

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

Appeal Nos. 202 & 203 of 2010

Dated 13th September, 2012

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

Reliance Infrastructure Limited,
(formerly Reliance Energy Limited),
Reliance Energy Centre,
Santacruz (East),
Mumbai- 400 055

... Appellant (s)

Versus

1. The Maharashtra Electricity Regulatory Commission,
World Trade Centre No. 1,
13th Floor, Cuffe Parade, Colaba,
Mumbai-400 001
 2. Mumbai Grahak Panchayat,
Sant Dnyaneshwar Marg,
Vile Parle (W),
Mumbai-400 056.
 3. Prayas,
C/o Amrita Clinic,
Athawale Corner,
Karve Road, Pune-411 004
 4. Thane Belapur Industries,
Post: Ghansoli, Navi Mumbai-400 071.
 5. Vidarbha Industries Association,
Civil Lines, Nagpur-400 041
- ...Respondent(s)

Counsel for Appellant(s) : Mr. Hasan Murtaza
Mr. Akhil Sibbal

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Ms. Richa Bhardwaja for R-1

JUDGMENT

HON'BLE MR. RAKESH NATH, TEHNICAL MEMBER

Appeal nos. 202 of 2010 and 203 of 2010 have been filed by Reliance Infrastructure Ltd. against the orders passed by Maharashtra Electricity Regulatory Commission ("State Commission") on 8.9.2010 and 3.9.2010 respectively. The order dated 8.9.2010 is relating to generation business, while the other dated 3.9.2010 is for transmission business of the appellant for truing up of FY 2008-09 and determination of tariff for FY 2010-11.

2. The State Commission is the 1st respondent. The respondent nos. 2 to 5 are the consumers' representatives.

3. The facts of the cases are as under:

3.1 Appeal No. 202 of 2010

i) The appellant submitted its petition for truing up of FY 2008-09 and determination of tariff for the FY 2010-11 on 20.12.2009 before the State Commission.

ii) The State Commission after following the due process passed an order dated 8.9.2010 disposing of the petition filed by the appellant and approving the truing up for FY 2008-09, Annual Performance Review for FY 2009-10 and determination of tariff for FY 2010-11 for the generation business of the appellant.

iii) Aggrieved by determination of efficiency gains on interest on working capital and associated carrying cost for the period 2006-07 to 2008-09 and disallowance of carrying cost for the deferred recovery for FYs 2006-07 and 2007-08, the appellant has filed this appeal.

3.2. Appeal no. 203 of 2010

i) On 23.12.2009 the appellant submitted its petition for truing up for FY 2008-09 and determination of tariff for FY 2010-11 in respect of its transmission business before the State Commission.

ii) The State Commission after public hearing passed an order on 3.9.2010 truing up the ARR for the FY 2008-09, Annual Performance Review for FY 2009-10 and determination of tariff for FY 2010-11.

iii) Aggrieved by determination of efficiency gains on interest on working capital and associated carrying cost for the period 2006-07 to 2008-09, carrying cost on truing up of FY 2008-09 and carrying cost on deferred recovery, the appellant has filed this appeal.

4. Since the issues raised in both the appeals are similar a common judgment is being rendered.

5. Learned counsel for the appellant has raised the following issues in respect of the appeal no. 202 of 2010.

5.1 Efficiency gain on interest on working capital:

i) Regulation 34.5 (a) of the Tariff Regulations, 2005 provides for interest on working capital. The Tariff Regulations stipulate that the rate of interest on working capital shall be on normative basis and shall be equal to the short-term prime lending rate of the

State Bank of India as on the date of the application. The quantum of working capital has to be trued up using the various elements of working capital at actual levels.

ii) The State Commission by its order dated 21.4.2008 in case no. 65 of 2007, while truing up the interest on working capital for FY 2006-07 found that the actual interest on working capital was zero. Accordingly, it allowed efficiency gain on the normative interest on working capital.

iii) Aggrieved by the finding of the State Commission the appellant filed an appeal being appeal no. 111 of 2008.

iv) When the Appeal no. 111 of 2008 was pending for disposal before the Tribunal, the Appellant filed Annual Performance Review for FY 2008-09

(truing up for FY 2007-08) before the State Commission considering normative interest using PLR of the SBI. However, the State Commission by its order dated 28.5.2009 in case no. 120 of 2008 for the FY 2007-08 considered the interest on working capital as controllable parameters and computed the sharing of gains on the basis of normative working capital interest and the actual working capital interest incurred, which was taken as zero.

v) Meanwhile, the Tribunal in its judgment dated 28.5.2009 in Appeal no. 111 of 2008 upheld the contention of the appellant and decided that the interest on working capital for the year in question shall not be treated as efficiency gain.

vi) The Tribunal in its judgment dated 28.8.2009 in Appeal no. 117 of 2008 has held that while carrying

out the trueing up exercise for the year 2008-09, the Short-Term Prime Lending Rate of SBI should be allowed for the deferred payments.

vii) The State Commission raised certain queries relating to interest on working capital for FY 2006-07 and 2007-08 during the proceedings which resulted in the impugned order. The appellant in reply referred to the decisions of the Tribunal in Appeal no. 111 of 2008 and 117 of 2008 with request to allow normative interest on working capital.

viii) However, in the true up for the FY 2008-09 in the impugned order, the State Commission has again treated the entire working capital interest on normative basis as efficiency gain and decided sharing of gain between the appellant and the consumers in accordance with the Regulation 19.1, contrary to the decision of the Tribunal in Appeal no. 111 of 2008.

The difference in amount on account of implementation of the Tribunal's judgment should be allowed with carrying cost.

5.2. Non-consideration of carrying cost on deferred recovery:

i) The State Commission in its order dated 21.4.2008 in case no. 65 of 2007 in the matter of APR for the FY 2007-08 which included true up for FY 2006-07, disallowed certain entitlements in respect of efficiency gains on account of lower auxiliary power consumption, Income Tax on PLF incentive, certain mandatory expenses for environmental related activities, etc. Aggrieved by this, the appellant filed an appeal before this Tribunal.

ii) The Tribunal by its judgment dated 28.5.2009 in Appeal no. 111 of 2008 allowed some of the claims of the appellant with directions to the

Commission to give effect to the judgment in the ensuing truing up and tariff order.

iii) The State Commission in its order dated 28.5.2009 in case no. 120 of 2008 had trued up the accounts for FY 2007-08. Since the order was issued on the day when the Tribunal's judgment in Appeal no. 111 of 2008 was pronounced, the effect of the Tribunal's judgment could not be reflected in the State Commission's order.

iv) Further, the Tribunal in its judgment dated 28.8.2009 in Appeal no. 117 of 2008 decided that the Short Term PLR of the SBI should be allowed for the deferred payments which should be incorporated while carrying out the truing up exercise for the FY 2008-09.

v) Accordingly, the appellant submitted its claim relating to impact of the Tribunal's judgment for FYs 2006-07 & 2007-08 before the State Commission

with request to allow the same with carrying cost in the true up for FY 2008-09.

vi) However, the State Commission in the impugned order erred in not allowing carrying cost on the plea that there was no specific ruling in the judgment dated 28.5.2009 of the Tribunal in Appeal no. 111 of 2008. This is contrary to finding of the Tribunal in its judgment dated 28.5.2009 in Appeal no. 117 of 2008.

vii) He also relied on the decision of the Tribunal in Appeal no. 173 of 2009.

6. In Appeal no. 203 of 2010, the appellant has raised the following issues:

6.1 Efficiency gains on interest on working capital:

The issue and facts of the case and the submissions of the Appellant are similar to that in appeal no. 202 of 2010, except for the dates of various

orders and, therefore, for the sake of brevity we are not repeating the same.

6.2 Non-consideration of carrying cost on truing up for FY 2008-09:

i) The appellant in the truing up petition for FY 2008-09 in case no. 100 of 2009 had arrived at a revenue gap of Rs. 2.80 crores and considered carrying cost on the same.

ii) However, the State Commission in the impugned order did not allow carrying cost on the revenue gap as, according to the Commission, the true up of revenue and the revenue required for any financial year is done during the determination of tariff/ARR for the second subsequent year as per the Regulations and thus the true up could not be treated as a deferred allowance/disallowance on which carrying cost has to be permitted. This is contrary to

the findings of the Tribunal in judgments in Appeal no. 117 of 2008 and Appeal no. 173 of 2009.

6.3 Carrying cost on deferred recovery: The appellant has not pressed this issue in the present appeal as the incentive and the corresponding tax liability thereon get determined only after the completion of the year.

7. The State Commission submitted counter affidavit and written submissions on the various issues which we shall be discussing while considering the issues.

8. We heard the learned counsel for the appellant and the learned counsel for the State Commission. After examining the contentions of the parties, the following questions would arise for our consideration:

i) Whether the State Commission has erred in considering the entire normative interest on working

capital as efficiency gain and deciding sharing of gain between the appellant and the consumers contrary to the finding of the Tribunal in the various cases relating to interest on working capital deployed from the internal accruals?

ii) Whether the State Commission has erred in not allowing carrying cost on deferred recovery?

iii) Whether the State Commission has erred in not allowing carrying cost on revenue gap decided on truing up of the ARR?

9. Let us first take up the first issue relating to efficiency gain on interest on working capital which is common to both the appeals.

9.1 This issue has already been decided by the Tribunal in its judgment dated 31.8.2012 in Appeal nos. 17, 18 & 19 of 2011 in the matter of Tata Power

Company Limited Vs. MERC. The relevant extracts of the judgment are reproduced below:

“20 Issue no.3 On this issue the only point raised by the Commission is that the ratio of the decision in Appeal no.111 of 2008 is that the Commission must enquire into and consider the actual costs of the funds used by the utility as working capital in the regulated business. In that case the Commission had treated the entire difference between the normative interest on working capital and actual interest as efficiency gain on the ground that the entire working capital of the appellant had been made from the internal funds of the appellant. It must not be missed that in Appeal no.111 of 2008 it has not been held that unless internal fund is located and sourced out interest on working capital cannot be given so far as normative portion is concerned. Merely because internal funds were spent as working capital it cannot follow that no cost was associated with it. This point has been made clear in number of decisions namely Appeal no.137 of 2008 decided on 15.07.2009 which

refers to the judgment in Appeal no.111 of 2008 and Appeal no.173 of 2009. In Appeal no.137 of 2008 following observation was made:-

“20. In Appeal No.111/08, in the matter of Reliance Infrastructure v/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the normative interest on Working Capital when the Working Capital has been deployed from the internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008.

“7) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on Working Capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as Working Capital loses the interest it could have earned by investment elsewhere. Further

the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards interest on Working Capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on Working Capital and hence the entire interest on working capital was gain which could be

shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on Working Capital as per Regulation 19 has merit.

15. b): The interest on Working Capital, for the year in question, shall not be treated as efficiency gain.

21. In view of our earlier decision on the same issue we allow the appeal in this regard also.”

In Appeal no.173 of 2009 this Tribunal held as follows:

“23. The next issue is wrongful consideration of the difference between normative interest on working capital and the actual interest of working capital. In respect of this issue, according to the Learned Counsel for the Appellant, the judgment rendered by this Tribunal in Appeal NO. 137/08, this point has been referred in favour of the Appellant. The

relevant observation in the said judgment is as follows:

Analysis and decision

“20. in Appeal No. 111/08, in the matter of Reliance Infrastructure V/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the normative interest on Working Capital where the Working Capital has been deployed from the internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008.

.....

21. In view of our earlier decision on the same issue we allow the appeal in this regard also.”

24. In view of the law laid down by his Tribunal in the aforesaid judgment which covers the issue in hand, the State Commission is directed to restore the actual amounts considered as part of the gains on

account of saving in interest expenditure in working capital”.

This issue is decided in favour of the Appellant accordingly. However, the State Commission may frame regulations for evaluation of cost of internal accruals used as working capital for working out the actual interest on working capital and efficiency gain”.

9.2 This issue is decided in favour of the appellant accordingly.

10. The second issue is regarding carrying cost on deferred recovery.

10.1 This issue pertains to Appeal no. 202 of 2010.

10.2 This issue has already been decided by the Tribunal in its judgment dated 31.8.2012 in Appeal

nos. 17, 18 and 19 of 2011 in the matter of Tata Power Company Limited Vs. MERC. The relevant extracts of the judgment are reproduced below:

“26 Issue No.9 According to the Commission due to inadvertence this issue was not properly appreciated and submitted that the effect of the same would be passed through in the next tariff order. According to the appellant, even after the agreed position as evident from the Counter Affidavit, the MERC has failed to give effect to the carrying cost on deferred payment in the next tariff order also, i.e. the tariff order passed by the MERC on 15.02.2012 (Tata Power-G and Tata Power-D and 14.02.2012 (Tata Power-T). Such denial is on the premise that carrying cost on disallowed amounts is to only to be provided when the recovery of the amounts is deferred by the MERC or the claim is not approved within reasonable time. This is in contravention of the principles laid down by this Tribunal which provides that the appellant is entitled to carrying cost on its deferred legitimate

recoveries. The Appellant in its Appeal (Appeals 173/174/175 of 2009 had submitted that the Appellant is entitled to the carrying costs on deferred payments (Gap/surplus of previous year carried forward to the next tariff periods). The MERC ought to have implemented the same as it has been implemented in the past. It cannot apply a new philosophy for interpreting the meaning of the term 'deferred' to deny legitimate entitlements to the Appellant. It is submitted that carrying cost for the deferred legitimate payments (Gap/Surplus of previous year carried forward to the next tariff periods) would accrue from the end of the respective financial year up till the amount is actually recovered through tariff payments in the subsequent years. This point was decided by this Tribunal in Appeal no.173 of 2009 as follows:-

“9. The first issue is denial of carrying cost. According to the Appellant disallowance of recovery of carrying cost of Rs. 137 crores on the ground that the carrying cost was not prayed in Appeal No. 60/07 and in the judgment dated 12.05.2008 in the said

Appeal, the Tribunal has not given any specific finding about the carrying cost is quite incorrect. It is pointed out that the State Commission has misinterpreted the said judgment and did not appreciate the submissions made by the Appellant before the Tribunal. Similarly, it is wrong on the part of the State Commission to state that the Appellant would be entitled to the carrying cost only on cash component and not on book adjustment.

10. In the petition filed by the Appellant for ARR for FY 2008-09 and for tariff determination for the FY 2009-10, the Appellant mentioned that the cost allowed by the Tribunal by the order dated 12.05.2008 can only be recovered in FY 2009-10 and since cost pertain to FY 2004-05 and 2005-06, the interest for 3 to 4 years would accrue and the Appellant would be entitled to the said interest. It is also noticed from the Appeal filed before the Tribunal in Appeal No. 60/07, it is specifically mentioned that denial of legitimate

expenses and assured reasonable return is unjust and the aforesaid unjust denial of legitimate expenses and assured reasonable return and its delayed payment will have a cascading effect and, therefore, the Appellant in such situation is entitled to carrying cost. The Appellant also prayed for allowing the entire legitimate expenditure which includes the carrying cost as well. This Tribunal in the judgment dated 23.05.2007 reported in 2007 ELR (APTEL) 193 has held that once expense is allowed then the Appellant is not only entitled to the expense but is also entitled to the carrying cost as its legitimate claim. The relevant observation of the judgment is as follows:

“The appellant is not only entitled to depreciation at this rate but also entitled to a carrying cost as its legitimate claim was denied at the appropriate time”

11. Although the Appellant may have accrued income, the cost had already been incurred by the Appellant and here has been cash outflow

in respect of the same. On accrual income is allowed because corresponding expenses to earn that income had already been incurred. Hence it may not be appropriate to indicate that these accruals are mere book adjustment and do not involve the cash flow. In other words, it would not be appropriate to segregate the disallowance of expense into cash and non-cash expenditure. In this context, the following observation made by this Tribunal in the judgment dated 30.07.2010 in the case of New Delhi Power Limited V/s DERC [passed in 153/09 2009(reported in 2010 ELR (APTEL) (891) is relevant:

“45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. This principle has been well recognized in the regulatory practices as laid down by this Tribunal as well as the Hon’ble

Supreme Court. In 2007 APTEL 193, this Tribunal has held that along with the expenses, carrying cost is also to be given as legitimate expense". Hon'ble Supreme Court in 2007 (3) SCC 33 has also held "the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure."

"58. (iv): The carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company."

Judgment dated 28.08.2009 in Appeal No. 117/08. Relevant extracts are quoted herein below:

"46. Regulations 64.6.2 and 76.8.2 of MERC (Terms and conditions of Tariff) Regulations 2005 read as under:

63.6.2 Interest shall be allowed at a rate equal to the Short Term Prime Lending Rate of the

State Bank of India as at the date on which the application for determination of tariff is made.

76.876.8.2 Interest shall be allowed at a rate equal to the Short Term Prime Lending Rate of the State Bank of India as at the date on which the application for determination of tariff is made.”

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

12. In the judgment dated 06.10.2009 in Appeal No. **16/08*** (**reported in 2009 ELR (APTGEL) 0880**), the relevant extracts are quoted herein below:

“116 Before parting with the judgment we have to remind the Commission of the observation in our judgment in Appeal No. 265 of 2006, 266 of 2006 and 267 of 2006 in the case of North Delhi Power Limited Vs. Delhi Electricity Regulatory Commission in which we said the following:

60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the revenue requested by a particular utility and such assessment should be based on practical considerations. The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and the anticipated expenses at the

beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reason to differ with the statement of the utility and records reasons thereof of where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of “restructuring the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudent.

13. Accordingly, the issue of carrying cost is decided in favour of the Appellant.”

10.3 Accordingly, this issue is decided in favour of the appellant.

*(*Quotation at page 28 of this judgement relates to Appeal no. 36 of 2008 but wrongly typed as Appeal no. 16/08)*

11. The third issue is regarding carrying cost on revenue gap decided on truing up of ARR.

11.1 This issue pertains to Appeal no. 203 of 2010.

11.2 According to the learned counsel for the appellant, the impugned decision is contrary to the findings of the Tribunal in Appeal no. 117 of 2008 and 173 of 2009.

11.3 According to learned counsel for the State Commission, the claim of carrying cost on the difference between the projection in ARR at the beginning of the year and the actual at the true up is without any statutory or juridical basis. The carrying cost was granted by the Tribunal in several judgments, namely, in NDPL, etc; and culminating in the Tata Power judgment in Appeal no. 173 of 2009,

whereunder the Tribunal has proceeded on the basis that carrying cost must be given to compensate the utility for the deprivation of monies. In those cases where a particular cost or revenue had been disallowed by the Commission and such disallowance was subsequently reversed by the Tribunal and the Tribunal was *inter alia*, pleased to proceed on the basis that since the utility had been deprived of the use of such cost/revenue, it had to be given carrying cost for such deprivation. Conceptually, the difference between a projection at the beginning of the year in an ARR and actual in a true-up after the year, cannot under any circumstances, be described as a “deprivation”.

11.4 The Tribunal has laid down the principle of carrying cost in its judgment dated 15.2.2011 in Appeal no. 173 of 2009 in the matter of Tata Power

Company Ltd. vs. MERC. The relevant extracts are reproduced below:

“40. The next judgment is dated 6th October, 2009 passed in Appeal No. 36 of 2008 reported in 2009 ELR (APTEL) 880). Relevant extracts are quoted hereinbelow:

116) (Reproduced at page 28 of this judgment and therefore not being repeated here).

117) All projections and assessments have to be made as accurately as possible. Truing up is an exercise that is necessarily to be done as no projection can be so accurate as to equal the real situation. Simply because the truing up exercise will be made on some day in future the Commission cannot take a casual approach in making its projections. We do appreciate that the Commission intends to keep the burden on the consumer as low as possible. At the same time one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such

method also burdens the consumer with carrying cost.

41. The next judgment is dated 30th July, 2010 passed in Appeal No. 153 of 2009 reported as 2010 ELR (APTEL) 0891. The relevant observation is as follows:

45. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accruals, has to be paid for by way of carrying cost. This principle has been well recognised in the regulatory practices as laid down by this Tribunal as well as the Hon'ble Supreme Court. In 2007 APTEL 193, this Tribunal has held that "along with the expenses, carrying cost is also to be given as legitimate expense". Hon'ble Supreme Court in 2007 (3) SCC 33 has also held "the reduction in the rate of depreciation is violative of the legitimate expectation of the distribution company to get lawful and reasonable recovery of expenditure".

58 (iv). *The carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company.*

42. *The above judgments of the Tribunal lay down the dictum regarding entitlement of carrying cost for deferred recoveries. However, in the present appeal the Appellant has raised carrying cost as a general issue without reference to any finding of the State Commission in the impugned order or specific claim of interest on deferred recovery. Therefore, while holding the principle of carrying cost on deferred recovery, we are not in a position to give any specific direction to the State Commission in this regard except to take decision on the claim of the Appellant on carrying cost keeping in view of the above judgments of the Tribunal. However, we would like to add that the Appellant is entitled to carrying cost on his claim of legitimate expenditure if the expenditure is:*

(a) accepted but recovery is deferred, e.g. interest on regulatory assets;

(b) claim not approved within a reasonable time; and

(c) disallowed by the State Commission but subsequently allowed by the superior authority”.

11.5 On the basis of the above findings of the Tribunal we decide as under:

i) When the utility gives its projected expenditure under a head in the ARR, the Commission either accepts it or decides a lower expenditure. However, if in the true up of the ARR subsequently the Commission finds that the expenditure which was denied/reduced earlier under that head needs to be approved then carrying cost may be allowed for such additional expenditure under that particular head which was denied earlier.

ii) The utility is entitled to carrying cost on his claim of legitimate expenditure if the expenditure is:

- a) accepted but recovery is deferred e.g. interest on regulatory assets,
- b) claim not approved within a reasonable time, and
- c) disallowed by the State Commission but subsequently allowed by the Superior authority.

11.6 If the revenue gap is as a result of routine true up carried out in the time frame specified in the Regulations and not on account of genuine expenditure denied on a claim by the appellant earlier or on account of deferred recoveries then no carrying cost may be admissible as the claim was made for the first time at the time of true up. The State Commission shall decide the claim of the appellant on the above principles. Decided accordingly.

12. Summary of our findings:

12.1 Efficiency gain on interest on working capital: (common to both the appeals)

This issue is decided in favour of the Appellant in terms of the findings given by this Tribunal in its judgment dated 31.8.2012 in Appeal nos. 17, 18 & 19 of 2011 in the matter of Tata Power Company Limited Vs. MERC.

12.2 Carrying cost on deferred recovery: (Appeal no. 202 of 2010)

This issue is decided in favour of the Appellant in terms of the findings of this Tribunal in its judgment dated 31.8.2012 in Appeal nos. 17, 18 & 19 of 2011 in the matter of Tata Power Company Limited Vs. MERC.

12.3 Carrying cost on revenue gap on truing up of ARR.

We have given principles for allowance of carrying cost in paragraphs 11.4 & 11.5 of this Judgment. The State Commission shall decide the claim of the Appellant on the basis of the above principles.

13. The Appeal no. 202 of 2010 is allowed and Appeal no. 203 of 2010 is allowed in part and to the extend as indicated above. The State Commission is directed to pass the consequential orders. No order as to costs.

14. Pronounced in the open court on this **13th day of September, 2012.**

**(Justice P.S. Datta)
Judicial Member**

**(Rakesh Nath)
Technical Member**

REPORTABLE / NON-REPORTABLE

vs