

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No.103 of 2020

Case filed by Adani Electricity Mumbai Limited (Distribution) for review of certain aspects of Multi Year Tariff (MYT) Order dated 30 March 2020 issued in Case No. 325 of 2019

Coram
I.M.Bohari, Member
Mukesh Khullar, Member

Adani Electricity Mumbai Limited (Distribution).....Petitioner

Appearance

For Adani Electricity Mumbai Limited (Distribution) :- 1) Adv.Venkatesh
2) Adv. Hemant Singh

ORDER

Date: 21 July, 2020

1. Adani Electricity Mumbai Limited (Distribution)(AEML-D) on 24 June 2020 filed a Petition under Section 94 (1) (f) of the Electricity Act, 2003 (EA 2003), read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 read with Order 47 Rule 1 of the CPC, 1908 for review of certain aspects of the Multi Year Tariff (MYT) Order dated 30 March 2020 in Case No.325 of 2019.
2. Main prayers of AEML-D are as follows:
 - a) *Review portions of the order dated 30.03.2020 passed in Case No. 325 of 2019, as set out in the present Petition and consider the issues as raised in the present petition;*
 - b) *Correct all the errors / issues of oversight that have crept in the Order dated 30th March 2020, in Case No. 325 of 2019;*

- c) *That this Hon'ble Commission may be pleased to carry out the corrections in the ARR as prayed and allow the surplus so worked out in Part A of the present petition, to be passed on in tariff to the consumers as proposed herein;*
- d) *That this Hon'ble Commission may be pleased to carry out the corrections in the ARR as prayed for in Part B of the present petition; ...”*

3. AEML-D has structured the Review Petition in two parts, i.e., Part A and Part B. Part A contains those issues, which affect the Distribution Business post AEML takeover, whereas Part B contains those issues, which are continued from pre-AEML period [period for which Reliance Infrastructure Ltd (R-Infra) was operating as a Distribution Business]. It has stated that submissions or claims made in Part B were without prejudice to AEML-D's contentions in any appeal/proceeding filed or to be filed against the impugned Order with the Appellate Tribunal for Electricity (APTEL) or before any other Forum
4. This Order has been structured to summarise issue wise submission of AEML-D and Commission's Analysis and Ruling on the said issue.
5. At the time of E-hearing dated 9 July 2020, Advocates of the Petitioner reiterated the submissions made in the Petition.
6. The Commission notes that the Review Petition has been filed under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, which specifies as follows:

“Review of decisions, directions, and orders

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

Thus, the ambit of review is limited and AEML-D's Petition has to be evaluated accordingly.

7. Before dealing with the issues for review, the Commission notes that review Petition is not filed within 45 days period allowed in Regulation 85 of MERC (Conduct of Business) Regulations, 2004. On this issue, AEML-D made following submissions:

7.1 There is no delay in filing the present Review Petition as the Hon'ble the Supreme Court vide its Order dated 23 March, 2020 passed in *Suo Motu* Writ Petition No. 03 of 2020 has extended the limitation period of all proceedings, with effect from 15 March, 2020, before all judicial/ quasi-judicial fora in the Country, irrespective whether the said proceedings are governed by special or general law of limitation, until further orders.

7.2 Therefore, AEML-D has claimed that the present Review Petition is within the period of limitation.

8. In view of above, the Commission notes that Hon'ble the Supreme Court vide its Judgment dated 23 March 2020 has extended limitation period for filing of all types of Petitions including Review Petition. Therefore, the Commission considered that this review Petition is filed within limitation period. Accordingly, the Commission is dealing with following issues raised in this review Petition:

- a. Part A (for the period post taking over of Distribution Business by AEML)
 - i. Issue I: Erroneous imposition of Stand-by Charges to AEML-D
 - ii. Issue II: Erroneous allowance of lower amount of Cumulative Surplus to AEML-D, than that allowed to AEML-G till FY 2020-21
 - iii. Issue III: Erroneous consideration of Fixed and Variable Charges of AEML-G allowed to AEML-D for the Control Period from FY 2020-21 to FY 2024-25
 - iv. Issue-IV: Erroneous allowance of higher Transmission Charges payable by AEML-D from FY 2020-21 to FY 2024-25
 - v. Issue V: Erroneous allowance of lower MSLDC Charges payable by AEML-D from FY 2020-21 to FY 2024-25
 - vi. Issue VI: Total reduction in ARR considering the effect of Issues I to V
- b. Part B (for the period prior to taking over of Distribution Business by AEML)
 - i. Issue VII: Wrongful consideration of lower rate of interest of 10.36% in place of 10.51% while computing the amount of Interest on loan for FY 2017-18
 - ii. Issue VIII: Consideration of actual Interest on Working Capital (IoWC) for FY 2017-18 and FY 2018-19 as "Nil" and consideration of difference between Normative Interest on Working Capital and "Nil" actual Interest on Working Capital as Efficiency Gains
 - iii. Issue IX: Non-consideration of "Other Allowance" under Employee Expenses in O&M expenses for FY 2017-18

The Commission is dealing with each of above issues/contentions in following paragraphs. **Part A:**

9. **ISSUE I: - Erroneous imposition of Stand-by Charges to AEML-D**

AEML-D's Submission

- 9.1 Based on the MYT Order of The Tata Power Company (Generation) (TPC-G) in Case No. 300 of 2019, the Commission has erroneously considered Stand-by Charges of Rs. 35.53 crore along with carrying cost to be paid by AEML-D to TPC-G.
- 9.2 The entire computation of Stand-by Charges payable by AEML-D to TPC-G for FY 2020-21 is in relation to inclusion of Stand-by Charges for past period (i.e., FY 2000-

04). In this regard, the Commission, in its Order in Case No. 7 of 2000 dated 31 May, 2004 had determined the Stand-by Charges payable by TPC and BSES (presently known as AEML-D) and concluded that the actual amount of Stand-by Charges paid by BSES over the period FY 1999-2004 was more than its calculated share in the Stand-by Charges by Rs 313.93 Crore[Excess Principal Amount Rs 322.3 Cr – Rs. 8.37 Cr (interest)].

9.3 The Commission in the Tariff Order of TPC in Case No. 30 of 2003 dated 11 June 2004 had considered the impact of Stand-by Charges as per the Commission's Order dated 31 May 2004. The Commission, while computing the Tariff of TPC, proceeded to draw up/utilize the reserves accumulated by TPC to meet the gap between Clear Profit and Reasonable Return created on account of refund of Stand-by Charges to the erstwhile BSES. Relevant extract of the Order is as follows:

“31 TARIFF PHILOSOPHY

In the previous Section, Commission has elaborated the methodology adopted by the Commission in matching the Clear Profit and Reasonable Return on a yearly basis, in accordance with the provisions of Schedule VI of the ESA. As all the expenses incurred/to be incurred by TPC over the period from FY 1998-99 to FY 2003-04 have already been considered while ensuring that the Clear Profit matches the Reasonable Return in every year of operation, no further revenue is required by TPC to meet its commitments, including payment towards standby charges, refund to BSES payment of interest and delayed payment charges, as elaborated in the Commission's Order on the standby dispute between TPC and BSES in Case No. 7 of 2000.”

9.4 TPC preferred an Appeal in APTEL against the Commission's Order in the Stand-by Charges matter wherein APTEL in its Order dated 20 December 2006 directed TPC to refund Rs. 354 Crore (Principal Amount Rs. 339 Crore + Interest thereon Rs. 15 Crore) with additional 10% simple interest. TPC challenged the APTEL Order before the Supreme Court in Civil Appeal No. 415 of 2007, wherein Hon'ble the Supreme Court granted interim stay on the APTEL Order and directed TPC to furnish a Bank Guarantee of Rs. 227 Crore to be deposited with the Registrar General of the Supreme Court. In its final Judgement dated 2 May 2019, the Supreme Court upheld the decision of APTEL and directed to pay the amount lying with the Registrar to AEML-D along with interest. AEML-D is in receipt of the said amount.

9.5 TPC-G, in its MYT Petition in Case No. 300 of 2019, claimed the difference between amount of refund of Stand-by Charges payable to BSES/RInfra/AEML as determined by APTEL vide its Judgment dated 20 December, 2006 in Appeal No. 202 of 2005, and as determined by the Commission vide its Order dated 31 May, 2004 passed in Case No. 7 of 2000, along with carrying cost from the three Distribution Licensees in Mumbai including AEML-D, in the ratio of sale of power to the three Distribution Licensees for the concerned period.

- 9.6 AEML-D, in its comments dated 24 January, 2020 on TPC-G MYT Petition, categorically pointed out that the Commission, vide its Order dated 11 June, 2004 passed in Case No. 30 of 2003, appropriated certain funds of TPC allocated to the reserves, in order to meet the shortfall between Clear Profit and Reasonable Return, which was created on account of refund of about Rs. 314 Crore. In case the original refund worked out by the Commission would have been Rs. 354.14 Crore, then in the Order dated 11 June 2004 passed by the Commission in Case No. 30 of 2003, by applying the same earlier principle, the Commission would have appropriated the reserves of TPC to the extent of Rs. 354.14 Crore. Taking the said factor into consideration, AEML-D accordingly suggested that any additional reserves in the combined entity being TPC G/T/D put together as was existing in the year 2004, could be appropriated/utilized for meeting the liability of differential amount of refund, instead of passing on the liability to the then beneficiaries of TPC.
- 9.7 However, the Commission vide its Order dated 30 March 2020 passed in Case No. 300 of 2019, observed that no reserves were available with TPC for FY 1999-00 to FY 2003-04. Therefore, the additional amount of Stand-by Charges incurred by TPC is to be recovered from consumers of that period, which include consumers of AEML-D also.
- 9.8 The above observation/finding of the Commission in the Order under Review is completely erroneous and an error apparent on the face of record on the basis of two grounds, firstly, the Commission failed to examine the fact that all the reserves of TPC were not exhausted and some of the reserves still existed with TPC. Secondly, Hon'ble the Supreme Court issued a Clarificatory Order dated 20 August, 2019 in the Judgment dated 2 May, 2019 passed in Civil Appeal No. 415 of 2007, whereby Hon'ble the Supreme Court categorically restricted TPC from passing on the liability of Stand-by Charges to the consumers.
- 9.9 The Commission, vide its Order dated 11 June, 2004 passed in Case No. 30 of 2003, apportioned the existing reserves of TPC such as Tariff and Dividend Control Reserve, Debt Redemption Reserve, Deferred Tax Liability, Consumer Benefit Account and Contingency Reserve (circumstances beyond management control), for meeting shortfall in the income of TPC arising due to the refund to be given to the then BSES. Further, the Commission, vide its Order dated 03 October, 2006 passed in Case Nos. 12 and 56 of 2005, exhausted the remaining balance in Debt Redemption Reserve, TDCR and Consumer Benefit Account, and further stated that while these Reserves are being exhausted, Contingency Reserves would be built up again as per the Tariff Regulations.
- 9.10 AEML-D was a beneficiary of TPC-G till 2011 and by virtue of the said fact, AEML-D has itself contributed to creation of all these reserves of TPC qua tariff, including the "Investment Allowance Reserve" and "Special Appropriation Reserve towards Project Cost". Therefore, in such case where any financial liability arises for TPC, concerned with the period when AEML-D was its beneficiary, the amounts lying in

these reserves ought to have been utilized to meet such liability, as they have been created out of the tariff contribution by the beneficiaries only.

- 9.11 Also, as per the repealed Schedule VI of the Electricity (Supply) Act, 1948, TPC created Development Reserve (which was merged later with the Investment Allowance Reserve) and the “Special Appropriations towards project cost”, which were permitted by the Govt. of Maharashtra, from the electricity Tariff it charged its beneficiaries.
- 9.12 Even if Special Appropriations and Development Reserve were not to be considered, as there was still a Debt Redemption Obligation Reserve of Rs. 37 Crore prevailing even on the date of the Order in Case No. 30 of 2003, which would certainly have been adjusted by the Commission, if it had worked out the refund as Rs. 354 Crore.
- 9.13 The Hon'ble Supreme Court, in its Judgment dated 2 May, 2019, categorically observed that determination made by the APTEL in its Order dated 20 December, 2006 has been acted upon and corresponding liability has been factored into Tariff, which has been passed on to the consumers and realised from them, since there was no interim stay on implementation of the Order. Also, Hon'ble the Supreme Court vide its Clarification Order dated 20 August, 2019 issued in Miscellaneous Application No. 1404 of 2019 filed in Civil Appeal No. 415 of 2007 prohibited TPC from seeking any additional recovery from consumers.
- 9.14 AEML-D has requested that the Commission may adjust the existing reserves of TPC, against the said amount, as these reserves are built out of tariff charged to beneficiaries and hence, they must be used to shield the beneficiaries from such liabilities of the past.
- 9.15 AEML-D has requested to reverse the total impact of Stand-by charges payment of Rs. 36.52 crores (Rs 35.53 crore+ Rs 0.99 Crore carrying cost) and provide consequential relief in Tariff.
- 9.16 AEML-D in its additional submission dated 13 July 2020 reiterated the submission made in the Petition and stated as below:
- 9.16.1 The finding of the Commission mandating recovery of Stand-by Charges from AEML-D, which is a “consumer” of TPC, is virtually in the nature of being contempt of the Hon'ble Supreme Court. The said observation has resulted in artificially inflating the Aggregate Revenue Requirement (ARR) of AEML-D, thereby resulting in a tariff shock for the retail consumers.
- 9.16.2 During the course of hearing held on 9 July, 2020, the Commission observed that TPC-G could have been made a Respondent in the present review proceedings, since, in the issue relating to Stand-by Charges, if relief is to be granted to AEML-D, then certain observations made in the TPC-G MYT Order dated 30 March, 2020, in Case

No. 300 of 2019, would also be required to be modified. In this context, AEML-D submitted that the scope of review proceedings is limited, to the extent that a review cannot at all be made broader than the Original proceedings. In this context, reference is made to the Judgment of the *Hon'ble Supreme Court in Union of India v. Paul Manickam, reported in (2003) 8 SCC 342* wherein it is stated that, introducing a new respondent in a review proceeding, which would result in bringing issues, which were not there when the original Order was passed, is not at all permitted.

9.16.3 The present review proceedings have been initiated by AEML-D against the Order dated 30 March, 2020 passed in Case No. 325 of 2019. In the proceedings pertaining to Case No. 325 of 2019, TPC-G was not a party, and as such, there was no legal requirement to make TPC-G a party in the review. In the event, TPC-G would have been a party respondent in Case No. 325 of 2019, then only AEML-D would have been legally required to make TPC-G a party. Hence, the review filed by AEML-D, in its present form, qua the issue of Stand-by Charges, is fully maintainable.

9.16.4 The MYT Order passed by the Commission for TPC-G in Case No. 300 of 2019, on the issue of passing on the liability of Stand-by Charges on to the consumers, being against the Clarificatory Judgment issued by the Hon'ble Supreme Court, can always be revised or modified, by even undertaking *suo-motu* proceedings under Regulation 15 of the MERC (Conduct of Business) Regulations, 2004, for the purpose of correcting an Order. The above procedure is consequential to the Commission granting relief to AEML-D on merits in the present review, qua the issue of Stand-by Charges.

Commission's Analysis and Ruling

9.17 The amount of Stand-by Charges payable by AEML-D to TPC-G as mentioned in AEML-D's MYT Order has been computed in the Commission's MYT Order in Case No. 300 of 2019 for TPC-G. All the contentions made by AEML-D in its Review Petition are against the Commission's rulings on merits of the issues examined in the above-said MYT Order of TPC-G. Therefore, the issue raised by AEML-D about Stand-by Charges actually relate to the review of the MYT Order in Case No. 300 of 2019.

9.18 The Commission, in its MYT Order for TPC-G in Case No. 300 of 2019 has dealt with the issue in detail and also addressed the submissions of AEML-D in that Petition. The Commission has concluded that no reserves are available with TPC for the period from FY 1999-00 to FY 2003-04 for which the additional amount of Stand-by Charges is to be borne by TPC.

9.19 AEML-D could well have submitted the Clarificatory Order of the Hon'ble Supreme Court passed in August 2019 during the proceedings on TPC-G's MYT Petition in January 2020 or could have included in its suggestions and objections on that Petition.

- 9.20 AEML-D has submitted that it is not required to make TPC-G a respondent in the Review matter, as TPC-G was not a Party in the original MYT Petition of AEML-D. However, AEML-D has not submitted how the Commission can undertake a review of the TPC-G MYT Order through a review filed on AEML-D MYT Order. The Commission does not find merit in this contention as AEML-D is expecting review of another Licensee's Order, without offering it the opportunity to express its views on the points made against its Order. This is against the Principles of Natural Justice and cannot be accepted.
- 9.21 The Commission conducted the hearing on TPC-G's Review Petition on 12 June 2020 and AEML-D was well aware of the same. The Commission has issued the Order on TPC-G's Review Petition on 27 June 2020. If AEML-D was really agitated with the findings of the Commission in the TPC-G MYT Order, instead of seeking review on this issue on its MYT Order, it could have separately filed a Review Petition on TPC-G's MYT Order, as it has filed on TPC-D's MYT Order, in Case No. 98 of 2020.
- 9.22 In view of the above, the Clarificatory Order of Hon'ble the Supreme Court cannot be considered under "*discovery of new and important matter or evidence*" under the Review Petition. Neither is this a case of "*error apparent on the face of the record*". The Commission has made a conscious decision to recover the Stand-by Charges of TPC-G from all the beneficiaries (BEST, AEML-D and TPC-D) after considering the Judgment dated May 02, 2019 of Hon'ble the Supreme Court and AEML-D's contentions in this regard. The issue of levy of Stand-by Charges raised by AEML-D in its Review Petition is an appeal in disguise against the MYT Order of TPC-G. The scope of review is very limited, and the contentions of AEML-D in this regard do not satisfy the criteria specified for review of the AEML-D MYT Order. Also, the Commission is not aware if any appeal has been preferred by AEML-D against the MYT order (covering this point) of TPC-D. Hence while ruling that the Review is not admissible on this issue, considering AEML's contention that said Order of the Commission is causing contempt of clarificatory Order of the Hon'ble Supreme Court, the Commission grants liberty to AEML-D to file a separate petition as per the provisions of the Conduct of Business regulations, by placing all the facts supporting its contention and by making all the concerned, as party(ies) in that petition.

10. ISSUE II: - Erroneous allowance of lower amount of Cumulative Surplus to AEML-D, than that allowed to AEML-G till FY 2020-21

AEML-D's Submission

- 10.1 The Commission vide its MYT Order dated 30 March 2020 for Adani Electric Mumbai Limited (Generation) (AEML-G) passed in Case No. 298 of 2019, determined the cumulative Revenue Surplus as Rs. 97.69 Crore to be recovered in FY 2020-21.

- 10.2 The Commission has erroneously considered lower cumulative Revenue Surplus of Rs. 91.96 Crore from AEML-G for FY 2020-21 in the MYT Order of AEML-D.
- 10.3 It is not merely a typographical error in either Order, but is an error apparent, which has a potential of reducing the ARR and tariff of AEML-D for FY 2020-21 to the extent of Rs. 5.73 Crore (plus holding cost).
- 10.4 AEML-D has requested to give effect to the computational error in this review Petition itself using the inherent powers of the Commission under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004, which may result in taking away the benefit of providing cheaper power to the consumers at large.
- 10.5 AEML-D in its additional submission dated 13 July 2020 reiterated the submission made in the review Petition.

Commission's Analysis and Ruling

- 10.6 Upon verification of the Financial Model underlying the impugned MYT Order, it is observed that the Commission has considered lower cumulative Revenue Surplus of Rs 91.96 Crore in AEML-D's MYT Order as against the Revenue Surplus of Rs 97.69 Crore approved in AEML-G's MYT Order in Case No. 298 of 2019 dated 30 March, 2020. Therefore, there is an error apparent on the face of the record. Review is allowed on this issue.
- 10.7 This error has led to Rs. 5.73 crore rendered surplus with AEML instead of passing it on to consumers. The said amount will be adjusted at the time of Mid Term Review (MTR) proceedings. In the Meantime, as this surplus amount is pertaining to power purchase expenses, the Commission directs AEML-D to separately maintain this amount under FAC stabilisation fund which has been created under impugned MYT Order for providing Tariff stability to the consumers.

11. ISSUE III: -Erroneous consideration of Fixed and Variable Charges of AEML-G allowed to AEML-D for the Control Period from FY 2020-21 to FY 2024-25

AEML-D's Submission

- 11.1 The Commission has erroneously considered higher Fixed Charges and Variable Charges in the power purchase cost approved for AEML-D for FY 2020-21 to FY 2024-25 than that allowed to AEML-G in its MYT Order dated 30 March, 2020 passed in Case No. 298 of 2019 . The additional amounts that have been considered by the Commission while determining the ARR of AEML-D from FY 2020-21 to FY 2024-25 due to this error, are as below:

Particulars (Rs. Cr)	FY 21		FY 22		FY 23		FY 24		FY 25	
	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D

Particulars (Rs. Cr)	FY 21		FY 22		FY 23		FY 24		FY 25	
	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D	AEML-G	AEML-D
Fixed charges	312.99	313.81	326.03	326.87	337.11	337.97	340.48	341.37	351.61	352.53
Variable Cost	1403	1415	1445	1457	1488	1501	1537	1550	1578	1591
Variable charge (Rs./kWh)	3.76	3.79	3.87	3.90	3.99	4.02	4.11	4.14	4.23	4.26
Total Cost	1716	1729	1771	1784	1825	1839	1877	1891	1930	1944
Difference		12.53		12.92		13.56		14.07		14.30

11.2 AEML-D has requested to give effect of the error in this review Petition itself using the inherent powers of the Commission under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004, to pass on the benefit to the consumers.

11.3 AEML-D in its additional submission dated 13 July 2020 has reiterated the submission made in the Petition.

Commission's Analysis and Ruling

11.4 Upon verification of the Financial Model underlying the impugned MYT Order, it is observed that the Commission has considered different Fixed Charges and Variable Charges against that approved in AEML-G's MYT Order in Case No. 298 of 2019 dated 30 March 2020. Therefore, there is an error apparent on the face of the record. Review is allowed on this issue.

11.5 The impact of review is as follows:

Particulars	FY 2020-21		FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25	
	As per Tariff Order	After Review	As per Tariff Order	After Review	As per Tariff Order	After Review	As per Tariff Order	After Review	As per Tariff Order	After Review
Fixed Charges (Rs. Crore)	313.81	312.99	326.87	326.03	337.97	337.11	341.37	340.48	352.53	351.61
Variable Charges (Rs. /kWh)	3.79	3.76	3.90	3.87	4.02	3.99	4.14	4.11	4.26	4.23
Power Purchase (MU)	3,733	3,733	3,733	3,733	3,733	3,733	3,744	3,744	3,733	3,733
Variable Cost (Rs. Crore)	1,415	1,403	1,457	1,445	1,501	1,488	1,550	1,537	1,591	1,578
Total Cost (Rs. Crore)	1,728.62	1,716.22	1,783.86	1,771.07	1,838.64	1,825.08	1,891.32	1,877.33	1,943.91	1,929.55
Impact (Rs. Crore)		(12.39)		(12.79)		(13.55)		(13.99)		(14.36)

11.6 The impact of above review is on the power purchase expenses of AEML-D. Regulation 10.2 of the MERC MYT Regulations, 2019, provides for pass through of

the amount due to variation in power purchase cost in the monthly bill through Fuel Adjustment Charge (FAC). Therefore, the Commission does not feel it necessary to approve any separate impact on this account at this stage.

12. ISSUE-IV:- Erroneous allowance of higher Transmission Charges payable by AEML-D from FY 2020-21 to FY 2024-25

AEML-D's Submission

- 12.1 The Commission has erroneously considered different Transmission Charges from FY 2020-21 to FY 2024-25 in the ARR approved in AEML-D's MYT Order than that approved in the Intra State transmission System (InsTS) Order dated 30 March 2020 in Case No. 327 of 2019.
- 12.2 By considering higher Transmission Charges in the Order under Review, the ARR and Tariff of AEML-D for each year of the Control Period has increased causing an unnecessary increase in the tariffs to be charged to the consumers. The said discrepancy is an error apparent on the face of the record and needs to be corrected.
- 12.3 The additional amounts that have been considered by the Commission while determining the ARR of AEML-D from FY 2020-21 to FY 2024-25, due to the above error, are shown in the Table below:

Particulars (Rs. Crore)	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
Transmission Charges for AEML-D as per InSTS Order (Case No. 327 of 2019)	472.95	477.90	482.12	485.30	483.09
Transmission Charges for AEML-D as per MYT Order (Case No. 325 of 2019)	476.65	480.59	484.83	488.14	486.30
Difference	3.70	2.69	2.71	2.84	3.21

- 12.4 AEML-D requested to give effect of the error in this review Petition itself using the inherent powers of the Commission under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004, to pass on the benefit to the consumers.
- 12.5 AEML-D in its additional submission dated 13 July 2020 reiterated the submission made in the Petition.

Commission's Analysis and Ruling

- 12.6 Upon verification of the Financial Model underlying the impugned MYT Order, it is observed that AEML-D's share of Transmission Charges approved in the InSTS MYT Order dated 30 March, 2020 in Case No. 327 of 2019 is not reflected in AEML-D's MYT Order. Therefore, there is an error apparent on the face of the record. Review is allowed on this issue.

12.7 For the reasons stated in para 14 below, AEML-D is allowed to claim this impact during upcoming MTR proceeding.

13. ISSUE V:- Erroneous allowance of lower MSLDC Charges payable by AEML-D from FY 2020-21 to FY 2024-25

AEML-D's Submission

13.1 The Commission has erroneously considered lower Maharashtra State Load Despatch Centre (MSLDC)Charges from FY 2020-21 to FY 2024-25 in the ARR approved in AEML-D's MYT Order than that approved in MSLDC Order dated 30 March 2020 in Case No. 291 of 2019.

13.2 The MSLDC Charges considered under Table 5.34 of AEML-D MYT Order matches with the MSLDC MYT Order but the MSLDC Charges considered in the ARR are lower than that approved, as shown in the following Table:

Sr. No.	Particulars (Rs. Crore)	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
1	SLDC Charges vide MYT Order in Case No 291 of 2019	2.362	2.219	2.390	2.563	2.618
2	SLDC charges Reflected in table 5.34 of AEML-D MYT Order	2.36	2.22	2.39	2.55	2.58
3	SLDC Charges considered in ARR of AEML-D MYT Order	1.65	1.82	1.97	2.12	2.16
4	Difference (1-3)	(0.712)	(0.399)	(0.42)	(0.443)	(0.458)

13.3 AEML-D has requested to give effect on this error in this review Petition itself using the inherent powers of the Commission under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004, to pass on the benefit to the consumers.

13.4 AEML-D in its additional submission dated 13 July 2020 has reiterated the submission made in the Petition.

Commission's Analysis and Ruling

13.5 Upon verification of the Financial Model underlying AEML-D's MYT Order, it is observed that SLDC Charges approved in MSLDC MYT Order in Case No. 291 of 2019dated 30 March 2020 are not reflected in AEML-D's MYT Order. Therefore, there is an error apparent on the face of the record. Review is allowed on this issue.

13.6 For the reasons stated in para 14 below, AEML-D is allowed to claim the impact of the same during upcoming MTR proceeding.

14. ISSUE VI:- Total reduction in ARR considering the effect of Issues I to V

AEML-D's Submission

14.1 AEML-D has submitted the total reduction in the ARR of AEML-D from FY 2020-21 to FY 2024-25 considering all the Issues from I to V, if the same are corrected, as shown in the Table below:

Particulars (Rs. Crore)	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
AEML-G Revenue Surplus till FY 20-21	5.73				
Power purchase cost of AEML-G	12.53	12.92	13.56	14.07	14.3
Transmission Charges	3.70	2.69	2.71	2.84	3.21
SLDC Charges	(0.712)	(0.399)	(0.420)	(0.443)	(0.458)
Stand-by Charges	36.52				
Total	57.77	15.21	15.85	16.47	17.05

14.2 The impact of the errors, is large in FY 2020-21. This issue becomes particularly important considering the present financial hardships of consumers in view of COVID-19 pandemic. In view of the above, AEML-D has requested the Commission to allow passing on the benefit arising out of this review to consumers immediately by relaxing the provisions of the aforesaid Regulation 10.10 of MYT Regulations, 2019.

14.3 Instead of keeping the impact confined to FY 2020-21 alone, it may be spread over the first three years of the Control Period, i.e., FY 2020-21 to FY 2022-23, so that the tariff impact till the Mid-Term Review, is uniform and FY 2023-24 and FY 2024-25 tariff may undergo changes based on the MTR Petition.

14.4 AEML-D has proposed that the amounts as may be approved pertaining to the Issues I to V under the instant Review Petition, may be passed on as a separate tariff adjustment factor along with FAC and allocated over consumer categories using the “K” factor ($K = ABR/ACoS$), for each year from FY2020-21 to FY 2022-23, as used for allocation of average FAC over categories.

Commission's Analysis and Ruling

14.5 The Commission notes that out of total financial impact claimed by AEML-D, issue of standby-charges and non-consideration of correct values from AEML-G MYT Order form major part. As ruled in earlier part of this review Order, the Commission has rejected review sought on stand-by charges. Impact of reflecting correct values from AEML-G has been accepted as error but no separate impact is allowed as same is entitled to pass though under existing FAC mechanism. Further, difference in AEML-G surplus is directed to be used for FAC stabilization fund. Hence, only impact remains to be factored in is impact of Transmission Charges and SLDC fees, net of which is not more than Rs 3 crore per annum as against AEML-D's average ARR of Rs 6800 crore.

- 14.6 There is no merit in revising complete Tariff structure for such small amount beside the fact that on the same principles, the Commission in recent past has consistently adopted practice of adjusting impact of review Order in next Tariff determination process. The Commission notes that AEML-D has also made such request of revising Tariff on account of review Order in Petition filed for review of TPC-D's MYT Order. The Commission vide its Order dated 1 July 2020 has not considered such request by giving following reasons:

“16.14 The Commission does not agree with AEML-D's contention that tariff which is made applicable from 1 April 2020 should not be treated as first revision in tariff for FY 2020-21 and based on review allowed in the Petition, the Commission can revise tariff which would satisfy requirement of Section 62 (4) of the EA that tariff shall not be revised more than once in any financial year. Accepting such contention means the Commission can revise tariff twice in any financial year i.e. on 1 April 2020 and subsequently on any date in that financial year. This is not the intent of the EA when it stipulates that no tariff shall normally be revised more than once in any financial year. Hence, the Commission rejects this contention of AEML-D.

16.15 Further, Distribution Tariff takes input from Generation and Transmission Orders. Transmission Order in Maharashtra is prepared based on Tariff Orders of multiple Transmission Licensees operating in the State. Each of these Generating Company or Transmission Licensee may approach the Commission at different point of time for revision in their respective Tariff Order which if allowed would have impact on Order of Distribution Licensee. If process of allowing immediate recovery of review order is adopted, then tariff of Distribution Licensees would require amendment on multiple occasions to include the impact of review allowed to Generating companies, Transmission Licensees and also the Distribution Licensees. This cannot be permitted under Section 62 (4) of the Electricity Act, 2003. Therefore, this Commission has adopted the practice of deferring the impact of review Order till next tariff determination process by allowing corresponding carrying/holding cost. This practice is being uniformly adopted for all the generating companies and licensees in the State including AEML-D.”

- 14.7 Above Order is squarely applicable to the present matter as well. Accordingly, AEML-D's request for allowing impact of this Review Order immediately by revising Tariff or through other appropriate method is rejected, except for variation in power purchase cost. AEML-D may claim impact of other issues in upcoming MTR proceedings.

Part B

- 15. ISSUE VII:- Wrongful consideration of lower rate of interest of 10.36% in place of 10.51% while computing the amount of Interest on loan for FY 2017-18**

AEML-D's Submission

- 15.1 The Commission while truing-up the Interest on Loan for FY 2017-18 has erroneously considered the interest rate as 10.36% instead of 10.51%.
- 15.2 Till FY 2017-18, the ownership of Mumbai Distribution Business was with RInfra. No new borrowing was made for capital expenditure in the Distribution Division of RInfra in FY 2017-18 and all capital expenditure was funded through internal accruals.
- 15.3 Accordingly, AEML-D has considered 70% of capitalization (net of Consumer Contribution during FY 2017-18) as normative debt for calculation of interest expenses. The weighted average interest rate claimed for FY 2017-18, based on the actual interest paid on the term loan and NCDs of erstwhile RInfra-D, was 10.51%.
- 15.4 AEML-D had claimed the interest expenses of Rs. 159.14 Crore and Rs. 9.31 Crore for the Wires Business and Supply Business, respectively, for FY 2017-18. It has claimed the interest on loan for FY 2017-18 as per Regulation 29 of the MERC MYT Regulations, 2015.
- 15.5 The Commission, while approving the interest cost, has changed the interest rate from 10.51% to 10.36% without any explanation. Therefore, there is an error apparent on the face of the record warranting exercise of review jurisdiction. AEML-D requested the Commission to consider the interest rate as 10.51%.
- 15.6 AEML-D in its additional submission dated 13 July 2020 has reiterated the submission made in the Petition.

Commission's Analysis and Ruling

- 15.7 During the MYT proceedings, the Commission had asked AEML-D to submit documentary evidence for the opening balance and the actual interest rates for all outstanding loans as on 1 April 2017 and 1 April 2018. AEML-D had submitted bank certificate of Term Loan of Central Bank of India (CBI) and certificate of the outstanding balance of NCDs as on 1 April 2017 and 1 April 2018.
- 15.8 The Commission had accordingly worked out the weighted average interest rate for loans outstanding as on 1 April 2017 based on the bank certificates submitted by AEML-D. The computation of weighted average interest rate approved for FY 2017-18 is shown in the Table below:

Particulars / (Rs. Crore)	Opening FY 2017-18	Closing FY 2017-18	Interest Rate (%)
Term Loan - Central Bank of India	224.47	209.39	9.65%

Particulars / (Rs. Crore)	Opening FY 2017-18	Closing FY 2017-18	Interest Rate (%)
NCDs:			
1000 Cr (LIC, NACIL, Yes Bank)			
Series 5	585.00	585.00	10.50%
Series 6	16.66	0.00	10.25%
Series 8,9 & 10	124.00	0.00	11.15%
500 Cr (IDBI)			
Series 11A, 11C, 12A, 12D, 13B & 14	318.70	318.70	10.00%
Series 11B, 11D, 12B, 12C, & 13A	131.30	131.30	9.80%
Series 16	25.00	25.00	10.20%
Series 17	25.00	25.00	10.20%
250 Cr (Axis)			
Series 18	200.00	200.00	11.50%
Series 19	50.00	50.00	10.25%
Total	1,700.13	1,544.39	10.36%

15.9 As seen from the above Table, the weighted average interest rate for FY 2017-18 works out to 10.36%, and accordingly, interest expense has been approved for FY 2017-18 by the Commission in the MYT Order of AEML-D. However, the Commission notes that simply computing weighted average of interest rates applicable for different loan portfolio without considering actual loan drawal / repayment and interest paid during the year is not correct. Hence, this is error apparent. The Commission allows review on this issue.

15.10 The Commission notes that it has already allowed interest expenses at rate of 10.36% and now with review allowed as above, same needs to be allowed at rate of 10.51%. This has impact of allowing an additional amount of Rs. 2.37 crore as interest on long term loan. However, such change would also have impact on other components of ARR such as Income Tax. Hence, as stated in para 14 above, AEML-D is allowed to claim this amount alongwith the net impact and with carrying cost in upcoming MTR proceedings.

16. ISSUE VIII:- Consideration of actual Interest on Working Capital (IoWC) for FY 2017-18 and FY 2018-19 as "Nil" and consideration of difference between Normative Interest on Working Capital and "Nil" actual Interest on Working Capital as Efficiency Gains

AEML-D's Submission

16.1 The Commission has considered the actual IoWC for FY 2017-18 as "NIL" and has considered the difference between Normative IoWC and "Nil" actual IoWC as Efficiency Gains as the same was inadvertently not provided by AEML-D at the relevant point in time.

- 16.2 In the MTR Order dated 12 September 2018, the Commission had held that the provisions of MYT Regulations, 2015 are clear on this matter, and the Licensee has to submit documentary evidence of having actually incurred IoWC. Therefore, the Commission did not agree with RInfra's contention that actual IoWC means the working capital determined by replacing the components of working capital formula as specified in the MERC MYT Regulations, 2015 with actual components and applying the interest rate as specified in the MERC MYT Regulations, 2015. The Commission rejected the issue again in MTR Review Order in Case No. 317 of 2018. AEML-D has preferred an appeal (Appeal No. 106 of 2019) before APTEL agitating this issue, and the same is pending for hearing/decision.
- 16.3 In line with the similar approach adopted in the MTR Order dated 12 September 2018, the Commission passed the MYT Order and has considered the actual IoWC as zero and considered total normative IoWC as Rs. 34.62 Crore. Further, the Commission has calculated the efficiency gains on the entire amount and has allowed 1/3rd of the total efficiency gains, i.e., Rs. 11.54 Crore as the net entitlement.
- 16.4 AEML-D has submitted that the documents for demonstrating the actual IoWC were inadvertently not produced at the time of MYT Petition. AEML-D has recently acquired the concerned Distribution Business and the financial modalities are being assessed.
- 16.5 As per the documents submitted, IoWC for the Distribution Business is Rs. 88.77 Crore and Rs. 45.60 Crore for FY 2017-18 and FY 2018-19, respectively. Therefore, for calculating the sharing of Efficiency Gains for FY 2017-18, actual IoWC should be considered as Rs. 88.77 Crore instead of NIL. In view of the actual IoWC being more than the normative IoWC, the efficiency gains (loss in this case) need to be shared in the ratio of 2:1 in favour of the RInfra as per the MERC MYT Regulations 2015.
- 16.6 AEML-D has requested to consider the same for review. In support of its contentions, AEML-D stated that Review Petition would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some inadvertent mistake or for any other sufficient reason. In this regard, AEML-D has relied upon the following Judgements as case laws:

In ***Board of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.***, [2005] 4 SCC 74, the Hon'ble Supreme Court observed as under: -

“Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason”.

In State *of Maharashtra vs. Ramdas Shrinivas Nayak*, AIR [1982] SC 1249, the Hon'ble Supreme Court held that: -

"If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error."

- 16.7 In *TNEB v. TNERC, 2009 ELR (APTEL) 412*, the Hon'ble Appellate Tribunal for Electricity (APTEL) held that the Order can be said to be suffering from apparent error if sufficient opportunity is not given to the Appellant to represent its case. This ground can be covered under third ground namely "any other sufficient reason". The Hon'ble Supreme Court also said that justice is a virtue that transcends all barriers and rules or procedures or technicalities of law cannot stand in the way of administration of justice.
- 16.8 AEML-D in its additional submission dated 13 July, 2020 has stated as follows:
- 16.8.1 RInfra, at the relevant point in time, had availed financial assistance/lending at the entity level and had also incurred the expenditure towards the IoWC as an integrated entity. The action of RInfra was purely a business decision and at no point in time the same violated any specific provision of the Regulations framed by the Commission.
- 16.8.2 The said loan management was carried out with respect to the integrated entity as a whole, as opposed to separate verticals of its Business, i.e., Generation, Transmission and Distribution. The above is clear from the Audited Accounts of RInfra.
- 16.8.3 However, the MERC MYT Regulations, 2015 provide for submission of documentary evidence for claiming IoWC. In the absence of segment-wise books of accounts of RInfra, the documentary evidence could not be placed on record at the relevant point in time before the Commission when the MTR Order as well as the MYT Order was passed by the Commission. No scientific method existed at the relevant point in time, which would enable RInfra to segregate IoWC, which would be approved by the Statutory Auditors appointed by RInfra under Companies Act, 2013.
- 16.8.4 Therefore, the Commission never acknowledged or accepted that any working capital was drawn by RInfra for Distribution, Generation and Transmission segments and interest cost was paid by RInfra to the working capital lenders. In view of the same, the Commission considered actual IoWC as zero in FY 2016-17 and the issue is pending before APTEL in Appeal. No. 105, 106 & 442 of 2019.
- 16.8.5 In the present MYT Petition (For FY 2017-18 and FY 2018-19), AEML-D followed the Commission's methodology to share efficiency gains by considering actual IoWC as zero as the breakup was not available at that point of time. The Commission also

followed the same approach in line with the approach adopted in the previous MTR Order dated 12 September 2018.

16.8.6 Subsequently, RInfra, after much deliberation, discovered that the Working Capital drawn, and corresponding interest expenditure can be individually attributable to Distribution, Generation and Transmission segments by usage of Drawing Power Reports submitted by RInfra to its lenders on a monthly basis. The above said discovery was made on the basis of the applicable MERC Tariff Regulations, 2015 and the Accounting Standards based on segment-wise and month-wise Stock Statement/ Drawing Power statements furnished to lenders, which were acknowledged/accepted by working capital lenders in order to allow RInfra to draw the working capital to meet the requirement of business/operations.

16.8.7 AEML-D, in its Review Petition, has submitted the Business Division-wise breakup of Drawing Power, Business Division-wise percentage share of the Drawing Power, corresponding working capital drawn for FY 2017-18 and FY 2018-19 along with the Statutory Auditors certificate.

16.8.8 The consortium of banks led by Canara Bank have accorded Cash Credit Facilities to RInfra separately for each business, viz., Generation, Transmission, Distribution, etc., and accorded Business-wise Drawing Power after retaining certain margin out of the sanctioned drawing power. The approach proposed by AEML-D to provide documentary evidence to the Commission has subsequently been accepted by the Statutory Auditors, who vide certificate dated 20 May, 2020, have computed the IoWC for all three Divisions for FY 2017-18 and FY 2018-19 (up to 28 August, 2018).

16.8.9 The Statutory Auditor Certificate dated 20 May, 2020 qualifies as Material Evidence, which was not in the possession of the Party when the Impugned Order was passed and warrants exercise of Review Jurisdiction. AEML-D has placed reliance of Hon'ble Supreme Court in the case of *State of West Bengal vs. Kamal Sengupta & Anr.* [(2008) 8 SCC 612].

16.8.10 From the perusal of the above quoted Judgment, the following legal position emerges:

- (a) When review of an order is sought based on discovery of new matter or evidence then:
 - (i) Such evidence must be relevant;
 - (ii) Such evidence must be of such a character that if the same had been produced, it might have altered the Judgment.
- (b) The party seeking review must depict that the additional evidence was not within its knowledge and even after the exercise of due diligence.

16.8.11 Evidence provided by AEML-D fulfils the mandatory requirement of furnishing documentary evidence vis-à-vis IoWC. Therefore, the evidence now discovered by and furnished before the Commission is of a character that if the same had been produced, it would have altered the decision of the Commission vis-à-vis IoWC.

Moreover, the data and certificates produced on record were discovered subsequently and were not within the knowledge of AEML-D. Therefore, the present case is a fit case for review wherein the Commission may consider the actual IoWC for calculating the sharing of Efficiency Gains for Distribution for FY 2017-18 as Rs. 88.77 Cr and for FY 2018-19 as Rs. 45.60 Crore instead of NIL.

Commission's Analysis and Ruling

16.9 The contention of AEML-D is that the Commission, while truing up for FY 2017-18 and FY 2018-19 in the MYT Order, has considered the actual IoWC as zero and has treated entire normative IoWC as Efficiency Gain. Hence, the amount receivable by AEML-D towards IoWC after sharing of Efficiency Gain is reduced accordingly.

16.10 As per Regulation 31.6 of MERC MYT Regulations, 2015 (which governs the truing up for FY 2017-18 and FY 2018-19), the sharing of Efficiency Gains/Losses needs to be computed based on actual IoWC substantiated by documentary evidence. The relevant extract of the Regulation is provided below:

“31.6 For the purpose of Truing-up for each year, the variation between the normative interest on working capital computed at the time of Truing-up and the actual interest on working capital incurred by the Generating Company or Licensee or MSLDC, substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss, as the case may be, on account of controllable factors, and shared between it and the respective Beneficiary or consumer as the case may be, in accordance with Regulation 11 :

Provided that the contribution of delay in receipt of payment to the actual interest on working capital shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be.”(emphasis added)

16.11 AEML-D, in its MYT Petition, had submitted the actual IoWC as Nil for FY 2017-18. For FY 2018-19, for the period of RInfra, actual IoWC was submitted as Nil and for the period after taking over by AEML, AEML-D had submitted details of actual IoWC with supporting documents and had accordingly claimed the net entitlement and sharing of gains on account of IoWC as follows:

Table Error! No text of specified style in document.-1: Sharing of Gain/Loss on Interest on Working Capital for FY 2017-18 as submitted by AEML-D (Rs. Crore)

Particulars	Wires	Supply	Total
Normative IoWC	31.73	3.85	35.58
Actual IoWC	0	0	0
Net Entitlement	10.58	1.28	11.86

Table Error! No text of specified style in document.-2: Sharing of Gain/Loss on Interest on Working Capital for FY 2018-19 as submitted by AEML-D (Rs. Crore)

Particulars	Wires	Supply	Total
-------------	-------	--------	-------

Particulars	Wires	Supply	Total
Normative IoWC	31.79	10.42	42.21
Actual IoWC	16.06	5.26	21.32
Net Entitlement	21.30	6.98	63.53

- 16.12 In the MYT Order, the Commission has computed the sharing of gains/(losses) on account of IoWC for FY 2017-18 and FY 2018-19 based on the above submissions of AEML-D, in accordance with the MERC MYT Regulations, 2015.
- 16.13 The Commission notes that AEML-D, contrary to its earlier submission, has now submitted in the Review Petition that the consortium of Banks led by Canara Bank have accorded Cash Credit facilities to RInfra separately for each business, viz., Generation, Transmission, Distribution, etc., and accorded business-wise drawing power after retaining certain margin out of the sanctioned drawing power. The Certificates mention that utilization of working capital loan and actual IoWC is allocated in the ratio of Working Capital Drawing Power of each business. Accordingly, from the certificates, it is clear that actual IoWC amount claimed by AEML-D as per Auditor's certificates is not based on the actual Working Capital utilized for Distribution Business, and hence, does not represent actual usage. Therefore, the documents submitted by AEML-D in support of the claim require due diligence. Also, AEML-D has preferred Appeal No. 106 of 2018 in APTEL against this issue in earlier MTR Order, which is sub-judice.
- 16.14 The Commission in the MTR Order in Case No. 200 of 2017 has considered actual IoWC as NIL for FY 2016-17 as AEML-D at that time had not substantiated its claim with documentary evidence, as required under the MERC MYT Regulations, 2015. Therefore, AEML-D was well aware that if the documents are not provided in MYT proceedings, the Commission as per the MERC MYT Regulations, 2015 will consider the actual IoWC as NIL for FY 2017-18. Further, for the part period of FY 2018-19 pertains to post takeover by AEML, AEML-D has duly submitted documentary proof for actual working capital which has also been considered by the Commission in MYT Order. Hence, AEML-D was aware of implication of non-submission of documentary proof for actual Working Capital.
- 16.15 Further, the contention of AEML-D that it has inadvertently not submitted the documents at the time of MYT Petition as AEML-D had recently acquired the concerned Distribution Business and the financial modalities were being assessed, cannot be accepted, as the transaction of takeover of the Distribution Business was effected in August 2018, and the MYT Order was issued in March 2020, i.e., 18 months after such date. Also having experience of MTR Order, AEML-D should have started the activities for segregating well before the MYT Proceedings to avoid the disallowance.

- 16.16 It is not the case that the Commission had carried out its own analysis based on the available information and disallowed cost without considering the information/data submitted by AEML-D. AEML-D was given sufficient opportunity to provide necessary details and based on the submission of AEML-D, the Commission has considered actual IoWC as NIL in line with the provisions of the MERC MYT Regulations, 2015.
- 16.17 Further, the Auditor's Certificates submitted by AEML-D for FY 2017-18 and FY 2018-19 are dated 20 May 2020. AEML-D has filed the Review Petition on 24 June 2020. Hence, sequence of events show that the Auditor's Certificates have been obtained to file the Review Petition, which seems an afterthought. For these documents to qualify as relevant new and important matter or evidence, they should have existed at that point of time, while at the same time not being in AEML-D's knowledge. These documents clearly did not exist at the time of issuance of the MYT Order. Hence, Auditor's Certificates cannot be treated as the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within AEML-D's knowledge or could not be produced by AEML-D at the time of proceedings in the Impugned Order, to accept the Review of the Impugned Order as claimed by AEML-D.
- 16.18 The Judgments of Hon'ble Supreme Court and APTEL cited by AEML-D essentially state that the review is maintainable if there is an error of facts in the impugned Order or there is new evidence /fact, or if proper opportunity was not given to the Appellant in the main proceedings. These Judgments are not applicable in the present review, as the MYT Order is squarely based on the submissions made by AEML-D at that point in time and proper opportunity had also been given to AEML-D for submission of data during MYT proceeding. In any case, the scope of review application is limited and the same is recited also in the Judgment cited by AEML-D.
- 16.19 AEML-D, on the one hand has stated that it has not submitted the information of actual IoWC to the Commission and on other hand, it is stating that the Commission has erred in considering the actual IoWC as NIL while calculating the efficiency gain/loss, which is a self-contradictory submission and is not tenable.
- 16.20 There is no error apparent on the face of the record. Therefore, the Commission is not inclined to accept the review on this issue.

17. ISSUE IX:- Consideration of "Other Allowance" under Employee Expenses in O&M expenses for FY 2017-18

AEML-D's Submission

- 17.1 AEML-D, in the MYT Petition had submitted actual O&M expenses based on audited accounts for FY 2017-18 and had also requested for sharing of efficiency

gains/(Losses) thereon considering the normative O&M expenses as per Regulations 72.2 and 72.3 of the MERC MYT (First Amendment) Regulations, 2017.

- 17.2 The Commission had verified the actual O&M expenses submitted by AEML-D for FY 2017-18 in line with the audited accounts for the respective year and reconciliation statement of regulated businesses submitted by AEML-D and sought justification for O&M expenses under the head “Other Allowance” for FY 2017-18. AEML-D vide letter dated 18 December, 2019, had submitted the break-up of expenses to the Commission.
- 17.3 The Commission disallowed the actual “Other Allowance” and allowed only 3.76% increase on the actual “other allowance” of FY 2016-17 on the basis that AEML-D had not provided suitable justification for the increase in “Other allowance” for FY 2017-18.
- 17.4 AEML-D, in its justification for increase in “Other Allowances” submitted in the Review Petition that it has inadvertently booked some line items in Other Expenses and submitted the revised expenses after reconfiguring the same. AEML-D has thereby reduced Other Allowances for FY 2017-18 to Rs. 122.04 Crore from Rs. 144.43 Crore maintaining net employee expenses as Rs. 705.36 Crore.
- 17.5 The Commission has erred in disallowing the actual Employee Expenses by comparing only 1 line item (Other Allowances) of the total employee expenses comprising almost 20 line items and ignoring the fact that actual employee expenses of FY 2017-18 were significantly lower than that in FY 2016-17. The Commission will observe that increase in some of the line items forming part of the “Other Allowances” has been more than offset by reduction in various other line items forming part of the employee expenses including reduction in overtime payment, bonus/ex-gratia payment, etc.
- 17.6 AEML-D has higher productivity benchmarks as compared to other Distribution Licensees such as BEST, MSEDCL, CESC and Torrent on various operational benchmarks such as number of customers/ employees, no of MU sold/employees, network management/employees, substation management/employees. Considering all these productivity benchmarks, the overall employee cost as compared to other Distribution Licensees is highly competitive.
- 17.7 AEML-D has requested the Commission to allow the “Other Allowances”, which was disallowed due to non-submission of suitable justification during the proceedings of the MYT Petition in Case No. 325 of 2019, considering the employee expenses in a composite manner instead of comparing line item-wise employee expenses.
- 17.8 AEML-D in its additional submission dated 13 July 2020 reiterated the submission made in the Petition.

Commission's Analysis and Ruling

17.9 During the MYT proceedings, the Commission has asked AEML-D to submit justification for increase in the expenses under heads "Other Allowances" and ample opportunity was given for submission of details. Despite repeated queries, AEML-D did not submit the justification.

17.10 Accordingly, the Commission in AEML-D's MYT Order, has clearly stated the reasons for not considering the "Other Allowances" as claimed by AEML-D for FY 2017-18. The relevant extracts of the MYT Order are as follows:

*"AEML-D provided the following reasons for increase in the above expenses: Other Allowances for FY 2017-18: AEML-D submitted the break-up of expenses but was not able to justify its claim. The components under Other Allowances are LTA Payments, Overtime Payments, PLI Payment, Retention allowance, Special Allowances, Shift Allowances, part of Corporate Allocation, and reversal of old provisions. **The Commission again asked AEML-D for justification, to which AEML-D replied that it has approached RInfra to seek reasons for the same however, RInfra has not responded till date. AEML-D submitted that the Commission may take an appropriate call in this matter.***

*The Commission is of the view that despite repeated queries, AEML-D has not been able to justify the steep increase in Other Allowances for FY 2017-18. Therefore, the Commission has allowed Other Allowances for FY 2017-18 after considering normative escalation of 3.76%, as arrived in this Order, on actual expenses of FY 2016-17."**(emphasis added)***

17.11 In the Review Petition, AEML-D has re-categorized the employee expenses under various heads to justify the increase in 'Other Allowance', which appears to be an afterthought, as this could have and should have been submitted at the time of MYT proceedings itself.

17.12 It is not the case that the Commission had carried out its own analysis based on the available information and disallowed cost without considering the information/data submitted by AEML-D. AEML-D was given sufficient opportunity to provide necessary details and the Commission has considered "Other Allowance" based on AEML-D's submissions, and as per MERC MYT Regulations, 2015.

17.13 There is no error apparent on the face of the record. The Review is not admissible on this issue.

18. As recorded in earlier part of the Order (para no. 10.6, 11.4, 12.6 and 13.5), the Office of Commission has not been able to identify some of the linkage errors reflected from the other Orders of Generation and Transmission in the MYT Order, on which the present review has been filed by AEML-D, and these errors have been considered under the present Review Order. Although financial impact of these linkage error is small, the utility has chosen not to

mention the linkage error beneficial to it. Hence, the Office of the Commission needs to exercise additional vigilance while undertaking detailed scrutiny of Tariff Petitions.

19. Hence, the following Order.

ORDER

- 1. Case No. 103 of 2020 is partly allowed in terms of Review of Order dated 30 March 2020 in Case No. 325 of 2019 as follows:**
 - a. Prayer regarding erroneous imposition of stand-by charges is not accepted (para no. 9.22)**
 - b. Prayer regarding correction of Cumulative surplus allowed to AEML-G in its Order in Case No. 298 of 2019 dated 30 March 2020 to AEML-D is allowed. Impact of the same shall be claimed during upcoming MTR proceeding with carrying cost. In the meantime AEML-Dis directed to maintain said surplus amount separately under FAC stabilisation fund(para no. 10.7)**
 - c. Prayer regarding correction of Fixed Charges and Variable Charges to be considered for AEML-D as approved for AEML-G for the Control Period from FY 2020-21 to FY 2024-25 is allowed. The Commission allows AEML-D to adjust the impact due to variation in power purchase cost through the FAC mechanism(para no.11.6).**
 - d. Prayer regarding correction of Transmission Charges payable by AEML-D from FY 2020-21 to FY 2024-25 to be considered as approved in the InSTS Order in Case No. 327 of 2019 dated 30 March 2020 is allowed. Impact of the same shall be claimed during upcoming MTR proceeding (para no. 12.7).**
 - e. Prayer regarding correction of MSLDC Charges payable by AEML-D from FY 2020-21 to FY 2024-25 to be considered as approved in the Order in Case No. 291 of 2019 dated 30 March 2020 is allowed. Impact of the same shall be claimed during upcoming MTR proceeding (para no. 13.6).**
 - f. Prayer regarding correcting rate of interest of 10.36% to 10.51% while computing the amount of Interest on loan for FY 2017-18 is allowed. Net impact of the same shall be claimed during upcoming MTR proceeding with carrying cost (para no. 15.10)**
 - g. Prayer regarding considering actual Interest on Working Capital based on new documents submitted during this review Petition is not considered (para no 16.20).**

- h. Prayer regarding allowing disallowed 'other allowances' under Employee Expenses for FY 2017-18 based on new information submitted during this review Petition is not considered (para no 17.13).**
- 2. Prayer of Adani Electricity Mumbai Ltd (Distribution) for allowing impact of review Order (Part A) immediately without waiting until MTR proceeding is not considered (para no 14.7).**

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M. Bohari)
Member**

