

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No.46 OF 2016**

Dated: 07.03.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**MEGHALAYA POWER DISTRIBUTION  
CORPORATION LTD.**

Integrated Office Complex  
Lum Jingshai, Short Round Road  
Shillong – 793 001

... Appellant

*Versus*

**MEGHALAYA STATE ELECTRICITY  
REGULATORY COMMISSION**

New Administrative Building,  
1<sup>st</sup> Floor, Left Wing,  
Lower Lachumiere  
Shillong – 793 001  
Meghalaya

... Respondent

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Kunal Veer Chopra  
Vedant Choudhary for Res. 1

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

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The appellant, Meghalaya Power Distribution Corporation Limited ( in short MePDCL) has filed this appeal against the tariff order dated 31.03.2015 passed by 1<sup>st</sup> respondent Meghalaya State Electricity Regulatory Commission (hereinafter referred to as “the Commission” or MSERC” ) in a petition filed by the appellant for true-up of expenses / revenue for Financial Year (FY) 2011-12, determination of Aggregate Revenue Requirement (ARR) for FYs 2015-16, 2016-17 and 2017-18 as well as for determination of retail tariff for FY 2015-16 and also the order dated 11.08.2015 whereby the Commission has dismissed the review petition filed by the appellant seeking review of said tariff order dated 31.03.2015.

2. Before adverting the facts and circumstances in which the instant appeal has been filed, we may note that in exercise of powers conferred under Sections 131 and 133 of the Electricity Act, 2003, the State Government of Meghalaya notified “The Meghalaya Power Sector Reforms Transfer Scheme 2010” on 31.03.2013 leading to restructuring and unbundling of erstwhile Meghalaya State Electricity Board (MeSEB) into four entities namely (i) Meghalaya Energy Corporation Limited (MeECL), the holding company; (ii) Meghalaya Power Distribution Corporation Limited (MePDCL), the distribution utility; (iii) Meghalaya Power Generation Corporation Limited (MePGCL), the generation utility; and (iv) Meghalaya Power Transmission Corporation Limited (MePTCL), the transmission utility. However, the holding company MeECL carried out the functions of distribution, generation and transmission utilities from 01.04.2010 to 31.03.2012. Thereafter, vide notification dated 31.03.2012, the State Government notified amendment to the Power Sector Reforms Transfer Scheme leading to effective unbundling of MeECL into MeECL (holding company), MePDCL (distribution utility), MePGCL (generation utility) and MePTCL (transmission utility) from 01.04.2012 onwards.

3. The respondent Commission is an independent statutory body constituted under the provisions of Electricity Act, 2003 and is vested with the authority as well as power to regulate the power sector in the State including determination of tariff for electricity consumers.

4. Now, we shall note the important dates and events which are relevant for our consideration in this appeal.

DATE	EVENTS
31.03.2010	By notification viz. "The Meghalaya Power Reforms Transfer Scheme, 2010" dated 31.03.2010, erstwhile Meghalaya State Electricity Board ("MeSEB") was unbundled into four successor entities.
10.02.2011	Meghalaya State Electricity Regulatory Commission (MSERC) vide notification dated 10.02.2011 issued a regulation named Meghalaya State Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2011 ( <b><i>"Tariff Regulations, 2011"</i></b> ).
23.12.2013	The Government of Meghalaya issued notification thereby notifying the revised and final statement of Assets and

	<p>Liabilities to be vested on MeECL / the holding company with effect from 1.04.2010.</p> <p>As per the transfer scheme dated 23.12.2013 assets of value Rs. 767.54 Cr stood transferred to MeECL as on 1.04.2010. Thereafter, the audited balance sheet for the period 2010-11 was finalized and the equity base as on 31.03.2011 after giving effect to subsequent equity additions stood at Rs. 903.53 Cr.</p>
15.09.2014	<p>MSERC (Multi Year Tariff) Regulations 2014 (<b><i>“Tariff Regulation 2014”</i></b>) was issued effective from 1.04.2015.</p> <p>[Regulation 1.4 in Tariff Regulation 2014 mandates that for Truing up pertaining to period prior to FY 2015-16, provisions of Tariff Regulations, 2011 shall apply].</p>
22.12.2014	<p>MePDCL filed Petition dated 22.12.2014 before MSERC for approval of the Annual Revenue Requirement (ARR) for the control period FY 2015-2016 to FY 2017-18 and determination</p>

	<p>of retail Tariff for FY 2015-16 under the Tariff Regulation, 2014.</p> <p>In the said Petition MePDCL <b>projected Net ARR of Rs. 888.67 Cr for FY 2015-16.</b></p>
09.03.2015	<p>MePDCL filed the true up petition of FY 2011-12 on 09.03.2015 alongwith Statement of Account for 2011-12 under Tariff Regulations, 2011 seeking net deficit of Rs. 378.09 Cores <i>inter alia with</i> the following components-</p> <p>a) Rs. 41.82 Crore towards power purchase cost.</p> <p>b) Rs. 2.08 Crores towards Prior Period Expenses</p> <p>c) Rs. 127.15 Crore towards Return on Equity.</p>
10.03.2015	<p>On 10.03.2015 a public hearing was held on the ARR and Tariff Petition for period FY 2015-16 to FY 2017-18.</p> <p>On the same date MSERC also admitted the True-up Petition of MePDCL for the period 2011-12.</p>
31.03.2015	<p>MSERC passed an Impugned common Tariff order dated 31.03.2015 for truing up of the ARR and revenues for FY 2011-</p>

	<p>12 and also for approval of the ARR for control period FY 2015-16 to FY 2017-18 and determination of retail Tariff for FY 2015-16 for supply of electricity in the state of Meghalaya.</p> <p>In the said order dated 31.03.2015, <b>MSERC allowed Net ARR of Rs 618 Cr only out of Rs. 888.76 Cr sought by MePDCL for the period FY 2015-16.</b></p> <p><b>Also in Truing up for FY 2011-12 MSERC allowed a revenue gap of only Rs. 85.53 Cr out of net revenue gap of Rs. 378.09 Cr.</b></p> <p>Additionally, MSERC also imposed a penalty of Rs. 29.64 Cr on AT &amp; C Losses.</p>
29.05.2015	<p>Aggrieved by the Impugned Tariff Order dated 31.03.2015 of MSERC, MePDCL filed a Review Petition dated 29.05.2015 before MSERC. In the Review Petition MePDCL sought Review of the True up order for FY 2011-12 and also sought Review of the Tariff Order for FY 2015-16.</p>

10.08.2015	<p>The MSERC passed the Impugned Review order dated 11.08.2015 in the Review Petition filed by the Appellant in which while rejecting the claims of the Appellant, it granted opportunity to the Appellant to file additional documents for re-examination/suitable correction of its finding in the said order, in relation to the issues on Power Purchase Cost, Prior Period Expenses and Imposition of Penalty on AT&amp; C loss.</p>
22.09.2019	<p>Appellant being aggrieved by the aforementioned order dated 11.08.2018 has filed present Appeal before this Tribunal on following issues:</p> <p>For FY 2011-12</p> <p><i>Power Purchase Cost</i></p> <p><i>Prior Period Charges</i></p> <p><i>Penalty for Non-Achieving AT&amp;C Loss Reduction Target</i></p> <p><i>Return on equity</i></p>



	For FY 2015-16 to 17-18. <i>Interest on Loan.</i>
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5. The issues raised by the appellants in this appeal are noted hereinbelow: -

**A. For Financial Year 2011-12**

1. Power Purchase Cost
2. Prior Period Charges
3. Penalty for non-achieving AT&C Loss Reduction Target
4. Return on Equity

**B. For Financial Year 2015-16 to 2017-18**

5. Interest on Loan

6. The grounds urged by the appellant in support of these issues are as under: -

- (a) The Commission has erroneously held that Power Purchase Cost would be examined in the petition for ARR and tariff for FY 2016-17 subject to filing of Comptroller and Auditor General (C&AG) certified copy of annual accounts along with the petition.

(b) The Commission has wrongly held that suitable corrections would be made on the basis of audit of power purchase expenditure as the appellant has already submitted the audited Prior Period Charges for FY 2011-12.

(c) The Commission while determining the calculation of collection efficiency has erroneously held that annual accounts for FY 2011-12 are not certified by C&AG and the same shall be examined in tariff order for FY 2016-17.

(d) The Commission has arbitrarily disallowed Return on Equity (RoE) on the basis of revised equity base instead of allowing the same on the revised equity amount as reflected in the audited balance sheet in accordance with the regulations.

(e) The Commission has incorrectly observed that neither the opening balance of the loan nor the additional loan availed are in conformity with the actual closing balance of the loans as on 31.03.2014 and capital investment proposed in the control period.

7. We have heard learned counsel for the appellant as well as learned counsel for the respondent Commission. We have also perused the

impugned orders as well as the written submissions filed by the learned counsels.

8. At the outset, it was pointed out by learned counsel for the respondent Commission that the instant appeal is barred in view of Order XLVII Rule 7(1) of the Code of Civil Procedure, 1908 (in short CPC) in so far as it assails the findings of the Commission on some of the issues in the order dated 11.08.2015 whereby the appellant's review petition was dismissed. In this regard following sequence of events needs to be noted:-

- (i) On 31.03.2015 the impugned tariff order was passed by the Commission;
- (ii) On 25.05.2015, the appellant preferred the review petition against said order, *inter alia*, on the following issues:-
  - (a) Power Purchase Cost
  - (b) Prior Period Charges
  - (c) Return on Equity
  - (d) Aggregate Technical and Commercial (AT&C) Losses
- (iii) Upon considering the submissions of the appellant and documents placed on record by it, the Commission rejected the review petition vide order dated 11.08.2015.

- (iv) The instant appeal was filed by the appellant on 26.10.2015. Initially the appeal was confined only to issues viz truing up of expenses and revenue for FY 2011-12 and denial of interest and finance charges. The issues related to Power Purchase Cost, Prior Period Expenses and AT&C Loses had not been raised therein.
- (v) On 31.08.2018, IA No.1209 of 2018 was filed by the appellant seeking amendment of Memorandum of Appeal, which was allowed by this Tribunal vide order dated 21.01.2019 and accordingly the issues related to Power Purchase Cost, Prior Period Charges and AT&C Loses were also included in the appeal.

9. It is the submission of the learned counsel for the Commission that once the issues with regards to Power Purchase Cost, Prior Period Charges, Return on Equity and AT&C Losses had been taken up by the appellant in the review petition which was dismissed vide order dated 11.08.2015, it is not open for the appellant to agitate those issues in the instant appeal. It is pointed out by the learned counsel that where a review petition is dismissed, there is no merger of the review order with the initial main order and therefore

appeal is not maintainable Against review order. Various judgments of the Hon'ble Supreme Court as well as this Tribunal were cited by the learned counsel to buttress his submissions.

10. Rule 7(1) of Order XLVII CPC is extracted hereinbelow: -

*“7. Order of rejection not appealable. Objections to order granting application. -*

*(i) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.”*

*[Emphasis Supplied]*

11. It is manifest from the bare perusal of this legal provision that no appeal lies against the order of a court / tribunal rejecting the application for review. Therefore, we find ourselves in agreement with the submissions of the learned counsel for the respondent Commission that the order dated 11.08.2015 passed by the Commission on the review petition of the appellant, thereby dismissing the same, could not have been assailed in this appeal in

view of the clear and specific bar contained in Order XLVII Rule 7(1) CPC. In such a scenario, the appeal lies against the original order and not against the order on the Review Petition. (See Rahimal Bathu vs. Ashiyal Beevi 2023 SCC OnLine SC 1226) We have, thus, no hesitation in rejecting the appeal in so far as it assails the order dated 11.08.2015 of the Commission and we will confine ourselves to the legality or otherwise of the impugned tariff order dated 31.03.2015 only on the issues agitated by the appellant.

12. We shall now take up the issues raised by the appellant in this appeal.

**A. For Financial Year 2011-12**

**Issue No.1- Power Purchase Cost:**

13. In the true-up petition, the appellant had claimed Power Purchase Cost of Rs.431.20 crores for 1684.49MW of power for the FY 2011-12. But the Commission approved only Rs.389.38 crores under this head in the impugned tariff order. Thus, an amount of Rs.41.82 crores stand disallowed. The reasoning given by the Commission for doing so is found in Paragraph No.6.7 at Page 47 of the tariff order, which is extracted hereinbelow: -

### **“Commission Analysis**

*In view of significant gap between the power purchase amount as approved by the Commission for FY 2011-12 and the audited amount, the Commission sought detailed information on the power purchase amount and licensee was required to submit the supplementary bills in support. The licensee was given ample time to respond with it and produce supplementary bills in support of previous arrears on account of revision in the charges as per CERC regulation 2009-14. However in spite of repeated reminders, the supplementary bills of arrears are not produced. While examining the bills of the current year (Q1), the Commission found that the late payment surcharge- supplementary bills are of the tune Rs. 53 crores which relates to 2007-2009 and so on. Recently, it is informed by the licensee that there are pending arrears of power purchase (Principle amount of Rs. 283.23 crores and late payment surcharge of Rs. 108.42 crores) towards NEEPCO. It is also informed that the late payment surcharges are now being reduced by 40% by NEEPCO.*

In his situation and in the absence of proper records the Commission is allowing Rs. 389.38 crores as power purchase cost in FY 2011-12 which includes transmission cost of Rs. 53.38 crores. This exercise is based on estimates of power purchase cost arrived due to the revised regulations of CERC. However, the Commission directs the licensee to get a proper audit of power purchase amount and furnish a report to the Commission by 30.9.2015 so that necessary adjustments will be made at appropriate time.

**The Commission approves power purchase cost at Rs 389.38 Cr including interstate transmission costs at Rs 53.38 Cr for FY 2011-12 after true up.”**

*[Emphasis Supplied]*

14. As per these observations of the Commission, the appellant had failed to produce supplementary bills in support of claimed Power Purchase Cost despite ample opportunity granted to it by the Commission. Further, the Commission also found Late Payment Sur-charge to the tune of Rs.53 crores in the bills for the 1<sup>st</sup> quarter of the current year relating to 2007-2009. In



these circumstances, the Commission made estimate of Power Purchase Cost for the appellant based on the revised regulations issued by Central Electricity Regulatory Commission (CERC) and allowed Rs.389.38 crores as Power Purchase Cost for the FY 2011-12 including Transmission Cost of Rs.53.38 crores.

15. Learned counsel for the appellant submitted that there was no direction / request issued by the Commission at all to the appellant to supply supplementary bills during the true-up proceedings. She would further point out that in the impugned true-up order dated 31.03.2015, the Commission had directed the appellant to carryout a proper energy audit of power purchase amount and furnish the report by 31.09.2015. She submitted that the abstract of station-wise power purchase bills showing the energy cost and penalty amount separately, along with invoices including supplementary bills for power purchased from all sources were filed along with the review petition which were not considered by the Commission on erroneous observation that the annual accounts were required to be certified by C&AG.

16. Per contra, in this regard it is submitted on behalf of the Commission that –

*(a) Vide letter dated 13.03.2015, the Commission directed the Appellant to submit detailed information with respect to power purchase cost in a particular manner, as described in the said letter by 21.03.2015. The appellant, under Regulation 93(3) of the Tariff Regulations, 2011, was further directed to produce supplementary bills in support of previous arrears on account of revision in the charges as per the CERC Tariff Regulations 2009.*

*(b) On 24.03.2015, in response to the aforesaid letter, the Appellant submitted a tabulated statement of generator-wise power purchase quantities for FY 2011-12. However, the Appellant not only failed to present the data in the specific format requested by the Commission but also did not provide justification for the power purchase costs claimed in the True-up Petition.*

*(c) Notably, while going through the incorrect data submitted by the Appellant, the Commission noted several discrepancies including but not limited to pending arrears of power purchase*

*including late payment surcharges of Rs.108.42 Crores towards NEEPCO.*

*(d) On 31.03.2015, the Commission passed the Impugned Order. And, consequently, in the absence of adequate records and data, the Commission approved an amount of Rs.389.38 Crores for the Appellant. Furthermore, the Appellant was directed to conduct a proper audit of the power purchase amounts and submit a report to the Commission to facilitate any necessary adjustments.*

*(e) Thereafter, on 29.05.2015, the Appellant vide its Review Petition, without providing any details, sought to review the findings rendered by the Commission in the Impugned Tariff Order.*

*(f) On 10.06.2015, in view of lack of proper data provided by the Appellant, the Commission vide its letter sought details of the power purchase bills for the period FY 2011-12 in a specific format as attached with the letter.*

*(g) On 30.06.2015, the Appellant through its letter provided certain information qua power purchase costs, however, the same were in complete disregard to the specific format suggested by the Commission. Moreover, the data submitted by the Appellant was incomplete in as much as the quantity of power taken by the Appellant from various generators was not mentioned.*

*(h) On 22.06.2015, the Commission through its letter again sought certain details qua power purchase cost in a prescribed format.*

*(i) However, on 02.07.2015, the Appellant vide its Reply contended that the details have already been provided by the Appellant through its letter dated 30.06.2015.*

*(j) On 11.08.2015, the Commission passed the Impugned Review Order vide which it rejected the review sought by the Appellant and inter-alia held that despite seeking information qua Power Purchase Cost and that too in a specific format, the Appellant had miserably failed to submit the data to justify its claims. Further, the annual accounts for FY 2011-12 were not certified by C&AG.*

17. There has been no specific denial on the part of the appellant to these letters pointed out by the respondent's counsel in the written submissions filed by him, which were sent by the Commission to the appellant seeking detailed information with regards to the Power Purchase Cost. In fact, some of these letters have been annexed by the appellant itself to the memo of appeal. Perusal of these letters as well as the replies sent by the appellant makes it evident that the appellant did not submit requisite information / documents to the Commission despite ample opportunity given to it not only during the proceedings of the tariff petition but also during the proceedings of the review petition filed by it. We clarify that even though the proceedings in the review petition filed by the appellant do not have any bearing on the outcome of this appeal, we have noted the same only to complete the chain of events and to see whether the requisite information / documents had been submitted by the appellant during the proceedings of that petition.

18. We find that by asking the appellant to submit relevant information / documents in support of its claim for Power Purchase Cost, the Commission was conducting a prudence check of the claims of the appellant which it is bound to do in terms of the tariff regulations. We also find that the Commission was justified in rejecting a portion of the appellant's claim

regarding Power Purchase Cost for want of proper data along with audited statement of accounts.

19. Therefore, we do not find any infirmity in the impugned findings of the Commission on this issue contained in the impugned tariff order dated 31.03.2015.

**Issue No.2- Prior Period Charges:**

20. In the petition filed before the Commission, the appellant had sought prior period expenses to the tune of Rs.2.80 crores for FY 2011-12 as per the accounting standard 5 (AS 5) issued by the Institute of Chartered Accountant of India. However, the Commission has not allowed these charges to the appellant in the impugned tariff order.

21. Upon noting the details given in this regard by the appellant and the grounds for claiming prior period charges, the Commission has merely observed / held as under: -

*“The Commission has considered the power purchase expenditure to be allowed in the truing up which almost*

*matches with the income and therefore no prior period expenses is allowed.*

***Commission`s Analysis***

***After examining the data submitted by MePDCL the Commission approves the net prior period expenses as nil.”***

22. Thus, it is clear from the impugned tariff order that the Commission has neither considered the details given by the appellant with regards to these charges nor the reasons furnished by it for claiming these charges and has rejected the claim of the appellant under this head merely on the ground that the power purchase cost of previous years was already allowed in truing up of respective years and therefore need not be allowed again.

23. Learned counsel for the appellant submitted that Prior Period Charges sought by the appellant were duly reflected in the audited balance sheet for FY 2011-12 of the appellant which has not been considered by the Commission. It is further submitted by the learned counsel that on account of less provisions made in previous years in the audited statement of accounts, the details of all prior period credits / charges / receipts / payments

during the said period were submitted to the Commission for its consideration in the true up petition but have been ignored by the Commission.

24. Learned counsel for the respondents argued that there is no provision in the Tariff Regulations 2011 providing for Prior period Charges, as claimed by the appellant, and therefore, the Commission had no other option but to reject the appellant's claim under this head for want of specific regulation. He would further submit that the appellant did not submit any relevant data also to the Commission as sought by the Commission from time to time to enable the Commission to ascertain whether such expenses had been prudently incurred to the benefit of the consumers and thus, failed to substantiate claim under this head.

25. Patently, the submissions made by the learned counsel for the Commission before us are contrary to the reasons given by the Commission in the impugned order while rejecting the appellants claim under this head. The impugned order nowhere shows that the claim of the appellant under this head has been rejected for want of any specific regulation in this regard or for non-submission of requisite documents / data. Once the Commission did not specify any reason for rejecting the appellants claim, it cannot be permitted



to justify its order by agitating something before us which does not find mention in the impugned order.

26. In our considered opinion, the impugned order of the Commission on the issue of Prior Period Charges is bereft of any reasons and thus cannot be sustained.

27. We may note that Prior Period Charges are the income or expenditure which arises in the current period as a result of any error or omission in preparation of financial statement for any previous period. The appellant, in its petition before the Commission, has provided the details of the prior period expenses for FY 2011-12 along with the reasons for claiming the same. However, the Commission has neither considered these details as well as reasons in support thereof nor has specified as to why the same are not being considered.

28. Hence, we set aside the findings of the Commission on this issue and remand the issue back to the Commission for fresh consideration upon taking into account all the details / data / reasons furnished by the appellant in support of its claim.

### **Issue No.3- Calculation of Collection Efficiency:**

29. The appellant in the true-up petition, had claimed the AT&C loss for FY 2011-12 as 34.73% and had provided table for calculation of such loss. However, the Commission has computed AT&C loss of the appellant for the said period as 41.85% and has imposed penalty of Rs.35.97 crores upon it for failure to achieve the minimum required reduction of AT&C loss.

30. It is submitted by the learned counsel for the appellant that the Commission has computed AT&C loss for the FY 2011-12 as 41.85% by adopting an incorrect methodology. It is pointed out by her that the Commission did not consider intra-state transmission loss due to which quantum of net available energy increased. She further argued that for the purpose of calculation of collection efficiency, the appellant has taken into account the actual revenue billed and the revenue collected excluding the delayed payment surcharge. According to her, on that basis, the collection efficiency ought to have been worked out as 88.23% excluding delayed payment surcharge. She also argued that: -

- a) the revenue realized ought to have been considered to be Rs 344.55 Cr instead of Rs 318.31 Cr.;

- b) the collection efficiency ought to have been determined to be 88.23% instead of 81.51%;
- c) the AT&C loss ought to have been determined to be 35.31 % instead of 40.23 %; and
- d) the penalty should have been Rs 10.42 Cr instead of Rs 29.64 Cr.

31. Learned counsel for the respondent Commission submitted that the Commission has rejected the claim of the appellant under this head after carefully analyzing the submissions put forth by the appellant and the data submitted by it. He argued that the appellant failed to provide any bifurcation on the impact of revenue collected from the past year and in view thereof, the Commission after considering the audited accounts submitted by the appellant, calculated the net revenue billed during FY 2011-12 to be Rs.390.51 crores. Accordingly, after applying the formula provided in Format-D2 (A) of Tariff Regulation 2011 for calculation of collection efficiency, and in view of failure of the appellant to furnish relevant data, the Commission determined the revenue realized by the appellant as 318.38 crores which was to be considered for computation of AT&C loss. He pointed out that the

calculation efficiency of the appellant worked out to be 81.51%. He referred to tables 6.14 and 6.15 given in the impugned tariff order in this regard.

32. We find it apposite to refer to the table 6.15 and 6.16 given by the Commission in the impugned tariff order in order to analyze the submissions of the learned counsels. The tables along with the observations of the Commission are extracted hereinbelow:-

*“6.18 Computation of AT&C Loss in FY 2011-12 works out to 41.85% as shown in the table below*

*Table: 6.15 Computation of AT&C loss in FY 2011-12*

<b>Sl. No.</b>	<b>Particulars</b>	<b>Calculation</b>	<b>Unit</b>	<b>Actuals furnished by MePDCL</b>	<b>Now approved by the Commission</b>
1.	Generation (own as well as any other connected generation net after deducting auxiliary consumption) within area of supply of DISCOM	A	MU		497.71
2.	Input energy (metered import)	B	MU		1123.38

	<i>received at interface points of DISCOM network.</i>				
3.	<i>Input energy (metered export) by the DISCOM at interface point of DISCOM network</i>	<i>C</i>	<i>MU</i>		<i>87.66</i>
4.	<i>Total energy available for sale within the licensed area of the DISCOM</i>	<i>D=A+B-C</i>			<i>1533.43</i>
5.	<i>Energy billed to metered within the licensed area of the DISCOM</i>	<i>E</i>	<i>MU</i>		<i>1093.97</i>
6.	<i>Energy billed to un- metered consumers within the licensed area of the DISCOM</i>	<i>F</i>	<i>MU</i>		<i>-</i>
7.	<i>Total Energy billed</i>	<i>G=E+F</i>	<i>MU</i>		<i>1093.97</i>
8.	<i>Amount billed to consumer within the licensed area of DISCOM</i>	<i>H</i>	<i>Rs. Core</i>		<i>390.51</i>

9.	Amount realized by the DISCOM out of the amount billed at H#	I	Rs. Core		318.31
10.	Collection efficiency (%) (=Revenue realized/Amount billed)	$J=(I/H) \times 100$	%		81.51%
11.	Energy realized by the DISCOM	$K=J \times G$	MU		891.7
12.	Distribution loss (%)	$L=\{(D-G)/D\}$	%		28.66
13.	AT&C Loss (%)	$M=\{(D-K)/D\} \times 100$	%		41.85%

Accordingly AT&C Loss as per audited accounts works out to 41.85% as against 35.64% approved in commission order for truing up of FY 2010-11. Penalty for failure to cause minimum reduction in AT&C loss in FY 2011-12 works out to as shown in table below

**Table: 6.16 Truing up financial loss for failure to achieve a minimum of 3% reduction in AT&C loss during FY 2011-12**

S.No	Particulars	Unit	FY 2010-11
1.	Maximum permissible AT&C loss for MePDCL during FY 2010-11	%	35.64%
2.	Mandatory minimum reduction of AT&C loss	%	3.00%
3.	Maximum permissible AT&C loss for MePDCL during FY 2011-12	%	32.64%

4.	<i>Actual AT&amp;C loss in FY 2011-12</i>	<i>%</i>	<i>41.85%</i>
5.	<i>Short fall in minimum reduction</i>	<i>%</i>	<i>9.21%</i>
6.	<i>Energy sale in FY 2011-12</i>	<i>MU</i>	<i>1093.97</i>
7.	<i>Average rate for sale of power in FY 2011-12 (390.51/1093.97)</i>	<i>Rs./kWh</i>	<i>3.57</i>
8.	<i>Short fall in amount of energy 9.21% of 1093.97 MU</i>	<i>MU</i>	<i>100.76</i>
9.	<i>Penalty for not reducing the loss by 9.21% at Rs 3.57/kWh</i>	<i>Rs Crore</i>	<i>35.97</i>

*Therefore the Commission now fixes the penalty for failure to achieve the minimum required reduction of AT&C loss in FY 2011-12 at Rs. 35.97 Crore.”*

33. We have perused each of the entries in the above tables minutely and are unable to understand as to on what basis does the appellant claim that the revenue realized ought to have been taken as Rs.344.55 crores instead of 318.31 crores, the collection efficiency ought to have been determined to be 88.23% instead of 81.51%, AT&C loss ought to have been determined as 35.31% instead of 40.23% and penalty should have been only Rs.10.42 crores instead of 29.64 crores. None of the entries in these two tables has been disputed on behalf of the appellant. Even no separate table in this regard has been submitted by the appellant in the written submissions filed by its counsel.

34. Hence, we do not find any error or infirmity in the impugned order of the Commission on this issue.

**Issue No.4- Return on Equity:**

35. The appellant, in the true-up petition before the Commission, had claimed Return on Equity (RoE) to the tune of Rs.127.15 crores as per the audited accounts submitted by it. However, the Commission has approved the RoE at Rs.28.28 cores only.

36. The appellant had claimed RoE of 127.15 crores on the equity base of Rs.908.18 crores @ 14% as per the following table:-

*“Table: 6.11 Return on equity claimed by MePDCL for FY 2011-12*

<b><i>Particulars</i></b>	<b><i>FY 2010-11 (Actual)</i></b>	<b><i>FY 2011-12 (Actual)</i></b>
<i>Opening Equity (Rs. Cr)</i>	<i>767.55</i>	<i>903.53</i>
<i>Additions during the year (Rs. Cr)</i>	<i>135.98</i>	<i>104.75</i>
<i>Closing Equity (Rs. Cr)</i>	<i>903.53</i>	<i>1,008.28</i>
<i>Equity consider for RoE (Rs. Cr)</i>	<i>903.53</i>	<i>908.18</i>
<i>RoE%</i>	<i>14%</i>	<i>14%</i>
<i>Return on Equity (Rs. Cr)</i>	<i>126.49</i>	<i>127.15</i>

”



37. According to the observations of the Commission, the appellant did not furnish any valid data for taking its equity base as Rs.908.18 crores and therefore the Commission approved the RoE of Rs.28.28 crores only as approved by it in its previous tariff order dated 20.01.2012.

38. Learned counsel for the appellant submitted that in the order dated 20.01.2012 for tariff determination for the FY 2011-12, the Commission had approved RoE of Rs.28.28 crores on an equity base of Rs.202 crores @ 14%, the same forming the basis of opening balance as on 01.04.2011. She further submitted that in the year 2010 by way of notification dated 31.03.2010, erstwhile Meghalaya State Electricity Board (MeSEB) was unbundled into four successor entities and thereafter vide notification dated 23.12.2013, Government of Meghalaya notified the revised and final statement of assets and liabilities to be vested in MeECL, the holding company with effect from 01.04.2010. She pointed out that as per the transfer scheme dated 23.09.2013, assets in the value of Rs.767.54 crores stood transferred to MeECL as on 01.04.2010 and therefore, the audited balance sheet for the period 2010-11 was finalized taking the equity base as on 31.03.2011 to Rs.903.53 crores after giving effect to subsequent equity additions.

39. She further argued that on the basis of the transfer scheme indicating the transfer of assets and liabilities to the successor companies and subsequent equity additions, the equity base for the period 2011-12 stood at Rs.908 crores which is also reflected in the audited accounts of the appellant for the FY 2011-12. She argued that the Commission has rejected the claim of appellant for a revised RoE in the impugned tariff order on the incorrect basis that no valid data has been furnished for considering the equity base as Rs.908.18 cores.

40. According to learned counsel, the Commission has failed to take into account the equity amount appearing in the equity balance sheet of the appellant or even as per the transfer scheme notification issued by the Government of Meghalaya for the purpose of calculating the RoE as envisaged by Regulation 101 of Tariff Regulations, 2011 and thus, the methodology adopted by the Commission in determining RoE is not only invalid but in deviation to its own regulations.

41. Learned counsel for the respondent Commission referred to Regulations 100 and 101 of the Tariff Regulations 2011 and submitted that the Commission was right in rejecting the appellants claim for RoE on equity

base of Rs.908.18 crores as no valid data was furnished by the appellant in this regard.

42. In rejoinder, the learned counsel for the appellant submitted that Regulation 100 provides that for determination of tariff, debt-equity ratio of 70:30 will be applied for all new investments and therefore the said Regulation has no application for investments prior to the period 2010-11.

43. We have considered the rival submissions of the learned counsels on this issue.

44. Since both the learned counsels have referred to regulations 100 and 101 of 2011 Tariff Regulations, we find it apposite to quote the same hereunder: -

***“100. Debt-equity Ratio***

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

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

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

### **101. Return on Equity**

*(1) Return on equity shall be computed on the equity base determined in accordance with Regulation 100, at a fixed rate of 14 percent, per annum. Provided that equity invested in a foreign currency may be allowed a return upto the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of*

*billing. The difference in actual exchange rate and the provisional exchange rate considered while determining the ARR shall be taken into consideration at the time of 'Truing up'.*

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

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

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

45. It is manifest that Regulation 100 talks about new investments during financial year for which the tariff is to be determined and provides that debt-equity ratio for all such new investments shall be considered in the ratio of 70:30. Hence, this Regulation is not applicable to the appellant for the reason that there had been no new investment made by the appellant during the FY 2011-12.

46. The case of the appellant before the Commission was that on account of the transfer scheme whereby the assets and liabilities of the erstwhile MeSEB were transferred to the successor companies including the appellant herein coupled with the subsequent equity additions, the equity base of the appellant for the period 2011-12 stood at Rs.908 cores which is also reflected in the audited accounts of the appellant for the said FY. Such a situation is clearly covered by Sub-Regulation (2) of Regulation 101 which provides that the equity amount appearing in the audited balance sheet or as per transfer scheme notification will be taken into account for the purpose of calculating the RoE for the first year of operation. Therefore, the Commission was bound to take into account the equity addition to the equity base of the appellant for FY 2011-12 in pursuance to the notification dated 23.12.2013 of the Government of Meghalaya vide which certain assets and liabilities of erstwhile

MeSEB came to be vested in the appellant with effect from 01.04.2010. That having not been done by the Commission, the rejection of appellant's claim for RoE on equity base of Rs.908.18 crores cannot be sustained.

47. Hence, we set aside the findings of the Commission in the impugned order on this issue and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile MeSEB in the appellant in pursuance to the transfer scheme formulated by the Government of Meghalaya.

## **B. For Financial Year 2015-16 to 2017-18**

### **Issue No.5- Interest on Loan:**

48. In the tariff petition for determination of ARR for FYs 2015-16 to 2017-18, the appellant had claimed interest and finance charges as Rs.50.79 crores for the FY 2015-16, as Rs.46.09 crores for FY 2016-17 and as Rs.41.86 crores for FY 2017-18. However, the Commission has approved the interest and finance charges at Rs.12.44 crores, Rs. 15.81 crores and Rs. 19.17 crores for FY 2015-16, FY 2016-17 and FY 2017-18 respectively on the following reasoning: -

***“7.26.1 Commission Analysis:***

*As verified from the above data neither the opening balance of loan nor the additional loans availed are not in conformity with the actual closing balance of loans as on 31.3.2014 and capital investment proposed in the control period. Further most of the works are either under RGGVY or AAPDRP schemes of which 90% are grants and only 10% in loan.*

*So the closing balance of loans at Rs. 92.74 Cr as approved in FyY2014-15 tariff order is considered and additional loans during the control period are considered at 10% of capital investment of respective years – Repayment of loans is however considered as proposed by MePDCL and rate of interest is considered at 9.91% being the average rate of interest worked out in tariff order of FY 2014-15 and interest on capital loan computed is detailed in table below.*



**Table: 7.46 Computation of Interest and Finance charges  
for control period.**

Sl.No.	Particulars	2014-15	2015-16	2016-17	2017-18
1.	Opening Balance	92.74	111.64	139.51	179.5
2.	Additions during the year	20.28	32.75	48.35	37.43
3.	Repayment during the year	1.38	4.88	8.36	9.45
4.	Closing loan	111.64	139.51	179.5	207.48
5.	Average loan	102.19	125.58	159.51	193.49
6.	Rate of interest	9.91%	9.91%	9.91%	9.91%
7.	Interest & Finance charges	15.81 1	10.13	12.44	9.17

*The Commission approves interest and Finance charges at RS. 12.44 Cr, Rs. 15.81 Cr and Rs. 19.17 Cr for FY 2015-16, FY 2016-17 and FY 2017-18 respectively.”*

49. Learned counsel for the appellant submitted that the Commission has failed to consider loan advance of Rs.250 crores for FY 2015-16 as well as the projected loan balance and interest and finance cost thereon. It is submitted that pending dues payable by appellant to NEEPCO stood at Rs.318.85 crores excluding the waiver of 60% of the surcharge. It is further

submitted that the appellant approached the Power Finance Corporation Limited (PFCL) for sanction of medium-term loan to payoff the said outstanding dues relating to power purchase and the loan arrangement was similar to the scheme envisaged under financial restructuring scheme issued by the Central Government. She would argue that the loan was necessary to clear pending dues of power purchase bills for the past period and for payment of 40% of the delayed payment surcharge. She submitted that the interest rate as projected in the petition at 12.5% was negotiated and the interest was payable on quarterly basis. It is her submission that the Commission has failed to consider these factual aspects of the case.

50. We may note that as per Regulation 27 of the MYT Regulations, 2014 issued by the Commission on 15.09.2014, the debt-equity ratio is to be taken as 70:30. Regulation 32 of these Regulations is with respect to interest and finance charges on loan capital and is quoted hereinbelow: -

***“32 Interest and finance charges on loan capital***

*32.1 Interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of loan repayment, terms and conditions of loan agreements, bond or debenture and the*

*lending rate specified therein. Provided that the outstanding loan capital shall be adjusted to make it consistent with the loan amount determined in accordance with regulation 27.*

*32.2 The interest and finance charges attributable to capital work in progress shall be excluded.*

*Provided that neither penal interest nor over due interest shall be allowed for computation of tariff.*

*32.3 The Generating Company or the Transmission Licensee or the Distribution Licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the Generating Company or the Transmission Licensee or the Distribution Licensee, as the case may be, in the ratio of 50:50.*

*32.4 In case any moratorium period is availed of in any loan by the generating company, 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.”*

51. It is the case of the appellant itself that the appellant intended to avail the loan from PFCL to clear its power purchase arrears towards NEEPCO, which does not fall within the ambit of loan availed for capital works to create assets. Further, it has been recorded by the Commission in the impugned order that neither opening balance of the loan nor the additional loan availed are in conformity with the actual closing balance of loan as on 31.03.2014 and the capital investment proposed in the control period. The Commission has also recorded that most of the works are either under RGGVY and R-APDRP schemes of which 90% are grants and only 10% in loan.

52. Hence, the Commission was correct in considering the additional loan availed during the control period at 10% of the capital investment of the respective year and in computing the interest on the capital loan as already noted hereinabove.

53. Thus, we do not find any ground for interference in the findings of the Commission in the impugned order on this issue.

54. We summarize our findings on the issues raised by the appellant as under: -

<b>Sl. No.</b>	<b>Issue No. / Issue</b>	<b>Our decision</b>	<b>In favour of</b>
<b>A.</b>	<b>For FY 2011-12</b>		
1.	<b>Issue No.1-</b>  <u>Power Purchase Cost</u>	We do not find any infirmity in the impugned findings of the Commission on this issue contained in the impugned tariff order dated 31.03.2015.	Respondent
2.	<b>Issue No.2-</b>  <u>Prior Period Charges</u>	We set aside the findings of the Commission on this issue and remand the issue back to the Commission for fresh consideration upon taking into account all the details	Appellant / Remanded

		/ data / reasons furnished by the appellant in support of its claim.	
3.	<b><u>Issue No.3-</u></b>  <u>Calculation of Collection Efficiency</u>	We do not find any error or infirmity in the impugned order of the Commission on this issue.	Respondent
4.	<b><u>Issue No.4-</u></b>  <u>Return on Equity</u>	We set aside the findings of the Commission in the impugned order on this issue and remand the issue back to the Commission for fresh consideration after taking into account the equity additions to the equity base of the appellant by reason of vesting of certain assets of erstwhile	Appellant / Remanded

		MeSEB in the appellant in pursuance to the transfer scheme formulated by the Govt. of Meghalaya.	
<b>B.</b>	<b><u>For Financial Year 2015-16 to 2017-18</u></b>		
5.	<b><u>Issue No.5-</u></b>  <b><u>Interest on Loan</u></b>	We do not find any ground for interference in the findings of the Commission in the impugned order on this issue.	Respondent

55. The appeal stands disposed off accordingly.

Pronounced in open court on this the 07<sup>th</sup> day of March, 2025

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

√  
*REPORTABLE / NON-REPORTABLE*

*tp*