

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

**Appeal No. 105 of 2010**

**Dated 30<sup>th</sup> September, 2011**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,  
Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

Madhya Pradesh Power Generating Co. Ltd.,  
Shakti Bhawan, Vidyut Nagar, Rampur,  
Jabalpur – 482008

... **Appellant**

Versus

1. Madhya Pradesh Electricity Regulatory Commission  
4<sup>th</sup> and 5<sup>th</sup> floor, Metro Plaza,  
E-5, Area Colony,  
Bittan Market, Bhopal- 462016
2. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Vidyut Nagar, Rampur,  
Jabalpur – 482008
3. Madhya Pradesh Poorv Khsetra Vidyut  
Vitaran Company Limited,  
Block No. 7, Shakti Bhawan,  
Rampur, Jabalpur- 482008
4. Madhya Pradesh Madhya Khsetra  
Vidyut Vitaran Company Limited,  
Bijli Nagar Colony, Nishtha Parisar,  
Govindpura, Bhopal-462023
5. Madhya Pradesh Paschim Khsetra  
Vidyut Vitaran Company Limited,  
Shakti Bhawan, Block No-3, Rampur  
Jabalpur -482008

6. Madhya Pradesh Power Transmission Co. Ltd.  
Shakti Bhawan, Block No. 3, Rampur  
Jabalpur-482008
7. M.P. State Electricity Board  
Shakti Bhawan, Vidyut Nagar, Rampur  
Jabalpur-482008
8. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Jyoti Nagar, Vidyut Bhawan,  
Jaipur-302005
9. Uttar Pradesh Power Corporation Ltd.  
Shakti Bhawan, 14 Ashoka Marg,  
Lucknow-226001
10. MSEB Holding Company Limited  
G-9, Professor Anant Kanekar Marg,  
Prakahgad, Bandra (East),  
Mumbai -400055

**...Respondent(s)**

- Counsel for the Appellant(s) : Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan,  
Ms. Swapna Seshdri,  
Ms. Sneha Venkataramani  
Ms. Ranjitha Ramachandran
- Counsel for the Respondent(s) : Mr. Sanjay Sen, Ms. Shikha Ohri,  
Ms. Surbhi Sharma  
Mr. Ashok Upadhyay &  
Mr. Manish Shrivastava for MPERC
- Mr. Parveen Kr. Jain, Poorv Kshetra  
Mr. A.R. Verma, Madhya Kshetra  
Mr. Pawan Jain, Paschim Kshetra
- Mr. S. Ravi Shankar,  
Ms. Garima Goswami for Res. 2 to 5

## **JUDGMENT**

### **PER HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by Madhya Pradesh Power Generation Company Limited against the order dated 3.3.2010 passed by the Madhya Pradesh Electricity Regulatory Commission (State Commission) determining the Annual Revenue Requirements and tariff for the Multi Year Tariff Period 2009-10 to 2011-12.

2. The Appellant is a generating company constituted after the reorganisation of the MP State Electricity Board. The State Commission is the first Respondent. MP Power Trading Company Limited is the second Respondent. It is engaged in the business of bulk purchase and bulk sale of electricity in the State of Madhya Pradesh. The Respondents no. 3 to 5 are the Distribution licensees. The Respondent no. 6

is the Transmission licensee. The Respondent no. 7 is the MP State Electricity Board. The Respondents no. 8 to 10 are the beneficiaries of a portion of the electricity generated by the Appellant, which is purchased by the Respondent no. 2 and sold to the Respondents no. 8 to 10.

3. The brief facts of the case are as under:

3.1. The State Commission framed the Tariff Regulations, 2009 in regard to determination of tariff of the generating companies for generation and sale of electricity to the Trading Company, the Respondent no. 2 on behalf of the Distribution licensees for the Multi Year Tariff Period 2009-10 to 2011-12.

3.2. The Appellant filed a petition being no. 54 of 2009 before the State Commission for determination of Multi

Year generation tariff for the control period FY 2009-10 to FY 2011-12.

3.3. The State Commission vide its order dated 3.3.2010 decided the tariff petition and determined the revenue requirement and tariff of the Appellant for the Multi Year Period 2009-10 to 2011-12. In this order the State Commission did not allow some of the claims of the Appellant.

3.4. Aggrieved by the order dated 3.3.2010, the Appellant has filed this Appeal.

4. The Appellant has raised the following issues in the Appeal:

4.1. Non-consideration of capital cost based on final opening balance sheet notified by the State Government: The reorganization of the State

Electricity Board was effected by the State Government vide Transfer Scheme Rules notified on 30.9.2003. The said transfer scheme provided that the value of undertakings of the State Electricity Board transferred to the successor entities including the Appellant would be determined at a later date. Thereafter, the State Government by an order dated 31.5.2005 notified the opening balance sheet of the successor entities on a provisional basis. Thereafter, the State Government by an order dated 12.6.2008 notified the final balance sheet of the successor entities including the Appellant as on 1.6.2005. As a result, the gross block of the assets of the Appellant has undergone significant change. The State Commission instead of applying the final balance sheet for determining the return on equity and depreciation took into account the provisional balance sheet, without assigning any

reason, thus depriving the Appellant servicing of the full capital cost as per the final balance sheet.

4.2. Non-consideration of Return on Equity as per the Regulations: According to the Regulations the Return on Equity (ROE) has to be computed on pre-tax basis at the base rate of 15.5% to be grossed up with the normal tax rate applicable to the Appellant. However, the State Commission has not allowed the ROE at 15.5% contrary to the Regulations on the ground that during the previous year the Appellant did not pay any income tax. According to the Regulation, the payment of actual tax is not relevant for determining ROE.

4.3. Payment of common expenses of the MP State Electricity Board: The State Commission has not allowed the employees cost for the share of the Appellant in the employees cost of MP State Electricity

Board as per the statutory notification of the Govt. of Madhya Pradesh. The common expenses of the State Electricity Board shared between the various successor utilities are essential for the business of the Appellant and but for the above expenditure incurred by the State Electricity Board, the Appellant would have incurred substantially the same expenditure or even more.

4.4. Consequential effect on the interest on working capital: In case the Appellant succeeds in this Appeal there will be consequential effect on the interest on working capital on account of change in various elements of working capital, which may be allowed.

5. On the above issues learned counsel for the Appellant has submitted as referred to above assailing the impugned order. On the other hand, learned



counsel for the State Commission made the reply elaborately in justification of the findings of the State Commission. After considering the rival contentions of the parties and examining the documents on record, we would frame the following questions for consideration:

- i) Has the State Commission erred in determining the ROE and depreciation on the provisional capital cost instead of taking into account the capital cost based on the final balance sheet, thus denying legitimate servicing of capital cost of the Appellant?
- ii) Whether the State Commission has erred in not determining the ROE on pre-tax basis by grossing up the base rate of 15.5% with applicable tax rate in violation of the Tariff Regulations?

iii) Whether the State Commission should have allowed the proportionate share of employees cost of MP State Electricity Board appportioned to the Appellant as per the notification of the State Government?

6. Let us take up the first issue regarding capital cost as per the final balance sheet.

6.1. According to learned counsel for the Appellant the State Commission should have determined ROE and depreciation on the capital cost as per the final balance sheet and not on the basis of the provisional balance sheet.

6.2. The learned counsel for the State Commission has submitted that the State Commission had never intended not to consider the impact of final opening balance sheet. Since the final opening balance sheet

as on 1.6.2005 was notified by the State Government on 12.6.2008, all tariff components related to capital cost were required to be re-determined from FY 2005-06 onwards i.e. since the inception of the Appellant company even if the State Commission had already issued true up orders for FY 2005-06 and FY 2006-07. The State Commission has since considered the impact of final opening balance sheet in the true up order dated 24.1.2011 for FY 2007-08. In this order the State Commission has considered the capital cost as per the final opening balance sheet notified by the State Government and has allowed ROE and depreciation on the same. In this order besides impact of final opening balance sheet, the State Commission has allowed additional true-up cost for FY 2005-06 and FY 2006-07.

6.3. In view of above submissions of the learned counsel for the State Commission, the core issue does not survive. However, we direct the State Commission to revise the opening balance for the Control Period based on the final balance sheet and its order dated 24.1.2011 for true-up of financials for the current MYT Control Period 2009-10 to 2011-12 and also for the future tariff orders.

7. The second issue is regarding computation of ROE as per the Tariff Regulations.

7.1. According to the learned counsel for the Appellant the State Commission has not allowed the rate of ROE correctly and has fixed the same at 15.5% which is contrary to the Regulations.

7.2. According to learned counsel for the State Commission, since no income tax was paid by the

Appellant during the FY 2008-09 on account of losses incurred during the year, the ROE has been allowed at the base rate of 15.5%.

7.3. Let us first examine the Tariff Regulations. The relevant Regulations are reproduced below:

***“22. Return on Equity***

*22.1. Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with Regulation 21.*

*22.2. Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per Regulation 22.3 of this Regulation:*

*Provided that in case of Projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in Appendix-I :*

*Provided further that the additional return of 0.5% shall not be admissible if the Project is not*

*completed within the timeline specified above for reasons whatsoever.*

*22.3. The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the Year 2008-09 applicable to the Generating Company:*

*Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be tried up separately.*

*22.4. Rate of return on equity shall be rounded off to three decimal points and be computed as per the formula given below:*

*Rate of pre-tax return on equity = Base rate / (1-t)*

*Where t is the applicable tax rate in accordance with Regulation 22.3 of this Regulation.*

***Illustration.-***

*(i) In case of Generating Company paying Minimum Alternate Tax (MAT) @ 11.33% including surcharge and cess:*

*Rate of return on equity = 15.50/ (1-0.1133) = 17.481%*

*(ii) In case of Generating Company paying normal corporate tax @ 33.99% including surcharge and cess:*

*Rate of return on equity = 15.50/ (1-0.3399) = 23.481%”.*

Thus, the pre-tax return on equity has to be calculated by grossing up the Base Rate with the normal tax rate for the FY 2008-09 applicable to the generating company. There is no specific provision in the Regulation for allowing grossing up of the base rate of return on equity even when actual tax paid is nil on account of losses incurred by the generating company. Therefore, we have to interpret the Regulations for the present case where no income tax was paid during the FY 2008-09 due to losses incurred by the Appellant.

7.4. Let us first examine the information furnished by the Appellant before the State Commission relating to income tax paid during the previous years. According to the Appellant, the company is required to pay the tax amount which is higher of MAT or the tax as per normal Corporate Tax determined on the basis of the provisions of the Income Tax Act. Accordingly, the basis of payment of income tax vary on year to year basis, as given below:

<u>Year</u>	<u>Basis on which Income Tax Paid</u>
FY 06	Normal corporate tax
FY 07	- do -
FY 08	On the basis of MAT
FY 09	No tax was paid (loss in both the cases)



7.5. According to learned counsel for the Appellant, the Regulations allow the ROE to be adjusted by the tax rate irrespective of the actual tax paid. The concept of pre-tax ROE was introduced, as against the earlier practice of allowing only the actual tax paid to be recovered through tariff, as it was felt that the actual quantum of tax to be paid by the company ought not to be a criterion for tariff determination. This concept has also been applied by the Central Commission.

7.6. The Tariff Regulations of the State Commission provide that the State Commission will be guided by the principles and methodology specified by the Central Commission in its Tariff Regulations, 2009. The relevant Regulation 16 under Chapter-II on

Principles & Methodology for Determination of Tariff is reproduced below:

**“16. CERC’s Principles**

*16.1. The Commission, while framing these Regulations has been guided by the principles and methodologies specified by the Central Commission (CERC) in its Notification dated 19.01.2009 on terms and conditions of Tariff Regulation, 2009 effective from 1.04.2009”.*

7.7. Regulation 22 on ROE of the State Commission is a reproduction of relevant Regulation 15 of Tariff Regulations, 2009 of the Central Commission. Thus, the State Commission has adopted the Tariff Regulation of the Central Commission which provided for grossing up of the base rate with normal tax rate for FY 2008-09 applicable to the generating company.

7.8. As pointed out by learned counsel for the Appellant, the earlier practice was to allow income tax as per actuals. However, the concept of pre-tax ROE based on base rate grossed up with the normal tax rate was introduced for the first time in the 2009 Regulations.

7.9. We shall now examine the statement of Reasons dated 3.2.2009 of the Central Commission's Tariff Regulations, 2009. The relevant article 14 is reproduced below:

***“14. Pre-tax Return {Regulation 15(4)}***

*14.1 Earlier in the draft regulation, the Commission proposed to retain the post-tax return on equity and tax on the income streams of the generating company or the transmission licensee, as the case may be, from its core business excluding net UI income and incentives was allowed to be recovered from the beneficiaries, or the long term transmission customer, as the case may be.*

*14.2 The issue of allowing post-tax rate of return or pre-tax rate of return was raised in public hearing as well as written submissions. The generating companies and transmission licensees are in favor of retaining existing regulation. In other words, they are of the view that all the risks pertaining to tax on income from core business including incentive, efficiency gain, income on UI, etc should be passed on to the beneficiaries. On the other hand, beneficiaries want that income tax burden to the extent of normal return on equity should only be passed on to the beneficiaries and any proportion of income tax on account of income other than return on equity, like income accrued due to efficiency gain, incentive, UI, normative expenditure, etc should be borne by the utilities themselves.*

*14.3 Under post-tax rate of return on equity the beneficiaries are paying tax on the net income of the utilities and the tax burden is calculated by grossing up. Considering the present tax rate of*

*33.99% applicable to the company's form of business, under grossing up methodology, the tax burden becomes almost 50% of the net income of the utility. The beneficiaries are not against refunding income tax to the utilities on the admitted return on equity. The beneficiaries also do not have any objection if the utilities run their business more efficiently and thereby optimize their annual income provided no further cost on account of income tax on income other than admitted return on equity is passed on to them. From the utilities point of view, in a regulated business, the tax burden is reimbursed from the beneficiaries or the consumers on no profit and no loss basis. Consumers pay for the income tax only when it is actually levied on the utilities. In case of any refund of income tax, the same is also passed on to the beneficiaries. Under existing regulation, even the benefit of income tax holiday under section 80IA of the Income Tax Act, 1961 is passed on to the beneficiaries. This benefit of income tax holiday is available to the investors only for development of infra-structure facilities. In case, the passing on the*

*tax burden to the beneficiaries is restricted only to the return on equity component, there is no logic in passing on the benefit of income tax holiday under section 80IA of the Income Tax Act, 1961 to the beneficiaries.*

*14.4 The Commission, after considering all the views of all stakeholders is of the view that it will be appropriate to move to the system of pre-tax rate of return on equity from the existing post-tax rate of return on equity. Accordingly, the Commission has decided to allow pre-tax rate of return on equity to the utilities. The same shall be calculated by considering the applicable tax rate for the companies for the year 2008-09 as per the relevant Finance Act, as base rate. To give an example:*

*(i) In case of a generating company or transmission licensee paying Minimum Alternate Tax (MAT) @ 11.33% including surcharges and cess:*

$$\begin{aligned} \text{Rate of pre-tax return on equity} &= 15.50 / (1 - 0.1133) \\ &= 17.481\% \end{aligned}$$

*(ii) In case of a generating company or transmission licensee paying normal existing corporate tax @ 33.99% including surcharge:*

*Rate of pre-tax return on equity =  $15.50 / (1 - 0.3399)$   
= 23.481%.*

*14.5 In order to facilitate computation of pre-tax, illustrative examples on the above lines have been given in clause 4 of Regulation 15 of these regulations.*

*14.6. With this change, the beneficiaries will be required to meet the Income Tax liability limited to the equity of the project, considered for tariff purposes and not on other incomes, such as incentive, profit arising out of efficiency improvement, UI Income and the like”.*

Thus the objective of the change over to pre-tax return on equity was that the income tax liability of

the beneficiaries is limited to the equity of the project and tax on incentive, profit arising out of efficiency improvement, UI income, etc., is not included in the tariff determination. Further in the earlier system of post-tax return the beneficiaries were paying actual tax on net income and the tax burden was calculated by grossing up which resulted in effective tax at almost 50% of the net income of the generating company which has been avoided in the new system.

7.10. The illustration given in Regulation 22.4 of the State Commission's Tariff Regulations, 2009 and Regulation 15(4) of the Central Commission's Regulation, 2009 indicate that in case of the generating company or the transmission licensee paying Minimum Alternate Tax or Corporate Tax, the base ROE will be grossed up by @ 11.33% and @ 33.99% respectively. Thus, the tax has to be



actually paid under MAT or corporate tax for grossing up the base rate of 15.5%. If tax is not paid due to loss incurred by the generating company, grossing up of the base rate need not be carried out.

7.11. Conjoint reading of the Statement of reasons and the Tariff Regulations would indicate that the ROE will be at the base rate of 15.5% if no income tax is paid during the FY 2008-09 due to loss incurred by the generating company. Grossing up of the base ROE of 15.5% by the applicable tax rate has been provided for to meet the liability of income tax on ROE component of income. However, if no income tax is paid due to loss incurred by the generating company then there is no case for allowing additional ROE.

7.12. However, if during any year (s) of the Control Period from 2009-10 to 2011-12, if any amount of MAT or corporate tax becomes payable by the Appellant, the

ROE will have to be trued up by grossing up the base ROE with the rate of tax paid, according to the proviso under Regulation 22.3 of the State Commission. Accordingly, directed.

7.13. According to the learned counsel for the Appellant even if no tax is paid on account of loss incurred or by way of tax Management & Planning, ROE has to be allowed taking into account the rate of tax applicable to the Appellant. We do not agree with this contention of learned counsel for the Appellant. The present case is non levy of income tax due to loss incurred by the Appellant and is not a case of tax saving due to good planning and management. If higher ROE is allowed by grossing up the base rate by a loss making companies like the Appellant which has not paid income tax, it would amount to rewarding

inefficiency which will be contrary to sub-sections (b)(d) and (e) of Section 61 of the 2003 Act.

7.14. The learned counsel for the Appellant has relied on this Tribunal's judgment dated 23.3.2010 in Appeal no. 68 of 2009 in the matter of Torrent Power Ltd. vs. CERC. This judgment will not be of any help to the Appellant firstly because in the said matter the Tariff Regulations, 2004 were applicable which allowed post tax ROE and income tax as pass through and not Regulations, 2009 as applicable to the present case. Secondly it only allowed grossing up to ensure recovery of actual tax paid so that the generating company recovers the stipulated post tax ROE.

7.15. In view of the above, we do not find any reason to interfere with the order of the State Commission. However, we direct the State Commission to true up the ROE in case any income

tax becomes payable by the Appellant in any year (s) of the Control Period by grossing up the base rate of ROE with the applicable tax rate.

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

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

8.2. According to the learned counsel for the State Commission this issue has already been dealt with by this Tribunal in its judgment dated 21.04.2011 in Appeal no. 24 of 2009 in the matter of M.P. Power

Generation Co. Ltd. vs. MPSERC & Ors. wherein the Tribunal upheld the findings of the State Commission.

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

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

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

*“25. As correctly pointed out by the Learned Counsel for the State Commission, the MYT order dated 7.3.2006 contains detailed reasons for not allowing the common employees expenses separately by the State Commission. Admittedly, the Appellant has neither filed review petition before the State Commission nor preferred any Appeal before this Tribunal as against the*

*disallowance of said common expenses as such it has attained finality. In the true-up order dated 17.6.2009, the State Commission allowed the actual operation and maintenance expenses which is said to be more than the normative operation maintenance expenses. The particulars are given below:*

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

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

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

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

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

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

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

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

8.6. We will also examine the relevant Regulations. In this connection, the relevant Regulation 34.1 is reproduced below:

***“34. Operation and Maintenance Expenses***

*34.1. The Operation and Maintenance expenses admissible to existing thermal power stations comprise of employee cost, Repair & Maintenance*

*(R&M) cost and Administrative and General (A&G) cost . These norms exclude Pension, Terminal Benefits and Incentive to be paid to employees, taxes payable to the Government, MPSEB expenses and fees payable to MPERC. The Generating Company shall claim the taxes payable to the Government and fees to be paid to MPERC separately as actuals. The claim of pension and Terminal Benefits shall be dealt as per Regulation 26”.*

8.7. We find that the State Commission has correctly determined the operation maintenance expenses according to the Regulations. The findings of the State Commission in this regard are as under:

*“4.14. The petitioner has claimed MPERC fee, MPSEB expenses, Cess on auxiliary consumption and water charges in the petition. The petitioner is allowed to recover the fee paid by the petitioner to MPERC for determination of generation tariff, water charges and cess on usage of water for hydro stations and E.D. and cess on auxiliary power*



*consumption levied by the Statutory Authorities from the beneficiaries on pro-rata basis. The Commission has not allowed the MPSEB expenses since the erstwhile MPSEB has already been disintegrated into its successor companies and one of them has been entrusted with the responsibility of trading company i.e. MP Power Transmission Co. Ltd. The Commission has not been allowing the MPSEB common expenses in past to any of the successor entities.”*

In view of the above, we decide this issue against the Appellant.

## **9. Summary of our findings**

**9.1. The first issue is regarding capital cost as per the final balance-sheet. In view of the submissions of the State Commission to consider the impact of final opening balance sheet as on 1.6.2005 as notified by the State Government, we direct the State Commission to revise the opening balance for**

**the MYT control period based on the final balance sheet and its order dated 24.01.2011 for true up of the financials of the FY 2009-10, FY 2010-11 and FY 2011-12 and also for the future tariff orders.**

**9.2. The second issue is regarding Return on equity. In view of no specific provision in the Regulation for allowing grossing up the return on equity when the actual tax paid is nil on account of losses incurred by the generating company, we have interpreted the Regulations applicable to the present case. On a conjoint reading of the State Commission's Regulations which have been adopted from the Central Commission's Regulations and the Statement of Reasons of the Central Commission Regulations, 2009, we do not find any reason to interfere with the finding of the State Commission to allow ROE at the base rate of**

**15.5%. However, if during any year (s) of the Control Period 2009-10 to 2011-12, if MAT or corporate tax becomes payable by the Appellant, the ROE will have to be trued up by grossing up the base ROE with the rate of tax paid. Accordingly, directed.**

**9.3. The third issue is regarding sharing of apportioned charges of M.P. State Electricity Board. We find that this issue has already been decided by this Tribunal in its judgment dated 21.04.2011 in Appeal no. 24 of 2009 in the matter of M.P. Power Generation Co. Ltd. vs. MPSERC & Ors. Accordingly, this issue is decided against the Appellant.**

10. In view of above, we do not find any reason to interfere with the order of the State Commission. However, we have given some directions to the State

Commission with regard to truing up of the financials for the ensuing Control Period which shall be complied with by the State Commission. The Appeal is dismissed without any cost.

11. Pronounced in the open court on this

**30th day of September, 2011.**

**( Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

REPORTABLE / NON-REPORTABLE

VS