the petition on merits instead of rejecting it straight away and did not imply acceptance of revenue gap due to delayed filing of the tariff petition. The State Commission cannot be faulted with for following the statutory mandate given in the National Tariff Policy.
- (j) that since the liberty having been granted to the Appellants in the Review Order, dated 30.10.2013, seeking review of the impugned order to claim the above expenses of Rs.253.60 crores, if any, made by it in the next true-up/ARR tariff petition filed for FY 2014-15 with supporting documents, as such, no

prejudice could be said to have been caused to the Appellants on account of disallowance of the expenses of Rs.253.60 crores claimed. Further, the treatment of delayed filing has been made in accordance with the provisions of the National Tariff Policy so that no infirmity could be alleged to exist in the same. The Appeal being devoid of any merits, the same is liable to be dismissed.

8. The main contention of the Appellants in the instant Appeal is that the State Commission has erred in disallowing the amount of Rs.255.43 crore as alleged in the hands of the Distribution Licensees (Appellant Nos.1 to 4) on the basis that the same was not shown in the audited accounts under the head 'Power Purchase Cost' without considering the amount shown under the head 'Exceptional Item' in the audited accounts. The power purchase cost considered by the State Commission did not include the amount payable to M/s Adani Power Limited on account of the change in law, as allowed by the State Commission vide its earlier order, dated 21.10.2011, in Petition No 1080 of 2011. The State Commission has further erred in not considering the same while truing up the financials of the Appellants for the year 2011-12. Elaborating this contention, it has vehemently been argued on behalf of the Appellants that the State Commission has totally failed to appreciate that the amount of Rs. 255.43 crores was duly audited and depicted in the audited accounts of the Appellants, which audit for the Appellants is undertaken by the Comptroller and Auditor General of India and there could be no issue as to the veracity of the amount shown or the liability of the Appellants to pay such amounts. In the said circumstances, the State Commission ought to have allowed the same and not artificially reduce the power purchase cost of the Appellants. The said amount of Rs.255.43 crores cannot be said to be an excess recovery by the Appellant No. 5 i.e. Gujarat Urja Vikas Nigam Limited from the remaining Appellants/Discoms in the bulk supply tariff during the FY 2011-12. Consequently, the State Commission has wrongly proceeded to adjust the said amount in the Annual Revenue Requirements of the Discoms (Appellant Nos. 1 to 4) for the said year. The State

Commission, has further, committed illegality in considering the power purchase cost of the Appellant No. 5 only as per the head 'Power Purchase Cost' in the audited accounts, overlooking the head of 'Exceptional Item' or 'Exceptional Amount'. Since the said amount of Rs.255.43 crores was clearly reflected in the audited accounts of the Appellant No.5 and had been paid only as per the directions of the State Commission, there was no reason for disallowing the same.

9. Refuting the above contention of the Appellants, it has been contended on behalf of the State Commission that during the course of the hearing of the main petitions before the State Commission, none of the Appellants filed any documentary evidence regarding payment of said amount and the State Commission has rightly dismissed the Review Petitions of the Appellants seeking review of the impugned order, dated 16.4.2013, on the ground of the absence of any evidence on record specifying that the said amount was paid by the Appellants to M/s Adani Power Limited and the State Commission while passing the Review Order, dated 30.10.2013, dismissed the review petitions filed by the Appellants and clearly observed that the petitioners are at a liberty to claim the above expenses of Rs.253.60 crores if any made by it in the next True-up/ARR tariff petition filed for FY 2014-15 with supporting documents. Since, the supporting documents were not filed by the Appellants either in the main petitions or in the review petitions, the State Commission, in the Review Order, clearly granted the liberty to the Appellants to claim the said amount, if any made by them, in the next true-up/ARR tariff petitions to be filed for FY 2014-15 with the supporting documents/evidence. The thrust of the arguments of the State Commission is that the State commission has rightly adjusted Rs.255.43 crores in the net consolidated revenue gap for FY 2011-12, being excess recovery by the Appellant No.5 from the Distribution Licensees (Appellant Nos. 1 to 4), towards power purchase cost. The State Commission, in the impugned order, has correctly decided to adjust the excess recovery of Rs.255.43 crores in the net revenue gap of FY 2011-12 amongst Distribution Licensees in proportion to the energy procured. Further, the State Commission had

also revised the tariffs for FY 2011-12 to get additional revenue of Rs.611.88 crores on an annualized basis, in its MYT order, dated 6.9.2011. Even in the proceedings before this Tribunal, the Appellants have not indicated whether the amount payable to M/s Adani Power has been paid and if it is paid, when it was paid. The Appellants during the proceedings before the State Commission also failed to produce any evidence regarding actual payment to M/s Adani Power despite specific query made by the State Commission. The State Commission has already given liberty to the Appellants to claim the expenses on this account if any made by them in the next True-up /ARR tariff Petition filed for FY 2014-15 with supporting documents. We do not find any infirmity in the order of the State Commission in this regard.

10. The issue regarding disallowance of revenue gap for delay in filing of the tariff petition is covered by this Tribunal's judgments dated 19.9.2007 in Appeal No. 70 of 2007, dated 18.12.2008 in Appeal No. 209 of 2006 and in a recent judgment dated 30.5.2014 in Appeal Nos. 147, 148 and 150 of 2013 in the matter of Torrent Power Ltd. Vs. Gujarat Electricity Regulatory Commission where it was decided that the distribution licensee is entitled to claim the revenue gap but the carrying cost for the period of delay in filing of the petition should not be allowed. The finding of the Tribunal in the above judgments will squarely apply to the present case. Accordingly, this issue is decided in favour of the Appellants.

11. **SUMMARY OF OUR FINDINGS:**

11.1 The Appellants have failed to produce any evidence about actual payment made to M/s Adani Power. In the instant matter, the State Commission in its Review Order, dated 30.10.2013, seeking review of the Impugned Order, dated 16.4.2013, since has granted liberty to the Appellants/Distribution Licensees to claim the said expenses, if any made by them, in the next True-up/ARR Petition to be filed for FY 2014-15 with supporting documents or evidence, we observe that the impugned order does not require any interference in the matter by us at this stage. The

Appellant Nos. 1 to 4/Distribution Licensees can claim the said expenses in the next ARR tariff petition to be filed for FY 2014-15 with the supporting documents or evidence, their grievance can be said to be addressed by the review order of the State Commission

11.2 The issue regarding disallowance of revenue gap on account of delay in filing of the tariff petition has been considered in this Tribunal in Appeal No. 150 of 2013. The findings of the Tribunal in Appeal No. 150 of 2013 will squarely apply to the present case. Thus, the distribution licensee is entitled to the allowance of the revenue gap but carrying cost shall not be allowed

12. In view of the above discussions, we allow the instant Appeal being Appeal No. 45 of 2014 in part as indicated above without any order as to costs.

**PRONOUNCED IN THE OPEN COURT ON THIS 4<sup>TH</sup> DAY OF DECEMBER, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**(Rakesh Nath)  
Technical Member**

**√ REPORTABLE/~~NON-REPORTABLE~~**

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