

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

Appeal No. 202 of 2005

Dated: 4th October, 2006

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A. A. Khan, Technical Member

IN THE MATTER OF:

Tata Power Company Ltd, Bombay House,
Homi Mody Street, Mumbai-400 001. Appellant

Versus

1. Reliance Energy Ltd, Nagin Mahal (6th Floor),
82, Veer Nariman Road, Mumbai- 400 020.
2. Maharashtra State Electricity Board,
Ali Yavar Jung Road, Prakash Gadh,
3. State of Maharashtra, Ministry of Industry,
Energy & Labour, Mantralaya, Mumbai.
4. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No. 1, World Trade Centre,
Cuffe Parade, Colaba, Mumbai-400 005.
5. Mumbai Grahak Panchayat, Grahak Bhavan,
Sant Dnyaneshwar Marg, Behind Cooper Hospital,
Vile Parle (West) Mumbai-400 056
6. Prayas 4, OM Krishna Kunj Society, Ganagote Path,
Opp. Kamla Nehru Park, Erandavane, Pune-411 006.
7. Thane-Belapur Industries Association, Plot No. P-14,
MIDC, Rebale Village, Post Ghansoli, Navi, Mumbai-71.
8. Vidarbha Industries Association, 1st Floor, Udyog
Bhavan, Civil Lines, Nagpur-440 001.

9. National Textile Corporation Ltd, NTC House,
15, N.M. Marg, Ballard Estate, Mumbai- 400 001.
10. National Textile Corporation Limited, Apollo House,
382, N.M. Joshi Marg, Chinchpokli, Mumbai-400 011.
11. Brihan Mumbai Mahanagar Palika, BEST Bhavan,
Colaba, Mumbai- 400 005.
12. The Chief Engineer (Electrical), Western Railways,
5th Floor, Churchgate Station Building, Churchgate,
Mumbai- 400 020.
13. The Chief Electrical, Engineer Central Railways,
New Parcel Office Building, C.S.T., Mumbai- 400 001.
14. The Mill Owner's Association, Elphinstone Building,
10 Veer Nariman Road, Mumbai- 400 001.
15. Bombay Small Scale Industries Association,
Madhu Compound, 2nd Floor, Sonawala Cross,
Road No. 2, Goregaon (E), Mumbai- 400 063.
16. The Central Electricity Authority, 212, Sewa Bhawan,
R.K. Puram, New Delhi- 110 066.
17. R.K. Jain, Indian Inhabitant, Member, C.E.A,
212, Sewa Bhawan, R.K. Puram, New Delhi-110 066.

...Respondents

Counsel for the appellant : Mr. Iqbal Chagla, Sr. Advocate
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Mr. Ms Anjali Chandurkar, Advocate
Mr. Syed Naqvi, Advocate
Ms Smieeta Inna, Advocate
Mr. Shyam Diwan, Advocate
Mr. Rajiv Nanda, Advocate
Ms Alpana Dhake, Advocate
Mr. Nishant Gupta, Advocate
Mr. Anand Mishra, Advocate
Mr. A. Prasad, Advocate
Ms Gargi Hazarika, Advocate
Mr. Phiroze Palkivalla, Advocate
Mr. Mukesh Tyagi, Advocate
Mr. D.J. Kakalia, Advocate
Mr. Arijit Maitra, Advocate
Mr. Saurabh Mishra, Advocate
Ms. Deepa Chavhan, Advocate
Ms. Pratibha Mehta, Advocate
Mr. Shaiwal Shrivastava, Advocate

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

I have had the advantage of going through the Judgment of my learned brother, Shri A.A. Khan, in draft. On some aspects of the matter covered by his judgment, I respectfully disagree with his opinion. I will touch upon those matters in the course of my Judgment.

2. This appeal has been filed by the appellant, the

Tata Power Company (for short ‘the TPC/TEC’) under Section 111 of the Electricity Act of 2003. The appeal arises from the order of the Maharashtra Electricity Regulatory Commission (for short ‘MERC’) dated May 31, 2004 in MERC Case No. 7 of 2000, whereby the stand-by charges payable by the first respondent herein, the Reliance Energy Ltd. (For short ‘REL/ BSES’) – (petitioner before the MERC), to the TPC were fixed and determined. The facts giving rise to the appeal briefly stated are as follows:

3. The TPC has been supplying electricity in Mumbai area for over eight decades. It not only supplies power to the domestic consumers but it also supplies power to industrial and commercial establishments including railways, refineries, ports and other various installations. It is also

- supplying power to the distribution licensees B.E.S.T. and REL. While BEST's area of operation starts from the Southern tip of Mumbai and goes up to Mahim Creak, REL's area of operation is between Mahim Creak and Vasavi Creak.
4. In the year 1962, The TPC system was interconnected with the system of Maharashtra State Electricity Board (for short 'the MSEB') to meet the shortfall of power in its license area.
 5. On March 18, 1964, an agreement was executed between the TPC and the MSEB. By that agreement, the TPC was bound to take from the MSEB all the electrical energy as may be supplied from the MSEB's hydro generating station at Koyna, Maharashtra.

6. In January 1984, 500 MW thermal power plant at Trombay was commissioned by the TPC. As a result of the commissioning of the plant, the installed capacity of the TPC increased to 1131 MW. In view of this change, a meeting was held on March 12, 1985 between the representatives of the TPC and the MSEB. It was, inter-alia decided as under:

“A. Demand Charges:

Effective 1.2.84, a monthly firmed demand of 300 MVA would be billed by MSEB. This would increase by 50 MVA each year effective 1.4.1985 to take care of the TPC’s own load growth annually. This is irrespective of the TPC’s actual net off-take recorded at the 4 interconnecting points of supply and also irrespective of MSEB’s total off – take from the TPC system.

C. Duration of the Agreement:

All the MSEB provisional bills for power supply preferred on the TPC for the period February 1984 to February 1985 would be revised and finalized on the

above basis. MSEB's provisional power supply bills for January 1984 will be treated as final. From March 1983 billing by MSEB will be on the basis of above discussion and this arrangement will continue till any major change in the TPC system take places e.g. BSES take over by MSEB or the TPC's unit no. 6 is commissioned into service etc."

7. Thus, w.e.f. February 1, 1984, the TPC was required to be billed by the MSEB on a monthly demand of 300 MVA. This demand was to increase by 50 MVA each year effective from April 1, 1985. This increase was to take care of the TPC's own load growth. As a consequence of this arrangement, the demand went up from 350 MVA in 1985-86 to 550 MVA in 1989-90. In the year 1990, second thermal power plant of 500 MW (550 MVA) at Trombay was commissioned by the TPC. With the commissioning of the second thermal plant the installed capacity of the TPC

- reached 1631 MW. It is not in dispute between the parties that the maximum demand of the TPC was frozen at 550 MVA.
8. It appears from the letters of the MSEB to the TPC dated March 21, 1990 and July 6, 1990 that the stand-by requirement of the TPC was to be reviewed by the MSEB after commercial commissioning of the TPC's proposed 180 MW combined cycle unit.
 9. Earlier to the events mentioned above, the REL, which was a distribution licensee since 1926, sought permission from the Government of Maharashtra to install a 500 MW generating capacity plant at Dahanu. Pursuant to the request of the REL its license was amended to allow it to install 500 MW generating station at

Dahanu. The generating station was required to be completed by the year 1981. It appears that the station could not be completed within the stipulated time for various reasons.

10. On June 7, 1986, the Government of Maharashtra notified its intention to further amend the license of the REL for permitting it to establish generating station of 500 MW capacity for supplying power to the grid of the MSEB. It was however, in the year 1992 that the Government of Maharashtra amended the license of the REL through a notification dated May 30, 1992, whereby the following relevant clauses were inserted in the REL's license:

(2) *“On the commencement of generation from the said generating station referred to in Clause 7A, the licensee shall supply the power, so generated to their*

consumers by making their own transmission and distribution arrangements.

(3) The Licensee shall also execute suitable inter connection with the system of Tata Electric Companies with the approval of the Central Electricity Authority, New Delhi.”

11. Thus, the REL was required to execute suitable interconnection with the system of the TPC with the approval of the Central Electricity Authority (for short ‘CEA’).

12. In view of the requirement of the REL to establish interconnection with the system of the TPC, on June 29, 1992, a meeting was held between the representatives of both the parties. In this meeting, it was, inter-alia agreed as under:-

“4.0 Interconnection:

BSES have confirmed that they are going ahead with the establishment of their own 220

KV transmission network to evacuate generation from Dahanu Plant. The interconnection with the TPC will only be via 220 KV lines to the TPC's proposed Borivli GIS Switching Station as agreed between the TPC and BSES earlier and conveyed to CEA subsequently.

12.0 The interconnection is being provided to take care of emergencies in BSES 220 KV system. Tata's already have an arrangement with MSEB wherein the stand-by capacity is provided by MSEB to Tatas in case of emergencies in Tata system. The stand-by capacity to BSES may be provided from the stand-by capacity reserved by Tata, with MSEB and appropriate sharing of charges by BSES could be worked out."

13. It is apparent from the above that the REL was to establish their own 220 KV transmission network to evacuate generation from Dahanu. The

interconnection with the TPC was to be only through two 220 KV lines to the TPC's proposed Borivli GIS Switchyard station and the interconnection was to be provided to take care of the emergencies in the REL 220 KV system. The agreement also took notice of the fact that the TPC had already an arrangement with the MSEB, whereby the stand-by capacity had been provided to the TPC in case of emergencies in the TPC's system. It was also agreed that for providing the stand-by facility to REL from the stand-by capacity reserved by the TPC, appropriate charges could be worked out.

14. During the year 1993-94, a 180 MW combined cycle plant at Trombay was commissioned by the TPC. After the commissioning of the plant, in consonance with the understanding reflected in

the letter of the MSEB dated July 6, 1990, the TPC requested the MSEB for review of the quantum of the stand-by facility provided to it. The MSEB, however, postponed the review of the stand-by arrangement till after the Pumped Storage unit of 150 MW at Bhira was operationalised.

15. It appears that the first and the second units of the Dahanu power station of the REL required start-up power for their commissioning. In December, 1994, the MSEB through its substation at Boisar provided the start up power to the REL at Dahanu, in order to enable the REL to commission its units. Since, there was no transmission line to Dahanu from Mumbai, the supply for start up power was possible only from the Boisar substation of MSEB. The first and the

second units of the Dahanu plant were commissioned in January 1995 and March 1995 respectively. It was only from September, 1995 that the REL started supplying power to its consumers in the suburbs of Mumbai city from the Dahanu station.

16. It seems to me that the interconnection between the TPC and the REL did not materialize because of the differences between them. In June 1996, the towers of MSEB were damaged. In order to provide interconnection, the TPC established a temporary interconnection with the REL at Borivli.
17. In October, 1996, the MSEB raised its demand charges for the stand-by facility from Rs 190/KVA/Month to Rs 450/KVA/Month. As a consequence of the increase in the demand

- charges for the stand-by facility, the TPC, on July 30, 1996 issued a tariff revision notice under VIth Schedule of the Electricity (Supply) Act, 1948, whereby the stand-by charges were proposed @ Rs. 450/KVA/month for the stand-by of 275 MVA i.e. at the same rate at which the TPC was paying to the MSEB for the stand-by provided by it.
18. The REL objected to the proposed tariff revision by the TPC. Parties however, agreed to discuss the issue of the stand-by charges.
 19. In December 1996, Bhira Pump Storage Unit of the TPC was commissioned. After the commissioning of the Bhira Pump Storage Unit, the TPC by its letter dated September 9, 1997 requested the MSEB to bill REL directly for the stand-by of 275 MVA.

20. By another letter dated November 7, 1997, the TPC again requested the MSEB for reduction of the stand-by charges provided to it. MSEB by its letter dated December 1, 1997, however, rejected the request. Basically the MSEB rejected the request of the TPC on the ground that MSEB had made huge investment in creating infrastructure for bringing power from Southern Maharashtra to Western Maharashtra through 100 KV network for ensuring reliable supply to Mumbai. Besides, as pointed out in the letter, the MSEB caters to the power needs of the agriculture sector and some other sectors at concessional tariff and the subsidy extended to them has to be borne by well placed segments, especially consumers of Mumbai.

21. The TPC by its letter dated December 17, 1997, in response to the MSEB's letter dated December 1, 1997, requested that the TPC should be billed for only 275 MVA stand-by facility as it was quite capable of supplying the stand-by and start up power to the REL for Dahanu plant from its own resources.

22. The Government of Maharashtra constituted a committee to go into the grievances of the TPC. After the receipt of the report of the committee, the Government of Maharashtra on January 19, 1998 issued an order. The relevant part of the order reads as under:-

“Taking into account the recommendations of the committee, following are orders of the Government:

- 1. BSES should complete interconnection at Borivli by January 26, 1998.*

2. *BSES should take 275 MVA the stand-by power supply from TEC for Dahanu generating station.*
3. *For taking above stand-by supply, BSES should pay the stand-by charges to TEC.*
4. -----
5. *TEC may charge the stand-by charges for 275 MVA supply to BSES.*
6. -----
7. *As per committee's recommendations and taking into account, TEC's electricity supply to BSES, TEC's stand-by supply from MSEB, charges thereof and TEC's and BSES's financial conditions, BSES should make a payment of Rs. 3.5 crores every month for stand-by supply. On this basis, rate per KVA should be fixed and commercial agreement finalized.*
8. *Above stand-by charges are based on TEC's and BSES's existing electricity supply tariffs. The stand-by charges may be reviewed during tariff revision in future."*

23. Thereafter, in order to comply with the order of the Government of Maharashtra, on January 31, 1998, the TPC and the REL signed the Principles

of Agreement for establishing Borivli interconnection, wherein it was inter-alia, stated as under:-

“(8) Both the parties have agreed to co-operate in order to ensure that the orders of the Government dated 19.1.1998 are implemented in the spirit of it.

9(a) A detailed Power Supply Agreement on mutually agreed basis incorporating the above, will be executed by 2nd of April, 1998.”

24. On February 14, 1998 an interconnection was established in consonance with the Govt. order dated January 19, 1998. In spite of the fact that the interconnection was established and the stand-by facility was extended by the TPC to the REL, the agreement envisaged by the aforesaid government order and the Principles of Agreement

dated January 31, 1998 was not executed by the TPC and the REL.

25. It also needs to be noted that both the parties did not challenge, in any forum, the government order dated January 19, 1998. On July 8, 1998, the TPC however, wrote to the Government of Maharashtra expressing its reservation with regard to the fixation of the stand-by charges at Rs. 3.5 crores. It also expressed that the arrangement was arrived at on the clear understanding that it will be revised in future.

26. On August 31, 1998, the MSEB revised charges for the stand-by facility for the TPC from Rs. 450/KVA/ Month to Rs.550/KVA/Month. At the enhanced rate, the stand-by charges came to Rs. 363 crores per annum (Rs. 30.250 crores per

month). Thus, the revised stand-by charges imposed an additional burden of Rs. 66 crores per year on the TPC.

27. On September 30, 1998 the TPC gave notice for revision of tariff under VIth Schedule of the Electricity (Supply) Act 1948, effective from December 1, 1998. In the notice, it was proposed to revise the stand-by charges payable by the REL from Rs. 3.50 crores/ per month to Rs. 15.125 crores per month (Rs. 181.5 per annum).

28. Since the TPC was having spinning reserve from its own resources it again requested the MSEB by its letters dated September 30, 1998 and November 18, 1998 for reducing its stand-by to 275 MVA and for billing it accordingly.

29. In view of the controversy between the parties, the MSEB on November 16, 1998 requested the Government of Maharashtra to convene a meeting between the MSEB, the TPC and the REL in order to iron out the problems. At the same time, the TPC was asked not to make any deductions in the bills of the MSEB on account of the stand-by charges.
30. On March 4, 1999, Government of Maharashtra convened a meeting under the Chairmanship of the then Deputy Chief Minister. In the meeting, the TPC and the REL were advised to settle the controversy amicably between themselves. Besides, certain directions were also given to the aforesaid licensees.

31. Thereafter, on May 27, 1999 the Government of Maharashtra constituted a committee which was required to submit its report with regard to the dispute of the stand-by charges payable by the REL to the TPC from the year 1999-2000 and onwards. The committee held several sittings. In its report dated March 15, 2000, the committee, inter-alia observed and recommended as follows:-

“During the committee’s discussions, after TEC and BSES had their say, it was opined that TEC should pay MSEB for a requirement of 550 MVA and BSES should pay for 275 MVA. Payment of Rs. 3.5 crores per month stand-by supply by BSES is on the basis of financial conditions of BSES and TEC in the year 1997-98, without changes in their then existing tariff. Govt. order suggests that the revision in the stand-by charges during tariff revision in future need not be inferred in the stand-by charges during tariff revision in future need

not be inferred on the principle of “capacity to pay”. This means if TEC pays an amount “X” to MSEB, BSES should pay X/2 to TEC since BSES requires the stand-by for 275 MVA unit which is half the size of TEC’s 550 MVA unit. On the basis of above cash flow payable by BSES to TEC and TEC to MSEB, it was suggested that BSES and TEC should reframe their respective tariff structure and get the same approved by MERC. Although this formulation was concurred in by TEC and MSEB, BSES recorded their dissenting note.”

Recommendations of the Committee:

“(a) The delicate commercial equilibrium between MSEB, TEC and BSES must be maintained. MSEB has to bear the burden of cross subsidizing agricultural and small consumer and the generating licensees have to partly share this burden through the mechanism of the stand-by charge. In return they get the generation support from MSEB. The commercial equilibrium is maintained by

(a) Payment of the stand-by charges by the generating companies and (b) the quantum of power purchase i.e. power purchase between the licensees TEC & BSES and TEC & BEST operating in the common area.

(b) The stand-by demand of TEC and BSES may be 550 MVA and 275 MVA respectively. TEC may pay the stand-by charge to MSEB at the rate charged to TEC by MSEB time to time. BSES may pay the stand-by charges to TEC at the same rate MSEB charges to Tec. At present, MSEB's rate for the stand-by charge is Rs. 550/ KVA per month. TEC and BSES would make the withheld payment of their stand-by charges immediately to MSEB and Tec respectively. The dissenting view of BSES is duly recorded GOM to decide this issue on merit. If Government decision were to result in additional financial burden on the licensees, they would apply to MERC for re-determination of their tariff.....”

32. On March 22, 2000, the Government of Maharashtra considered the report and took the following decisions:

“1. The assumptions that have been taken into consideration while levying the stand-by charges to TEC by MSEB (Zero purchasers of electricity units or the assumptions that may be taken into consideration and the rate at which the stand-by charges have been levied (Rs. 550 per KVA per month) or the rate that may be levied, on the same assumptions and at the same rate TEC should levy the stand-by charges to BSES Ltd. for 275 MVA from the year 1999-2000 on wards.”

2. For the period from 1.12.1998 to 31.3.1999 as decided earlier, BSES should pay Rs. 9 crores as the stand-by charges to Tata Electric Companies immediately. BSES Ltd should take necessary action to pay the stand-by charges to Tata Electricity companies as per the government Resolution and should

kindly inform regarding the actions taken to the Government.”

33. On December 4, 2000, the REL filed an application, being Case No. 07 of 2000, under section 22 (2) (n) of the Electricity Regulatory Commission Act, 1998 seeking fixation and determination of the stand-by charges payable by the REL to the TPC. On December 18, 2000, the application of the REL was admitted. While admitting the application the commission passed the following order:-

“(a) For the period from 1st December, 1998 to 31st March, 1999, an amount of Rs. 9 crore be deposited by the BSES with this commission, in a separate account to be opened entitled ‘MERC (BSES/TEC/MSEB dispute) account;
(b) for the period from 1st April, 1999 to 31st March, 2000, an amount equivalent to 50% of Rs. 181.50 crores be similarly deposited by

the BSES with the Commission, after taking credit for amounts already paid by the BSES;
(c) For subsequent periods also, till a decision in this case is given, 50% of the amounts payable as per TEC be similarly deposited on a monthly basis;
(d) For the year 2000-2001, the MSEB shall take appropriate legal steps to recover its dues from the TEC, and for this purpose, they may approach the MERC.”

34. The MERC also observed that as the MSEB has increased the stand-by charges payable by the TPC from 550 MVA/ Month to Rs 600/MVA/per month w.e.f. from August 1, 2000, the TPC may, if it so desires, submit a tariff revision proposal for consideration of the commission.

35. On January 8, 2001, the interim order of the commission dated December 18, 2000 was challenged before the Bombay High Court by

means of a writ petition, being writ petition No. 31/2001. The Bombay High Court on the basis of the agreement of the parties passed the order on March 19, 2001. The relevant part of the order reads as under:-

“1. Respondent No. 1(BSES) hereby undertakes to this Hon’ble Court that BSES shall:

(a) on or before 28.3.2001 deposit with Respondent No. 4 (MERC) a sum of Rs. 26 crores.

(b) on or before 15.4.2001 deposit a further sum of Rs. 26 crores with MERC; and

(c) deposit Rs. 8.23 crores per month with MERC on the 15th day of each month (the first such deposit to be made on or before 15.4.2000) until the petition/ application filed by BSES on 4.12.2000 is disposed of finally and subject to such adjustments as may become necessary as a result thereof. This sum includes Rs. 3.50 crores payable by BSES to the petitioners, pursuant to the order dated 19.1.1998 read with the agreement dated 31.1.1998.

Pending the hearing and final disposal of

BSES's petition and for a period of 4 weeks thereafter:

a. the interim order passed by MERC and contained in paragraph 18 of the order dated 18.12.2000 shall continue;

b. the petitioners shall continue to pay 50% of the stand-by charges to MSEB for 550 MVA the stand-by facility.”

36. In view of the aforesaid order, the appellant herein withdrew the writ petition with liberty to raise all contentions and submissions raised in the Writ Petition before the MERC, including the plea as to the jurisdiction of the MERC to decide the issue of the stand-by charges. Similarly, the first respondent herein, the REL, was also granted liberty to raise all contentions before the MERC.

37. After withdrawal of the aforesaid writ petition, the MERC proceeded with the matter and by order dated December 7, 2001, in case no. 7, held that

the order of the Government of Maharashtra dated March 22, 2000 and notice of the TPC dated September 13, 1998 for enhancing the stand-by charges payable by the REL was not effective in view of the provisions of the Electricity Regulatory Commission Act, 1998.

38. The Commission was also of the view that Section 29 of the ERC Act gives exclusive jurisdiction to it to determine tariff in accordance with the provisions of Section 22(1)(a) of the ERC Act, 1998. The commission treated the issue of the stand-by charges as tariff issue. The commission in regard to the nature of the stand-by held as under:-

“The stand-by charges are levied for the stand-by capacity that one utility, generally larger in size, provides to another utility, smaller in size, to meet emergent conditions.

The stand-by capacity constitutes a special backup arrangement, which needs to be activated occasionally under certain special circumstances such as planned or forced closures or outages in power plants. The purpose behind having this kind of back up arrangement in the case under consideration is to ensure an uninterrupted supply of electricity in an important metropolitan city like Mumbai.”

39. As is apparent from the above, the commission treated the facility of the stand-by as a kind of back up arrangement to ensure uninterrupted supply of electricity in the metropolitan city of Mumbai. It did not confine the stand-by support to the generating system alone.

40. The MERC also held that the stand-by capacity made available to BSES pursuant to the govt order dated January 19, 1998 and the stand-by capacity made available by MSEB to the TPC are independent of each other. There was no privity

of contract between the BSES and the MSEB. In so far as payment of the stand-by charges is concerned, the contract was only between the MSEB and the TPC, and the MSEB is entitled to look to the TPC for receiving the entire stand-by charges.

41. Two members of the MERC also worked out a formula on the basis of which the stand-by charges were calculated. It appears that the formula was worked out in consultation with the consultants. The chairman of the MERC was not informed of any of the meetings that the members had with the consultants, nor was the Chairman apprised of the minutes of the said meetings.

42. The Commission was of the view that the maximum demand in Greater Mumbai in 1999-

2000 was 2013 MVA, out of which the share of the BSES license area was 506 MVA. The commission, on this basis was of the opinion that the BSES's/REL's share of the stand-by charges was 25.1%.

43. Both the TPC and the REL/BSES filed appeals before the Bombay High Court under section 27 of the Electricity Regulatory Commission Act, 1998. The Bombay High Court on January 25, 2002 stayed the operation of the order of the MERC and directed the continuation of the consent order dated March 19, 2001 passed in Writ Petition No. 31 of 2001.

44. Subsequently, on June 3, 2003, the appeals were allowed by the Bombay High Court and the order of the MERC dated December 7, 2001 was set

aside, inter-alia, on the ground that it was difficult to explain the exact nature of the formula which was adopted by the MERC to determine the stand-by charges. It also noted that two members of the commission had several meetings with the consultants to work out the methodology for determination of the stand-by charges but the chairman of the commission had no knowledge of such deliberations.

45. The Bombay High Court remitted the matter to MERC for de-novo consideration in accordance with the law.
46. Aggrieved by the order passed by the Bombay High Court, both the REL and the TPC filed appeals before the Supreme Court. By order dated October 17, 2003, the Supreme Court

dismissed the appeals and affirmed the order of the Bombay High Court whereby the matter was remitted to the MERC for de-novo consideration.

47. Pursuant to the order of remand, the matter was again taken up by the MERC. The MERC during the course of proceedings sought advise of the CEA on the following issues:

“i. In the context of the Western Regional Electricity Grid, including its various constituents, and that of Mumbai grid and their operations, what is the stand-by capacity that is required to be availed by TPC and BSES respectively in view of their present generation capacity available as on January 31, 1998;

ii. the definition and technical significance of the stand-by capacity in view of the metropolis of Mumbai;

iii. the mechanism of the formula to arrive at a cost to provide such stand-by

charge facilities.”

48. It appears that the issues were not formulated in consultation with the parties.

49. The CEA on January 19, 2004 submitted its report to the MERC. A copy of the report was forwarded to the parties for inviting their comments thereon. Availing the opportunity, the parties filed their responses to the report.

50. On May 31, 2004, the MERC passed the impugned order.

51. The MERC on the basis of the Principles of Agreement between the TPC and the BSES dated January 31, 1998 and having regard to the report of the CEA came to the conclusion that the TPC and the BSES systems in Mumbai should be considered as a single system for the purposes of

determining the stand-by requirements. The MERC agreed with the view of the CEA that the entire network of Mumbai is one system. According to the MERC **the stand-by facility is used as an insurance against any type of system failure.**

52. The MERC having regard to the CEA report also held that the requirement of the stand-by capacity is required to be computed on the basis of peak demand and not on the basis of largest sized unit.
53. The commission computed the amount payable towards the stand-by charges based on the formula recommended by the CEA. The computation of the amount payable by the TPC and BSES towards the stand-by charges was worked out by the commission as under:

Sl.No	Particulars	Computation/ source	Cumulative amount from FY 1999 to FY 2004
1.	Total stand-by charges payable to MSEB	TPc's ARR petition	2255.0
2.	Share of TPC in the above stand-by charges	MERC Ruling	1739.4
3.	Actual amount paid by TPC to MSEB	Additional data submitted by TPC	1358.7
4.	Balance amount payable by TPC	(1) - (3)	896.3
5.	Share of BSES in the above stand-by charges	MERC Ruling	515.6
6.	Actual amount paid by BSES over the period FY 1999 to FY 2004, including deposit amounts	TPc and BSES submissions	837.9
7.	Amount payable/ refundable by/ to BSES	(6) -(5)	(322.3)

54. According to the MERC, the total amount refundable to the REL against the stand-by charges during the period 1998-99 to 2003-04 is Rs. 322 crores. Besides, the TPC is also to pay the late payment charges and interest on the amount due to the MSEB.

55. Dis-satisfied with the aforesaid order of the MERC, The TPC filed a Writ Petition before the Bombay High Court, being Writ Petition No. 1471 of 2004. The Bombay High Court by its order

dated July 1, 2004 granted the interim relief to the petitioner. Thereupon the REL filed a Special Leave Petition on July 7, 2004, against the interim order passed by the Bombay High Court.

56. On December 24, 2004, the Bombay High Court disposed of the writ petition observing that the issues raised were of technical nature and need to be decided by this Tribunal.

57. On April 12, 2005, the TPC filed Special Leave Petition against the order of the Bombay High Court dated December 24, 2004. On November 30, 2005, the Supreme Court disposed of the appeal. While disposing of the appeal, the Supreme Court granted liberty to the TPC to file appeal before this Tribunal against the order of

the MERC dated May 31, 2005. This is how the matter has come up before us.

58. We have heard the learned counsel for the parties extensively. The learned senior counsel for the TPC, the MSEB and the BEST submitted that the TPC and the REL share stand-by of 550 MVA provided by the MSEB for which logically and legally charges are required to be shared by them in the ratio of 50:50. According to the learned counsel for the TPC, the generating capacity of the TPC over the years has increased to about 1774 MW. In view of the enhanced installed capacity, the TPC has been requesting the MSEB to reduce the stand-by provided to it by the MSEB. It was contended that when the stand-by of 275 MVA was provided to the REL, in accordance with the order of Govt. of Maharashtra, it was quite clear

that the TPC was required to pay for the stand-by of 275 MVA to the MSEB and similarly the REL was required to pay for the stand-by of 275 MVA. The learned senior counsel appearing for the TPC submitted that the Bombay High Court while allowing the appeals of the TPC and REL, held that the REL is liable to share 50% of the stand-by charges of the MSEB. Consequently, the MERC was directed to decide the matter de-novo in accordance with law as also in the light of their observations recorded in their judgment. It was also pointed out that the order of the Bombay High Court was affirmed by the Supreme Court in Civil Appeal Nos. 8360-8361 of 2003 by its order dated October 17, 2003. The learned counsel for the appellant also contended that the stand-by support to the TPC is linked to the size of its

single largest generating unit. On the parity of reasoning, it was submitted that the stand-by to the REL was also linked to the size of its single largest generating unit of 275 MVA. It was also urged by the learned senior counsel that by order of the State Govt. dated January 19, 1998, the facility of the stand-by provided by MSEB was divided between the TPC and the REL. The learned senior counsel while inviting our attention to the tariff notice dated Sept., 19, 1998 issued by the TPC and the order of the Govt. of Maharashtra dated March 22, 2000, contended that the stand-by charges are required to be paid by the REL at the same rate as are levied by the MSEB on the TPC.

59. The learned senior counsel for the appellant also contended that since the MERC itself was required by the remand order to consider the matter de-novo, it was not justified in seeking the opinion of the CEA on the points framed by it.

60. It was also submitted on behalf of the appellant that the question relating to the concept and nature of the stand-by charges, which was referred by the MERC to the CEA, stood concluded by the decision of the Supreme Court in Civil Appeal Nos. 8632 and 8633 of 2003 and could not be re-opened by the MERC or referred to the CEA. The questions formulated by the MERC for the opinion of the CEA were framed behind the back of the appellant. The learned senior counsel also submitted that the opinion of the CEA was

biased in favour of the REL as the CEA was engaged by the REL for providing Engineering Consultancy Services to the REL and therefore, the MERC was not justified in relying upon the report of the CEA.

61. On the other hand, the learned senior counsel for the respondent REL submitted that the stand-by support was not merely extended to the generating unit but it was a stand-by for the entire Mumbai network. It was contended that the rate of the stand-by charges applicable to the TPC cannot be made applicable to the REL for the stand-by of 275 MVA and it cannot be asked to pay 50% of the stand-by charges billed to the TPC by the MSEB. As regards the observation of the Bombay High Court to the effect that the stand-by charges are to be shared by the TPC & the REL –

in equal proportion, it was submitted that the same cannot be regarded as the declaration of law by the Bombay High Court. It was pointed out that in the Judgment of the Bombay High Court dated June 3, 2003, it has been clarified that the observations made by it are for the purpose of deciding the appeals and are relevant for that purpose only. The learned senior counsel also argued that the Supreme Court has recognized that the Judgment of the Bombay High Court was an interim arrangement, made on a prima-facie consideration of the matter and therefore, the argument advanced on behalf of the appellant that the Bombay High Court has by a binding direction held that the REL was liable to pay 50% of the stand-by charges that are payable by the TPC to the MSEB is misconceived. It was also

submitted that the Judgment of the Bombay High Court having merged with the Judgment of the Supreme Court, has no existence in the eye of law. Reliance was placed on the decisions of the Supreme Court in Kunhayammed vs. State of Kerala – (2000) 6 SCC 359 and Chandi Prasad vs. Jagdish Prasad (2004) 8 SCC 724.

62. It was submitted by the learned counsel for the REL that the MERC relying upon the report of CEA has rightly linked the stand-by support to the peaking demand.

63. With reference to the submission advanced on behalf of the appellant that the judgment of the Supreme Court dated October 17, 2003, has approved the concept of sharing of the stand-by charges between the TPC and REL in the

ratio of 50:50, it was submitted on behalf of the REL that there was no such approval by the Supreme Court.

64. In so far as the allegation of the appellant that the CEA was biased in favour of the REL is concerned, the learned senior counsel for the REL contended that it was factually incorrect, legally untenable and is without any basis. According to the learned senior counsel for the respondent, CEA's report was in consonance with the principles of fair play and natural justice. It was pointed out that the CEA gave its report after providing an opportunity of hearing to the parties.

65. As regards the plea advanced on behalf of the appellant that the MERC was not justified in referring the questions for the opinion of the CEA,

it was submitted that the questions were referred by the MSEB for the opinion of the CEA pursuant to the order of remand by the Supreme Court and in consonance with the statutory provisions of the Electricity Regulatory Commission Act.

66. We have considered the submission of the learned counsel for the parties. In so far as the concept and nature of the stand-by charges is concerned, it may be necessary to notice the agreement dated March 18, 1969 between the TPC and the MSEB and the other relevant material. According to the agreement dated March 18, 1969, the TPC was required to purchase from the MSEB, the entire electric energy as may be supplied from the MSEB Hydro Generating station at Koyna, Maharashtra. Need was felt to revise the agreement dated March

18, 1964 in view of the increase in the installed capacity of the TPC. In this regard, on March 12, 1985 a meeting was held between the representatives of the TPC and the MSEB. It was agreed that w.e.f. Feb., 1, 1984, the TPC would be billed by the MSEB on a monthly demand of 300 MVA, which would increase by 50 MVA each year, effective from April 1, 1985, to take care of the TPC's load growth annually. It is not in dispute that the fixed demand in the year, 1990 was frozen at the level of 550 MVA. The concept was clarified in the letter dated December 28, 2000 of the Chairman of the MSEB addressed to the Govt. of Maharashtra in which it was stated as under:-

“ Among all suppliers and distributors of power in the State, the MSEB has so far shouldered the major responsibility of supplying power (below cost) to the rural areas

of the State. So when Tatas put up their 500 MW plant in Trombay, MSEB sale to Tatas in Mumbai, which is the most profitable area suffered, making it necessary for Tatas to compensate MSEB. This in effect partly financed the cross subsidy. In course of time when MSEB sales to Tatas became zero, this compensation took the form of the stand-by charges. For 2000-2001, the rate of the stand-by charges Rs. 600/KVA/m for 500 MVA was also approved by the MERC”.

67. The letter of the MERC dated March 15, 2001 also throws light on the concept of the nature of the fixed demand. This letter reads as under:-

“There exists a stand-by arrangement between MSEB and the TPC, which MSEB has provided with a view to extend system support required for the TPC’s stable operations. Due to this arrangement, MSEB shares the load in the TPC system whenever there are outages of the TPC’s generating units. As per the

arrangement agreed between the TPC and MSEB, the TPC is liable to pay fixed demand charges to MSEB for the specified demand (termed as the stand-by demand) which enables the TPC to draw additional power from MSEB and also to share burden of subsidy being given to agriculture and other categories of consumers in Maharashtra as and when required. The current 'stand-by charges' are at Rs. 600/KVA/month for 550 MVA, which have been determined by MERC and are effective since 1st August, 2000”.

68. Thus, it is apparent that the MSEB provided the stand-by facility to the TPC with a view to extend system support to it for stable operations for which the TPC was liable to pay fixed demand charges. Besides, the TPC was to share the burden of subsidy being given to the consumers of agriculture sector and other categories of consumers by the MSEB.

69. It is clear from the above correspondence that the fixed demand took the shape of the stand-by charges in course of time when the MSEB's sales to the TPC became zero. There is no doubt that the mechanism of the stand-by was not only meant to compensate the MSEB for shouldering the burden of subsidy, being given to the agriculture consumers in rural areas, but it was also meant to provide guarantee or reliability to generating system of the TPC.
70. At this stage, it needs to be recalled that in 1992 Govt. of Maharashtra amended REL's license by a notification dated May 30, 1992 in view of the proposal of the REL to establish 500 MW generating station at Dahanu. As per the license, the REL was required to execute the inter-

connection with the system of the TPC. Having regard to this requirement, on June 29, 1992, a meeting was held between the representatives of the REL and the TPC. In this meeting, it was agreed that the stand-by capacity to the REL may be provided from the stand-by capacity reserved for the TPC and appropriate sharing of charges by BSES could be worked out. On January 19, 1998, the Govt. of Maharashtra issued an order, requiring the REL to take 275 MVA stand-by power from the TPC for its Dahanu station. Thus, the quantum of the stand-by facility to be provided by the TPC to the REL was fixed. The controversy with regard to nature and concept of the stand-by does not survive in view of the following observations of the Supreme Court contained in para 18 of its Judgment dated

October 17, 2003 in Civil Appeal Nos. 8360-8361
of 2003:-

“Electricity is not a commodity which may be stored or kept in reserve, it has to be continuously generated and it is so continuously generated electricity which is made available to consumers. Any generator of electricity has to have some alternate arrangement to fall back upon in the event of its generating machinery coming to a halt. The stand-by arrangement for 550 MVA made by the TPC was for the purpose that in the event its generation fell short for any reason, it will be able to immediately draw the aforesaid quantity of power from the MSEB. Similarly, the arrangement entered into by BSES/REL with the TPC ensured the former of immediate availability of 275 MVA power in the event of any breakdown or stoppage of generation in its Dahanu generation facility. Heavy investment is required for generation of power. For this kind of a guarantee and availability of

power, the TPC had to pay charges for the same to MSEB. This payment was in addition to the charges or price which the TPC had to pay to MSEB for the actual drawal of electrical energy. The same is the case with BSES qua the TPC. The charges paid for this kind of an arrangement whereby a fixed quantity of electrical energy was guaranteed to the TPC and BSES at their desire, is bound to constitute a component of the price which they (BSES and the TPC) would be charging from their consumers towards the cost of the electrical energy actually consumed by them”.

71. From the observations of the Supreme Court, it is clear that the stand-by is linked to the generating machinery. In the event of planned or unplanned outages of the generating unit, the generator can draw upon the stand-by facility to the extent of the specified quantity of power from the source, which has agreed to provide the stand-by facility.

72. Stand-by charges do not represent the cost of electricity. Stand-by charges are different from charges for consumption of electricity. Stand-by charges are akin to insurance premium. Premium is paid by the insured so that the insurance policy comes to his rescue in the event of a specified calamity. Similarly, stand-by charges are paid for securing the availability of specified quantum of power in the event of the outage of the generating machinery. In the case in hand, the stand-by charges is the price which is required to be paid by the TPC to the MSEB and the REL to the TPC for making the facility available. As already pointed out, the stand-by support is linked to the size of the single largest generating unit. While in the case of the TPC, the single largest generating unit is of the capacity of 550 MVA, in the case of

the REL, the single largest generating unit is of the capacity of 275 MVA. In other words, the TPC has a stand-by facility of 550 MVA and not 275 MVA. Therefore, the stand-by facility of TPC is double that of the REL. In this view of the matter, charges for the stand-by need to be shared by the TPC and REL in the ratio of 2:1.

73. The aforesaid method has not found favour with my learned brother. He has taken into consideration the spinning reserve of 317 MVA for calculating the cost of the stand-by charges, which are to be levied on the REL. I respectfully do not agree with my learned brother on this aspect of the matter. It needs to be noted that the concept of spinning reserve has nothing to do with the stand-by provided by the MSEB. Whether the

spinning reserve is utilized or not by the TPC and REL, the MSEB is entitled to charge for the entire stand-by facility provided by it. As already pointed out, the minutes of the meeting between the TPC and the REL dated June 29, 1992 clearly reflect that the TPC was entitled to provide the stand-by facility to the REL from the stand-by capacity reserved by the MSEB for the TPC. Much emphasis has been placed by the learned counsel for the REL on the words “may be provided” used in the Para 12 of the aforesaid minutes of the meeting, for pressing into service the contention that the TPC had the option to provide the stand-by facility to the REL either from its own source or from the stand-by capacity provided by the MSEB.

74. In order to correctly appreciate the import of the minutes of the meeting between the TPC and the

REL dated June 29, 1992, the order of the Govt. of Maharashtra dated January 1, 1998 must be looked at. Both the documents, when read together, would reflect that the BSES/REL is required to take stand-by facility of 275 MVA from the TEC. Obviously this stand-by facility is to be provided to the REL from the stand-by facility of 550 MVA reserved by the MSEB for the TPC.

75. Even though, in most of the cases of outages of the REL generating system, TPC was not drawing power from the MSEB, it does not mean that the stand-by capacity resource for the REL from the stand-by capacity of 550 MW provided by the MSEB was diluted. The stand-by reserve of 550 MVA provided by the MSEB is an assurance of reliability of the generating system of the REL and the TPC and at any point of time they can draw

power from it, in the event of outages of the generating system. There may not be any written contract between the MSEB and the TPC regarding stand-by, but the fact remains that the parties by their action, have agreed that the stand-by facility to the REL will be available from the stand-by facility of 550 MVA reserved by the MSEB. Charges for 550 MVA of the stand-by facility are required to be paid to the MSEB, whether the TPC draws power from the MSEB or not, when the generating system of the TPC or the REL fails. In case the TPC in future acquires a spinning reserve to the extent of 500 - 700 MVA or more, then in that event, on the parity of reasoning as employed by my brother, no or very little charges for the stand-by facility will be payable by the REL, even though the TPC will be liable to pay the stand-by charges for 550

MVA to the MSEB. It needs to be pointed out that the consumers of the TPC are much more in number than the consumers of REL. The contribution of consumers of the TPC to the creation of spinning reserve is much larger than the consumers of the REL. Therefore, by taking into account spinning reserve at zero cost for the purpose of calculating the cost of the stand-by will work injustice to the consumers of the TPC. The consumers of the TPC are not only contributing towards sharing the burden of the MSEB for subsidizing the consumers in the agricultural sector and those belonging to the weaker sections of the society, they will also be paying for the charges of the stand-by capacity of 275 MVA, in case spinning reserve of 317 MVA is factored in for the purpose of calculating the cost of stand-by

- for the REL (Generation), which is meant to be paid by the consumers of the REL.
76. It also seems to me that it is not just, reasonable and appropriate to link the stand-by capacity provided to the TPC and to the REL to the total generation capacity of the REL and TPC for the purpose of computing the value of the stand-by facility. This concept seems to be alien to the nature of the stand-by, which has been provided to the parties.
77. The learned senior counsel for the REL submitted that by virtue of the order of the Govt. of Maharashtra dated January 19, 1998, and the Principles of Agreement signed by the TPC and the REL, the latter is required to pay Rs. 3.5 crores every month for the stand-by facility. It was

pointed out that the aforesaid order of the Govt. of Maharashtra has not been challenged by the appellant before any forum and consequently, the REL is liable to pay only Rs. 3.5 crores/ per month for the stand-by facility. The submission of the learned counsel for the REL has no substance. The Govt. of Maharashtra's order dated January 19, 1998 created an ad-hoc and temporary arrangement for the year 1997-98 and the stand-by charges were liable to be reviewed during tariff revision in future. It is not in dispute that the stand-by facility provided to TPC has been increased substantially by the MSEB and the stand-by charge is a tariff issue as held by the Supreme Court. Therefore, once stand-by charges payable by the TPC were revised upwards, the stand-by charges of Rs. 3.5 crores/ month

payable by the REL cannot remain static. Besides, the figure of 3.5 crores/ month cannot serve as a yardstick for fixation of charges for the stand-by facility provided to the REL. In the commercial world, the price of goods and services are market driven. Prices of comparable goods and services normally will have one price tag. Similarly, the rate of stand-by facility for the TPC and the REL cannot be different and the total stand-by charges payable by the TPC and REL will depend upon the quantum of stand-by facility provided to them. Accordingly, the submission of the learned counsel for the REL is rejected.

78. The learned senior counsel for the TPC pointed out that the Bombay High Court in its judgement and order dated June 3, 2003, has clearly held that the stand-by charges are to be shared by the

TPC and the REL in the ratio of 50:50. He submitted that this view of the Bombay High Court is binding on us. In this connection it needs to be pointed out that the Bombay High Court went into the rival contentions of the parties with a view to find out whose case, prima facie, was acceptable. This is made clear by the Bombay High Court in Paras 25 and 35 of the aforesaid judgment.

79. The observation of the Bombay High Court that stand-by facility is to be shared by the TPC and the REL in equal proportions of 50:50 is not of a binding effect as that was a prima-facie view of the Bombay High Court.
80. In any event, the Supreme Court, while affirming the order of the Bombay High Court has given its

own reasoning for its decision. There is no condition in the judgment of the Supreme Court that the matter shall be decided by the MERC in view of the observations made by the High Court. The judgment and order of the Bombay High Court has merged with the order of the Supreme Court. Therefore, the order of the Supreme Court has replaced and subsumed the judgment of the Bombay High Court and only the judgment of the Supreme Court is to be treated as final.

81. The merger of the order of a judicial or quasi-judicial forum takes place with the order of an appellate forum, whether or not the appellate forum affirms, modifies or reverses the decision of the former. This view draws its sustenance from decisions of the Supreme Court in Chandi Prasad & Ors. Vs Jagdish Prasad & Ors (2004) 8 SCC 724

and Kunhay Ammed Vs State of Kerala (2000) 6 SCC 359.

82. The learned senior counsel for the appellant submitted that the MSEB with a view to revise its tariff, w.e.f. December 1, 1998, issued a notice in terms of the agreement between the MSEB and the TPC. The charges for the stand-by facility for the TPC were increased from 450/KVA/ month to 550/KVA/month, which works out to Rs. 363 crores per annum equal to Rs. 30.250 crores /per month. In view of this revision of tariff, the TPC also issued a notice to the Govt. of Maharashtra proposing revision of the stand-by charges from 3.5 crores/ month to Rs. 15.125 crores/ per month (equal to Rs. 181.5 crores per annum).

83. It was submitted that in order to remove the injustice, Govt. of Maharashtra passed an order on March 22, 2000, whereby it was decided that the same rate at which the TPC is required to pay for the stand-by to the MSEB, should be applied for the stand-by facility provided to the REL by the TPC as well. The learned counsel submitted that the order of the government was a well considered order and on that basis the appellant is entitled to receive from the REL 50% of the stand-by charges billed by the MSEB.

84. The reliance placed on the aforementioned notice of the TPC and the order of the Govt. of Maharashtra on behalf of the appellant does not help the case of the appellant. The notice of the TPC dated September 30, 1998 and the order of the Government dated March 22, 2000 were

without jurisdiction, as the notification constituting the commission was issued by the Govt. of Maharashtra on August 5, 1999. After the constitution of the commission, it is the commission alone which can decide the tariff issues. That apart, by notification dated October 27, 2000, the Govt. of Maharashtra conferred the commission with the power to adjudicate upon the disputes and difference between the licensee and utilities under section 22(2)(n). Therefore, the Govt. of Maharashtra by its letter dated October 30, 2000 rightly asked the parties to approach the MERC for resolution of the dispute. In the circumstances, therefore, the aforesaid notice and the order of the government are without jurisdiction. But this does not mean that on merits, the rate was rejected.

85. In view of the aforesaid discussion, I would stick to the view that the charges for the stand-by need to be shared by the TPC and the REL in the ratio of 2:1. Applying the ratio, the TPC is required to refund a sum of Rs. 133 crores to REL as per the following Tables:

Table- 1
Amount refundable by the TPC to the REL on account of Stand-by Charges

S.No.	Description	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total (Crores)
1.	Cost of stand-by payable by TPC to MSEB (Crores)	363	385	396	396	396	
2.	Share of stand-by cost between TPC and REL (crores)	2 : 1	2 : 1	2 : 1	2 : 1	2 : 1	
3.	Amount paid by TPC to MSEB (crores)	182	230	298	198	279	
4.	Balance amount payable by TPC to MSEB (crores)	182	155	198	198	117	
5.	Amount of stand-by cost payable by REL to TPC (crores)	121	128.33	132	132	132	654.33 (Note-1)
6.	Total amount paid by REL including deposits (crores)	42	151	101	99	404	797
7.	Amount to be refunded to REL after considering REL deposits (in crores) excluding the interest on excess deposits.	-	-	-	-	-	142.67 = 143

Note -1: Inclusive of outstanding Rs. 9 crores to be paid by REL for FY 1998-99. Thus, the sum of Rs. 9 crores payable by REL is adjusted.

Table -2
Interest due from the REL to the TPC

Financial Year	Outstanding in Crores	SBI PLR (%)	Interest (Crores)	No. of years overdue
1999-00	88	12.0	42.24	4
2000-01	(-)22.67	11.5	(-)7.82	3
2001-02	(-) 31	11.5	(-)7.13	2
2002-03	(-)33	10.3	(-)3.39	1
2003-04	(-)272	10.0	(-)13.6	0.5

Total interest accrued due from the REL to the TPC 10.3 Crores

Thus, the TPC is liable to refund to the REL as on 31st March, 2004, the amount detailed below:

- | | |
|---|---|
| a. Standby charges/ refundable by the TPC to the REL for 275 MVA capacity for the period FY 1999-00 to FY 2003-04 | Rs. 143 crores |
| b. Interest on outstanding amount payable by the REL to the TPC | Rs. 10.3 crore |
| c. Total amount to be refunded to REL by TPC | Rs. 132.7 crores
(Rs. 133 crores) |

86. Accordingly, I direct the TPC to refund an amount of Rs. 133 crores to the REL.

87. Before parting with the judgment, it needs to be pointed out that I agree with the order of my learned brother in respect of the following:

1. That the terms of reference framed by the MERC for the opinion of the CEA were beyond the scope of the issues which were required to be decided pursuant to the order of remand;
2. The question raised by the appellant regarding alleged bias of the CEA is not relevant, since the report of the CEA has not been considered for resolution of disputes in the appeal for reasons advanced in the main judgment by my learned brother;
3. The quantum of the stand-by capacity is related to the largest unit size of generation in either system;
4. The stand-by facility to manage the outages is independent of the peaking and non peaking load situations in the system;
5. The systems of the TPC and the REL are independent of each other; and
6. The impugned order of the MERC is set aside.

(Justice Anil Dev Singh)
Chairperson

In view of the disagreement between us with regard to the question namely: In what ratio the standby charges are to be shared by the TPC and the REL and at what rate. We hereby make a reference to the Chairperson for appropriate orders in accordance with Section 123 of the Electricity Act, 2003.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member