

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 150 of 2014 and**  
**Appeal No. 151 of 2014**

**Dated: 6<sup>th</sup> May, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**Appeal No. 150 of 2014**

**Torrent Power Limited**  
**Electricity House**  
**Lal Darwaja**  
**Ahmedabad - 380 001**

**... Review Petitioner**

**Versus**

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

**...Respondent**

**Counsel for the Appellant(s) :** **Ms. Deepa Chawan**  
**Mr. H.S. Jaggi**  
**Mr. Hardik Luthra**  
**Mr. Ravinder Chill**

**Counsel for the Respondent(s):** **Ms. Suparna Srivastava**  
**Ms. Nishtha Sikoria**  
**Mr. S.R. Pandey (Rep.)**  
**Mr. S.T. Ananda (Rep.)**

**Appeal No. 151 of 2014**

**Torrent Power Limited  
Torrent House, Off Ashram Road  
Ahmedabad - 380 009**

**... Review Petitioner**

**Versus**

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

**...Respondent**

**Counsel for the Appellant(s) : Ms. Deepa Chawan  
Mr. H.S. Jaggi  
Mr. Hardik Luthra  
Mr. Ravinder Chill**

**Counsel for the Respondent(s): Ms. Suparna Srivastava  
Ms. Nishtha Sikoria  
Mr. S.R. Pandey (Rep.)  
Mr. S.T. Ananda (Rep.)**

**JUDGMENT**

**RAKESH NATH, TECHNICAL MEMBER**

Appeal no. 150 of 2014 and Appeal no. 151 of 2014 have been filed by Torrent Power Ltd. against the orders dated 29.04.2014 for Torrent Power Ltd – Distribution Ahmedabad and Torrent Power Ltd – Distribution Surat respectively. These orders are relating to true up for FY 2012-13 and determination of tariff for FY 2014-15. The following issues have been raised in these Appeals:

- (a) Disallowance of revenue gap approved for the earlier period.
  - (b) Erroneous computation of interest expenses.
  - (c) Non-consideration of the proposal for tariff rationalization.
  - (d) Erroneous treatment of bad debts.
2. We shall be taking up the issues raised by the Appellant one by one. For the sake of brevity, the facts of the case of Appeal no. 150 of 2014 are being referred to.
3. **The first issue is regarding disallowance of revenue gap approved for earlier period.**
4. The Appellant has submitted that in its petition it had clearly stated that the Cumulative Gap as Rs. 533.89 crores, which included a figure of Rs. 116.03 crores being the approved Revenue Gap for the earlier years. The said Rs. 116.03 crores comprised of RS. 115.84 crores being the revenue gap of FY 2010-11 as per the tariff order dated June 02, 2012 duly passed by the Respondent Commission and Rs. 0.16 crore approved by the Respondent Commission vide order dated September 04, 2013 on Petition No. 1323/2013. This previous year's approved Gap has been completely disallowed by the Respondent Commission to the tune of Rs. 115.84 crores.

5. During the hearing, Learned Counsel for the State Commission accepted that there seems to be some error in consideration of the revenue gap approved for the earlier period. Subsequently, the State Commission made the following submissions through its Secretary.

“The matter was heard by Hon’ble Tribunal on 03.03.2015 and on 09.04.2015. During the course of hearing, the issue was examined and found that the trued up gap of FY 2010-11 was considered by the Commission while determination of tariff for FY 2012-13. At the time of determination of tariff for FY 2012-13, the Commission considered the MYT approved ARR of Rs. 3170.60 crore and the trued up gap of FY 2010-11 of Rs. 115.84 crore of FY 2010-11. However, while truing up the financials for FY 2012-13, the Commission has considered the trued up ARR of FY 2012-13 calculated based only on MYT approved ARR of Rs. 3170.60 crore and not considered the trued up gap of Rs. 115.84 crore of FY 2010-11. On the revenue side, the Commission has considered the actual revenue, which includes the gap of FY 2010-11 also. Thus, it reveals that the trued up gap of FY 2012-13 is approved short by Rs. 115.84 crore. The Commission has examined the issue and agrees to correct it. The effect of this correction shall be taken care along with next tariff determination exercise.”

6. In view of submissions of State Commission that necessary correction shall be made along with next tariff determination exercise, this issue is decided in favour of the Appellant.
7. **The second issue is erroneous computation of interest expenses.**
8. It was fairly admitted by Learned Counsel for the parties that this issue is covered by judgment dated 30.05.2014 in Appeal no. 147, 148 and 150 of 2013 wherein the Tribunal did not interfere with the decision of the State Commission on the issue of interest expenses.
9. In view of above, this issue is decided against the Appellant in term of findings of this Tribunal in judgment dated 30.05.2014 in Appeal no. 147, 148 and 150 of 2013 wherein Tribunal did not find any infirmity regarding interest expenses
10. **The third issue is regarding non-consideration of the proposal for tariff rationalization.**
11. It was fairly admitted by the Learned Counsel for the parties that this issue is already covered by the judgment of this Tribunal dated 30.05.2014 in Appeal no. 147, 148 and 150 of 2013.
12. This Tribunal in its judgment dated 30.05.2014 in Appeal nos. 147, 148 and 150 of 2013 considered the problems raised by the Appellant and issued certain directions to the State Commission and the Appellant to

the said ground for future. Appellant was asked to put up detailed proposal in this regard in future tariff petition and the State Commission shall decide the matter as per law after considering the suggestions and objections of the stakeholders. The same findings will be applicable in the present case.

**13. The fourth issue is regarding erroneous treatment of bad debts.**

14. According to the Appellant the State Commission has erred in considering bad debts written off as a controllable item of expense and recovery from bad debts as uncontrollable while approving the ARR and reiterated the same in order dated 17.11.2014 passed in the clarificatory petition No. 1435 of 2014.

15. As per the Appellant, the Commission approved the writing off bad debts as Rs. 3.64 crores in the truing up for FY 2012-13. However, the difference between the bad debts approved in MYT order for FY 2012-13 and actually allowed in truing up for FY 2012-13 i.e. a loss of Rs. 2.55 crores was considered as controllable item. As regards non-tariff income the Commission allowed the difference between approved non-tariff income for FY 2012-13 in the MYT order and actually allowed in truing up for FY 2012-13 as gain/loss due to uncontrollable factor. The impugned order is silent and has not given rational for the different

treatment meted out to a particular tariff item namely bad debts when the Commission considered it as a revenue and as an expense. It is submitted by the Appellant that bad debts should be treated uncontrollable as the Appellant is under obligation to supply electricity to whosoever applies for the same without verifying his capacity to pay/credit rating which is a main cause for amount becoming the bad debts. Therefore, the bad debts written off and income arising from recovery of bad debts should be considered as uncontrollable. The Appellant is adversely prejudiced and affected on both counts of the expense being treated as controllable and the income being treated as uncontrollable. The dispensation of the Commission as regards these items of tariff both in the impugned order as well as order passed on the clarificatory petition treat the same differently when considering the item under two heads of expense and revenue.

16. Learned Counsel for the State Commission in reply has made following submissions: -

- (a) Section 47 of the Electricity Act 2003 empowers the Distribution Licensee to recover security deposits from the consumer and review it in case of security given by the consumer becomes insufficient. The licensee is also empowered to disconnect the

supply if a consumer fails to pay required security deposit. Thus, the licensee are required to function utilizing the powers conferred by the Act and the Regulations. Slackness of Licensee on account of its duty of recovery of electricity charges from the defaulting consumers in spite of being empowered by the Statute, cannot be considered as an uncontrollable element.

- (b) The Commission has approved some amount as bad debts under the MYT regime looking to the risk involved in the distribution business but the licensee must endeavour to limit which is actual bad debt within the limit prescribed under MYT order. Any deviation on that account is due to slackness of the licensee of its obligated duty. The bad debts are a commercial loss to the Distribution Licensee and should be within the control of the Licensee. The commercial loss is considered as a controllable factor as per the MYT Regulations, 2011.
17. We find that the impugned order has not given any explanation to treat the deviation in bad debts as income and expense being treated differently. The State Commission in the clarificatory order dated 17.11.2014 has held that the income on account of bad debts should be considered as uncontrollable as it is unexpected income. We find that



the State Commission in the impugned order as well as clarificatory order has not examined the issue wholistically for treating the variation in bad debts differently as expense and as revenue. We feel that as long as the bad debts are within the allowable limits, treatment for both income and revenue should be the same. Accordingly, we remand the matter to the State Commission for reconsideration and deciding the issue as per law without being influenced by its earlier decision.

**18. To conclude:**

**(a) Disallowance of revenue gap approved for the earlier period.**

**This issue is decided in favour of the Appellant. The Appeal is disposed of in terms of the submissions made by the Commission in which State Commission has agreed to correct the error on account of non-consideration of revenue gap approved for the earlier period.**

**(b) Erroneous computation of interest expenses.**

**This issue is covered by judgment of this Tribunal dated 30.05.2014 in Appeal nos. 147, 148 and 150 of 2013 in which this Tribunal did not interfere with the decision of the State Commission on the issue of interest expenses.**

**(c) Non-consideration of the proposal for tariff rationalization.**

This issue is disposed of in terms of the directions given by this Tribunal in judgment dated 30.05.2014 in Appeal nos. 147, 148 and 150 of 2013 for future.

(d) Erroneous treatment of bad debts.

This issue is remanded to the State Commission for re-consideration.

19. In view of above, the Appeal is allowed in part as indicated above. No order as to costs.
20. Pronounced in the open court on this day of 6<sup>th</sup> May, 2015.

(Rakesh Nath)  
Technical Member

√

REPORTABLE/NON-REPORTABLE

mk

(Justice Ranjana P. Desai)  
Chairperson