

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 121 of 2011

Dated: 3rd October, 2012

Present: MR. JUSTICE P. S. DATTA, JUDICIAL MEMBER
MR. V J TALWAR, TECHNICAL MEMBER,

IN THE MATTER OF:

Madhya Pradesh Power Generating Company Limited
Shakti Bhawan, Vidyut Nagar,
Rampur Jabalpur (M.P.) – 482008.

... Appellant

VERSUS

1. Madhya Pradesh Electricity Regulatory Commission
5th floor, Metro Plaza,
E-5, Bittan Market, Bhopal – 462023
2. Madhya Pradesh Power Trading Company Limited
Shakti Bhawan, Vidyut Nagar,
Rampur Jabalpur (M.P.) – 482008
3. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited
Shakti Bhawan, Rampur
Jabalpur – 482008
4. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited
Nishtha Parisar, Govindpura
Bhopal – 462023
5. Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited
GPH Compound, Polo Ground
Indore – 452002
6. Madhya Pradesh Power Transmission Company Limited

Block no. 3, Shakti Bhawan,
Rampur, Jabalpur – 482008

7. Madhya Pradesh State Electricity Board
Shakti Bhawan, Vidyut Nagar,
Rampur Jabalpur (M.P.) – 482008
 8. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur – 302005
 9. Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan Extn,
14-Ashok Marg, Lucknow – 226001
 10. MSEB (Holding Company) &
Maharashtra State Transmission Company Limited
C-19, E-Block, MSETCL, Prakashganga,
Bandra Kurla Complex, Bandra(East)
Mumbai – 400051
- ...Respondents

Counsel for the Appellant : Mr M G Ramachandran

Counsel for the Respondent : Ms Surbhi Sharma for R-1

JUDGMENT

PER MR. V J TALWAR TECHNICAL MEMBER

1. The Appellant, MP Power Generating Company Limited (GENCO) is the State Owned Power Generation Company in the State of Madhya Pradesh. Madhya Pradesh Electricity Regulatory Commission (Commission) is the 1st Respondent herein. Respondent Nos 2 to 5 are the State owned distribution licensees and the 6th Respondent is the State owned transmission licensee

in the State of Madhya Pradesh. Respondent no 7 is the holding company for the power sector of Madhya Pradesh. Respondent Nos 8-10 are the State Owned Distribution Licensee in the States of Rajasthan, Uttar Pradesh and Maharashtra, having shares in the generating stations of the Appellant GENCO.

2. The Appellant had filed a petition No. 55 of 2009 before the Commission for trueing up the generation tariff for the FY 2007-08 as determined by the Commission vide multi-year tariff order dated 7.3.2006 for the control period 2006-07 to 2008-09. The Commission disposed off the said petition vide its Order dated 24.1.2011. Aggrieved by the impugned order dated 24.1.2011 passed by the Commission the Appellant has filed this Appeal before the Tribunal.
3. The Appellant has raised the following issues in this Appeal for our consideration:
 - i. Variation in the basis of computation of coal cost from NCV basis to GCV basis at the time of true up.
 - ii. Disallowance of common employees' expenses apportioned from Madhya Pradesh State Electricity Board (**MPSEB**).
 - iii. Consequential impact of the above disallowances on the interest on working capital
 - iv. Disallowance of interest on excess equity.
 - v. Disallowance of interest charges on loans transferred to the Appellant from the erstwhile Madhya Pradesh State Electricity Board (MPSEB) as per the final opening balance sheet notified on 12.08.2008 under the Statutory Transfer Scheme.

4. We shall deal with each of the issue one by one.
5. The first issue raised by the Appellant is related to variation in the basis of computation of coal cost from NCV basis to GCV basis in the Impugned Order.
6. The learned Advocate made the following submissions on this issue:
 - a. The Commission in the tariff order dated 07.03.2006 had determined the quantum of coal and the cost of coal to be allowed based on the Net Calorific Value of the coal. The above was in accordance with the provision of Regulation 13 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2005 read with the order dated 29.11.2002 passed by the State Commission determining the variable cost adjustment formula.
 - b. However, in the impugned order, namely, the true up order, the State Commission has varied the basis of the computation by applying the Gross Calorific Value of the coal and that also without providing for the necessary adjustment for the accepted difference of 180-200 Kcal/kg between the Gross Calorific Value and the Net Calorific Value of the coal.
 - c. The above issue was considered by this Tribunal in Appeal No. 24 of 2010 which was filed by the Appellant against the order dated 17.06.2009 passed by the State Commission relating to the truing up of the generation tariff for the immediately

preceding financial year 2006-07 and the Tribunal in its order dated 21.04.2011 decided the issue against the Appellant.

- d. Aggrieved by the above Order of the Tribunal dated 21.4.2011, the Appellant filed Review Petition being Review Petition No. 1 of 2011 before this Tribunal on 16.05.2011. On 26.08.2011, the Tribunal pronounced the Order on the Review Petition No.1 of 2011 and dismissed the same. Aggrieved by the order dated 26.8.2011 of this Tribunal the Appellant had filed a second appeal being Civil Appeal No. D-20558 of 2011. In the second appeal, the Hon'ble Supreme Court has passed the following Orders:

“Delay condoned.

Issue notice as to why the matter should not be remitted to the Tribunal to reconsider the matter in the light of Regulation 13 read with Regulation 42 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff) Regulations, 2005.

No ad-interim stay”.

7. The learned Counsel for the Appellant submitted that the Hon'ble Supreme Court has issued notices and in all likelihood the matter would be remanded back to this Tribunal to decide the issue in the light of Regulation 13 read with Regulation 42 of the Madhya Pradesh Electricity Regulatory Commission (terms and Conditions for Determination of Generation Tariff) Regulations, 2005. Thus, it would be appropriate for this Tribunal to reconsider the issue and decide it afresh in view of the directions of the Hon'ble Supreme Court.

8. The learned Counsel for the Commission contended that the issue has been finally decided by this Tribunal in its orders dated 21.4.2011 and 26.8.2011. The Appellant has filed 2nd Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court has not granted any stay. As such, the issue stands decided against the Appellant.
9. The issue has been considered by this Tribunal in Appeal No. 24 of 2010 and has been held against the Appellant. The relevant extracts of this Tribunal judgment in Appeal No. 24 of 2010 dated 21.4.2011 are as under:

"19. It is clear from the Regulation 42 that quantity of coal has to be determined on the basis of Gross Station Heat Rate and Gross Calorific Value of coal. The Clause ii of the Regulation regarding adjustment of rate of energy charges on account of variation in price or heat value of fuel also clearly indicates that Gross Calorific Value of coal only has to be used for working out variation in price and heat value of fuel.

20. The Regulation 36 also indicate Gross Station Heat rate for the power stations of the Appellant for the MYT control period from FY 2006-07 to 2008-09 as under:-

Gross Station Heat Rate (Kcal/kWh)

<i>Station</i>	<i>FY 2007</i>	<i>FY 2008</i>	<i>FY 2009</i>
<i>ATPS, Chachai-Complex</i>	<i>3573</i>	<i>3573</i>	<i>3573</i>
<i>STPS, Sarni-Complex</i>	<i>2960</i>	<i>2926</i>	<i>2873</i>
<i>SGTPS, Birsinghpur-Complex</i>	<i>2825</i>	<i>2800</i>	<i>2757</i>

The Regulations 2005 also define "Gross Calorific Value" and "Net Calorific Value" is not defined or mentioned anywhere in the Regulation. Thus the Regulations provide for only Gross Calorific Value and the Gross Station Heat Rate corresponding to Gross Calorific Value.

21. Strangely in the main order dated 7.3.2006 while the State Commission adopted the Station Heat Rate as per the Regulations as tabulated above, it considered Net Calorific Value of coal instead of Gross Calorific Value for determining the quantity of coal and variable charges of coal. In this order the State Commission also did not give any indication that it was deviating from the Regulations or gave any justification for deviating from the Regulations in adopting NCV instead of GCV. Therefore, in main tariff order the State Commission did not apply the regulations correctly. However, the main tariff order is not under challenge in the present Appeal. Other than recording that the State Commission has not been careful while deciding the main tariff order, we cannot go into the matter any further, as far as the main tariff order is concerned."

10. The Appellant filed review petition before this Tribunal in RP no. 1 of 2011 and the same was dismissed vide order dated 26.8.2011 as under:

4. We have examined the matter. We find that the Petitioner/Appellant has been making all the submissions which were made in the main Appeal and the Petitioner wants us to review the impugned judgment on merits, which is not permissible in the Review Petition.

5. We do not find any error apparent on the face of the record and therefore, there is no reason for reviewing our judgment dated 21.04.2011.

6. Accordingly, the Review Petition is dismissed,

11. From the above it is clear that the issue has been decided against the Appellant. We have also studied the order of the Hon'ble Supreme Court submitted by the learned counsel for Appellant during the course of hearing. From the order of the Hon'ble Supreme Court it transpires that only notices have been issued and there has not been any direction by the Hon'ble Supreme Court has for re-examination of the issue by this Tribunal. In view

of above, we cannot be in a position to deviate from the decision rendered by us in Appeal No. 24 of 2010.

12. The Second Issue before us for consideration is related to Disallowance of common employees' expenses apportioned from Madhya Pradesh State Electricity Board (**MPSEB**).
13. The learned Counsel for the Commission submitted that the issue relating to disallowance of common expenses of the Madhya Pradesh State Electricity Board has also been raised in Appeal No. 24 of 2010 and also in Appeal No.105 of 2010 before this Appellate Tribunal against the Commission's order dated 03.03.2010 passed by the Commission for determination of tariff for the Multi Year Tariff Period 2009-10 to 2011-12. Both the Appeal No. 105 of 2010 and 24 of 2010 were dismissed by this Tribunal vide its Judgment dated 30.9.2011 & 21.04.2011 respectively.
14. The learned Counsel for the Appellant argued that in Appeal No. 105 of 2010, this Tribunal had not dealt with the specific distinguishing facts relating to the tariff period as compared to the earlier period and Order dated 21.4.2011 passed in Appeal no. 24 of 2010. There was no discussion on the implication of the Statutory Notification issued by the State Government in exercise of powers under Section 131 of the Electricity Act, 2003 providing for the common expenses to be allowed. The notification was issued on 3.6.2006. The impact of the notification needs to be considered and allowed.
15. In this regard it is to be noted that the State Government had notified the Statutory Transfer Scheme under Section 131 of the

2003 Act on 3.6.2006 carrying out the unbundling of the MPSEB. The State Government notified the final Opening Balance Sheet of the five successor companies of Madhya Pradesh State Electricity Board on 12.6.2008. The impugned orders in Appeal no. 24 of 2010 and 105 of 2010 were passed by the Commission on 17.06.2009 and 3.3.2010 respectively. These Appeals were disposed of by this Tribunal vide its judgments dated 21.4.2011 & 30.9.2011. It is clear that the Commission's impugned orders dated 17.06.2009 and 3.3.2010 as well as the judgments in appeals against the impugned orders were pronounced after the State Government issued notification dated 3.6.2006 on final Opening Balance Sheets. It is, therefore, not correct to say that neither the Commission nor this Tribunal had taken in to account the impact of the State Government's notification.

16. In fact, the same plea of non-consideration of State Government's Notification had been raised by the Appellant in Appeal No. 105 of 2011 and this Tribunal in its judgment in Appeal No. 105 of 2010 had rejected it. The relevant extracts of the Tribunal's judgment dated 30.9.2011 in Appeal No. 105 of 2011 are quoted as under:

"8. The third issue is relating to sharing of apportioned charges of M.P. State Electricity Board as per the notification of the State Government.

8.1. The learned counsel for the Appellant has argued that these expenses are to be paid by the Appellant as per the statutory notification of the State Government dated 03.06.2006 pursuant to the transfer scheme issued under the provisions of the Electricity Act, 2003.

8.2. According to the learned counsel for the State Commission this issue has already been dealt with by this Tribunal in its judgment dated 21.04.2011 in Appeal no. 24 of

2009 in the matter of M.P. Power Generation Co. Ltd. vs. MPSERC & Ors. wherein the Tribunal upheld the findings of the State Commission.

8.3. According to the learned counsel for the Appellant, the Tribunal's judgment dated 21.04.2011 is not applicable in the present case and the Tribunal would have to consider this issue afresh.

8.4. We will examine if the findings of the Tribunal in its earlier judgment dated 21.04.2011 is applicable in this case or not.

8.5. The findings of the Tribunal in its judgment dated 21.04.2011 are reproduced below:

"25. As correctly pointed out by the Learned Counsel for the State Commission, the MYT order dated 7.3.2006 contains detailed reasons for not allowing the common employees expenses separately by the State Commission. Admittedly, the Appellant has neither filed review petition before the State Commission nor preferred any Appeal before this Tribunal as against the disallowance of said common expenses as such it has attained finality. In the true-up order dated 17.6.2009, the State Commission allowed the actual operation and maintenance expenses which is said to be more than the normative operation maintenance expenses. The particulars are given below:

Normative O&M expenses as per Regulation =Rs.299 Cr.

Actual O&M expenses allowed in true-up order = Rs.315 Cr.

Additional O&M expenses allowed in true-up order=Rs.16 Cr.

26. The reasons for not allowing the electricity board common expenses have been described in Para 3.20 (g) of the impugned order which is as follows:

"Para 3.20: The common expenses by MPSEB amounting to Rs.13.81 crores are not allowed. The Commission had not been allowing these expenses to the Distribution Companies also since the erstwhile MPSEB had already been

disintegrated into successor Companies and one of them has been entrusted with the responsibility of a Trading Company i.e. MP Power Trading Company”

27. In view of the above we do not find any merit in this contention. Accordingly, this point is answered against the Appellant”.

Thus, the Tribunal in the above judgment not only rejected the contentions of the Appellant on point of law for not challenging the MYT order but also on merits.”

17. In the light of the Tribunal’s judgment in Appeal No. 105 of 2011, this issue is decided against the Appellant.
18. Next issue for consideration is related to consequential impact of the above disallowances on the interest on working capital
19. The learned Counsel for the Appellant submitted that in view the in view of the judgment dated 21.04.2011 of this Tribunal in Appeal No. 24 of 2010, and the disallowance of the said two issues, the Appellant is not pressing this issue in the present appeal.
20. The fourth issue before us for consideration is related to Disallowance of Interest on Excess Equity.
21. The learned Counsel for the Appellant has made the following submissions:
 - a. The Commission has allowed the interest on equity contribution in excess of normative 30%, as deemed loan at the weighted average rate of interest of 8.15% for the year FY 2005-06, 8.23% for the year FY 2006-07 and 8.56% for the year FY 2007-08. There is, however, an issue on the quantum of excess equity considered as loan.

- b. The total excess equity is Rs. 191.59 crores and the total allowable interest on excess equity works out to Rs. 45.18 crores taking the amount of such excess equity as on 1.6.2005.
- c. However, the Commission has only allowed an amount of Rs. 15.41 crores as interest on the excess equity on an assumption that a portion of the excess equity has already been serviced from the date of commissioning of the assets till the tariff period.
- d. The Appellant had commenced operations as on 1.6.2005 pursuant to the notification of the transfer scheme by the State Government and the equity capital including the equity in excess of 30% to be considered is with effect from 1.6.2005.
- e. In the Impugned Order dated 24.01.2011, the Commission has calculated the interest on equity by considering the normative repayment of excess equity in 10 yearly installments from the date of commercial operation of the respective power station instead of acknowledging the excess equity as on the date of transfer of equity to the Appellant.
- f. The issue which remains for consideration of the Tribunal is the decision of the Commission in considering the servicing of excess equity as from the date of commissioning and commercial operation of the respective generating stations instead of from 1.6.2005 when the assets got vested in the

Appellant and the Appellant commenced business operations.

- g. The Commission has failed to appreciate that the assets were vested in the Appellant at the value specified in the final opening balance sheet after taking into account the book value as on 1.6.2005 and therefore, there cannot be any assumption that the equity capital specified therein was serviced as either equity or as notional loan prior to 1.6.2005.
- h. The fundamental error which the Commission has committed is that it has applied the Tariff Regulations, 2005 dealing with the excess equity with retrospective effect i.e. from the date of commercial operation of the power plant and not with reference to the date of the opening of the balance sheet i.e. 1.6.2005, the date on which the generation undertakings of MPSEB got vested in the Appellant.
- i. Regulation 20 of MPERC Tariff Regulations clearly provides that the normative debt equity ratio of 70: 30 would apply as on the date of commercial operation **in case of new generating stations or capacity expansion**. Regulation 20, therefore, does not in effect deal with the existing generating station established prior to the coming into force of the said Regulation.
- j. In terms of the above if the regulation 20 of the Tariff Regulations,2005 is to be applied strictly, the existing generating stations of the Appellant will not fall under the same, the existing generating stations would have the same debt equity ratio of 50 : 50 and not 70 : 30. The entire

amount of 50% of the Gross Block Fixed assets of Rs. 4506.29 crores i.e. Rs. 2253.14 crores should be treated as Equity and serviced as Return of Equity.

22. The learned Counsel for the Commission reiterated the stand taken by the Commission in the Impugned Order and has made the following submission in its support:

- i. The amount of equity in excess of the norms has to be treated as loan as per Regulations 20 and 22 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2005 therefore, repayment of this excess equity was also considered in accordance with the repayment schedule of other loan(s) for the respective power stations. No moratorium period was considered by the Commission for working out repayment of excess equity and the repayment has been considered from the date of commercial operation of the last unit of the respective power house. Accordingly, the interest payable on the excess equity amount was worked out by the Commission applying year-wise weighted average rate of interest as filed by the Appellant in accordance with Regulation 22 of MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2005.
- ii. The original project cost of the power station needs to be funded by the total equity and loan component. However, the power station wise equity amount and loan component as on 01.06.2005 as per final opening balance sheet notified by the State Government pertains to the original project cost of

the power stations. Certain loans were drawn for the power stations of the Appellant and the repayments of all such loans were expected to be made right from the drawal of such loans since there was no provision of moratorium in the prevailing Regulations. Therefore, repayments of all such loans are to be considered from the date of commissioning of the respective power stations.

- iii. Accordingly, the interest charges have been allowed on the excess equity under the same principles and methodology applied for allowing interest and finance charges on the actual loan considered by the Commission in the impugned order since the excess equity is to be treated as loan in accordance with the applicable Regulations. The contention that such “excess equity” should not rank parri-passu with other loans and be given special status is devoid of merit and hence deserves to be rejected.

23. We have heard the learned Counsels for the parties. The core issue that arises from their contention is as to whether the Regulations can be applied retrospectively? According to the Commission the amount of excess equity has to be treated as a loan as per Regulations 20 and 22 of the MERC (Terms and Conditions for generation Tariff) Regulations, 2005 and, therefore, the repayment of this excess equity was also to be considered in accordance with the repayment schedule of other loan for the respective power stations from the date of commercial operation.

24. Per contra, the Respondent has submitted that the Regulations are applicable only on new assets. All of its generating stations are

commissioned prior to notification of the Regulations, therefore, these Regulation 20 of these Regulations dealing with Debt – Equity ratio cannot be applied on them. At the most the Regulations can be applied from the date of State Government's Notification under Section 131 of the 2003 Act. The Regulations cannot be given retrospective effect.

25. The MPERC (Terms and Conditions for Generation Tariff) Regulations 2005, were notified on 5.12.2005. Regulation 1.3 of these Regulations provides that the Regulations would be applicable from the date of notification. Therefore, it is clear that the Regulations can be applied from 5.12.2005 prospectively.
26. Further, Regulation 20 of these Regulations provides that the Debt – Equity ratio shall be 70:30 on the date of commercial operation. Installments on loan component of the cost of the asset would become payable immediately upon commissioning of the asset and the Debt – Equity ratio would get disturbed and would not remain constant at 70:30. Further, depreciation on the asset would also become chargeable from the date of commercial operation and Debt – Equity ratio of book value of the asset would not remain at initial ratio of 70:30. The learned Counsel for the Appellant has clarified on affidavit that the State Commission's notification on Opening Balance Sheets for five successor companies provides for book value of the assets.
27. In the light of the above we are of the opinion that the Commission should have applied the Tariff Regulations, 2005 dealing with the excess equity with reference to the date of the opening of the balance sheet i.e. 1.6.2005, the date on which the generation

undertakings of MPSEB got vested in the Appellant and not from the date of commercial operation. The Commission has wrongly calculated the interest on equity by considering the normative repayment of excess equity in 10 yearly installments from the date of commercial operation of the respective power station instead of acknowledging the excess equity as on the date of transfer of equity to the Appellant. We, therefore, direct the Commission to recalculate the interest on 'normative loan' i.e. equity in excess of 30% from the date of opening balance sheet.

28. The issue is decided in favour of the Appellant.
29. Next Issue before us for consideration is related to Disallowance of interest charges on loans transferred to the Appellant from the erstwhile Madhya Pradesh State Electricity Board (MPSEB) as per the final opening balance sheet notified on 12.08.2008 under the Statutory Transfer Scheme.
30. the Appellant has raised the issues regarding following four loans in respect of disallowance of interest and finance charges :
 - (i) PFC Loan for R&M scheme of STPS, Sarni and ATPS, Chachai
 - (ii) Renovation & Rehabilitation (R&R) Korba (Power Finance Corporation) Loans
 - (iii) Government of M. P. Loan
 - (iv) LIC Loan
31. The learned Counsel for the Commission made elaborate following submissions on each of the loans listed above reiterating the stand

taken by the Commission in the impugned order. The gist of the contentions of the Commission are as under:

- i. While processing the true-up petition for FY 2007-08, the Appellant GENCO in its submission dated 16.12.2009 had filed the details regarding each scheme of PFC loan for FY 2006-07 and FY 2007-08 and it was observed from the same that the loan Nos.20104020 and 20104021 were shown under Capital Works In Progress (CWIP) and these works were not capitalized till end of FY 2007-08. The Appellant has claimed assets addition under these loans as additional capitalization in true-up petition for subsequent year. The interest amount on R&M loans has been allowed by the Commission in the true-up order dated 22.03.2012 for FY 2008-09.
- ii. The Commission had been disallowing interest and finance charges on R&R Korba loan only for the reason that the principal and interest against this loan were not recorded in the audited accounts of the Appellant in FY 2006-07 and even these details were not fully recorded in the audited accounts for FY 2007-08 also. As may be seen from the the impugned order issued by the Commission and also from the submission made by the Appellant in the appeal that the full details of R&R Korba loan were yet to be received from the lender and reconciliation process for PFC loan was going on hence, the interest charges were disallowed by the Commission. The details of these loans were submitted by the Appellant in subsequent proceedings before the State Commission i.e for true of FY 2008-09. Since the principal

amount of R&R Korba loan was found recorded by the Respondent Commission in the audited accounts for FY 2008-09 of the Appellant therefore, the interest amount on these loans was allowed by the Commission in the true-up order dated 22.03.2012 for FY 2008-09.

- iii. Since the true-up order is based on the audited accounts of the respective financial year, the Commission scrutinized the petition with respect to audited accounts of the Appellant for FY 2007-08 when it was observed that no repayment of principal amount and interest amount made by the Appellant from FY 2005-06 to FY 2007-08. Due to non availability of supporting details, the Commission had not allowed interest on GoMP loan in impugned order. The interest amount on GoMP loans has been allowed by the Commission in the true-up order dated 22.03.2012 for FY 2008-09.

32. Taking cognizance of the fact that the Commission has allowed interest on most of these loans in the true-up order dated 22.03.2012 for FY 2008-09, the Appellant has submitted as under:

- i. The Interest on Loan claimed by the Appellant, MPGENCO and allowed by the State Commission in the True Up Order for the financial year 2008-09 dated 7th March 2012 are as under:

S.No	Nature of loan	Amount claimed In True Up petition for FY 08 for FY 06, FY 07 & FY 08 (in crores)	Amount allowed in True Up order for FY 09 For FY 06, FY 07 & FY 08 (in crores)	Difference (in crores)
1	PFC R&R Korba Loan	34.14	2.87	31.27

2	Government of Madhya Pradesh Loan	3.32	0.40	2.92
3	PFC R&M Loan for Amarkantak and Sarni	7.57	1.34	6.23
	Total	45.03	4.61	40.42

- ii. The various loans were transferred to the Appellant in terms of the statutory transfer scheme vide the Final Opening Balance Sheet as notified by the Government of Madhya Pradesh on 12.06.2008.
- iii. The **PFC R&R Korba loans** were disallowed by the State Commission in the true-up order dated 17.06.2009 for the year FY 2006-07 on the ground that these loans were not recorded in the Annual Statement of Accounts for the year FY 2006-07 of the Appellant. However, with respect to the year FY 2007-08, the interest claimed for the said loans have been duly recorded in the Annual Statement of Accounts for the year FY 2007-08 of the Appellant, as duly audited. The State Commission has still disallowed the said loans on the ground that some details regarding the loans were outstanding. The said outstanding details were awaited from the lender but did not impact the liability of the Appellant to repay the same. Thus, the Appellant ought not to be penalized for information outstanding from the lender.
- iv. With respect to the loan availed from the **Government of Madhya Pradesh**, the State Commission has disallowed the same on the ground that there is no actual repayment of either the principal amount or the interest thereon. It is submitted that the scheduled interest payable during the year 2007-08 has been duly accounted for in the Appellant's

books of accounts and is therefore a liability to be borne by the Appellant. Thus, in accordance with the provisions of the Regulation 22 of the Tariff Regulations, 2005, the interest charges on the said loan ought to be allowed to the Appellant. The State Commission has, therefore, erred in disallowing the interest on the said loan to the Appellant.

v. With respect to loans for **Amarkantak & Sarni** availed from **PFC**, it is to submit that these loans were also considered by the State Commission in the multi-year tariff order dated 07.03.2006 and there is, therefore, no justification whatsoever in not considering the said loans in the true-up order for FY 08.

33. From the above submissions of the Appellant and the Commission it is clear that the Commission did not allow interest on the loans for want of certain details to be furnished by the Appellant. When the Appellant had supplied the requisite information, the Commission has allowed interest on these loans in its subsequent true up order dated 22.3.2012 for FY 2008-09.

34. The Appellant in written note of arguments dated 6.7.2012 has submitted as under:

“the Order dated 22.3.2012, dealing with the truing up for the Financial Year 2009, the State Commission has partly allowed the interest and finance charges, but the major grievances of the Appellants still remains as detailed hereunder:-...”

35. Thus, the Appellant has some grievance against the true up order dated 22.3.2012 for FY 2008-09 and has made detailed

submission on the findings of the Commission in its subsequent true up order dated 22.3.2012 for FY 2008-09.

36. We are of the opinion that it would not be appropriate for us to examine the contentions of the Appellant on the true up order for the subsequent year which is not the impugned order in the present appeal before us.
37. The main grievance of the Appellant was that the Commission did not allow the interest on loan in the impugned order. Since the Commission has allowed the interest on these loans in the subsequent true up order dated 22.3.2012 for FY 2008-09 stands resolved. If the Appellant has some grievance against the subsequent true up order dated 22.3.2012 for FY 2008-09, he is at liberty to seek the remedy available as per law.
38. The only issue remains for consideration is related to LIC loans. The learned Counsel for the Appellant contended that the Commission has not considered the loan availed from the **Life Insurance Corporation** in accordance with the repayment schedule for the said loan. The repayment schedule for the said loan specified that the loan was for a period of 10 years with 20 half yearly installments, with a moratorium period of three years for the principal repayment at the rate of 9% payable half yearly (9.203% compounded annually). The State Commission has not considered the moratorium period of 3 years in the impugned order and has only considered ten annual installments instead of 20 half yearly installments as per the repayment schedule. Further the State Commission has applied the rate of interest as 9% annually

instead of 9.203% in accordance with the shift from half yearly installments to annually.

39. The learned Counsel for the Respondent submitted that while processing the true-up petition for FY 2005-06, the Appellant filed the details of LIC loan with the Commission vide its letter dated 22.08.2007. These submissions, inter alia, would indicate that the balance principal amount of LIC loan for Rs.371.66 crores was restructured to 9% rate as a package deal which has been considered by the Commission in the impugned order. The Commission has, therefore, computed the interest and finance charges of LIC loans as per the information filed by the Appellant in the petition.
40. In view of the rival contentions of the parties it would be desirable to traverse the findings of the Commission on the issue as set out below:

“LIC Loan

2.71. As per the Provisional opening balance sheet, the total amount of LIC Loan as on 1st June, 2005 was Rs. 488.07 Cr. In the final opening balance sheets notified on 12th June,2008 the total amount of LIC Loan as on 1st June,2005 indicated Rs. 371.66 Cr. Full amount of LIC loan has been linked with the SGTPS, Birsinghpur.

2.72. While calculating the interest on LIC loan, the Commission has considered the scheduled repayment as per terms and conditions and opening loan balances as Rs.371.66 crores as on 1st June'2005. Since the LIC loan restructured for 10-years at lower interest rate therefore the Commission has taken the repayment without considering any moratorium. Accordingly, the year-wise interest amount on LIC loan considering the impact of the final opening balance sheet has been determined by applying the applicable weighted average rate of interest as given below:

Table: 27 Interest amount on LIC loan: (Rs. Cr.)

	Year Opening Balance Sch	Repayment	Closing Balance	Average loan amount	Applicable interest rate	Interest amount
FY05-06 (10-months)	371.66	37.10	334.56	353.11	9.00	26.48
FY06-07	334.56	37.10	297.46	316.01	9.00	28.44
FY07- 08	297.46	37.10	260.34	278.91	9.00	25.10
Total						80.01

2.73. Hence, the Commission has allowed the amount of Rs. 26.48 Cr. for FY 2005-06 (10-months), Rs.28.44 Cr. for FY 2006-07 and Rs.25.10 Cr. for FY07-08 against the interest on LIC Loan.”

41. It is evident from the above that the Commission has considered an annual weighted average interest rate of 9%. The Interest has been calculated on average loan amount during the year indicating that the Commission has considered repayment to be done in monthly installments and not in annual installments as alleged by the Appellant. Since the utility recovers its' ARR in 12 monthly installments through tariff, it is always desirable to repay the loans along with the interest in monthly installments to minimise the burden on the end consumers. Once the payable interest is paid in monthly installments along with the installement of principle amount, there would be no question of 'half yearly compounding of interest'. Accordingly, the Commission has adopted the correct method for computation of interest and we find no reason to interfere with the same.
42. With regard to non-consideration of moratorium period, the learned Counsel for the Commission submitted that **Regulation 22 of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Generation Tariff.) Regulations,**

2005 does not allow for considering moratorium period for repayments of loan. Regulation 22 of Tariff Regulations, 2005 reads as under:

1. "Interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of repayment, as per the terms and conditions of relevant agreements of loan, bond or debenture, ordinarily restricted to prevailing rates of PFC / REC Term Lending Rate or the rates specified by the CERC from time to time. Exception can be made for the existing or past loans which may have different terms as per the agreements already executed if the Commission is satisfied that the loan has been contracted for and applied to identifiable generation projects. The interest rate on the amount of equity in excess of 30% treated as loan shall be the weighted average rate of the loan schemes of the generating company.

Provided that all loans considered for this purpose shall be identified with the assets created.

Provided that interest and finance charges of renegotiated loan agreements shall not be considered should they result in higher charges.

Provided that interest and finance charges on works in progress shall be excluded and considered as part of the capital cost.

2. Interest charges on security deposits, if any, with a generating company shall be considered at the rate specified by the Commission from time to time.

3. In case any moratorium period is availed of, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.

4. The generating company shall make every effort to swap the loan as long as it results in net benefit to the beneficiary. The cost associated with such swapping shall be borne by the beneficiary and any benefit on account of swapping of loan and interest on loan shall be passed on to the

beneficiary in such ratio as may be decided by the Commission”.

43. It is clear from above that the Tariff Regulations, 2005 do not provide for any moratorium period. Thus, the Commission has adopted the correct method for computation of interest and in disallowing the moratorium period and the claim of the Appellant fails on this issue.
44. In view of the above findings, the Appeal is partially allowed to the extent indicated in para 27 above. The Commission is directed to revisit the issue of ‘normative’ loan as on 1.6.2005 in accordance with its own Tariff Regulations, 2005.
45. However, there is no order as to costs.

(V J Talwar)
Technical Member

(Justice P. S. Datta)
Judicial Member

Dated: 3rd October, 2012

REPORTABLE/~~NOT REPORTABLE~~