Before the Appellate Tribunal for Electricity
Appellate Jurisdiction

Appeal No. 86 & 87 of 2007

Dated: 10th April, 2008.

Present: Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

Maharashtra State Power Generation Co. Ltd. …Appellant

Versus

1. Maharastra Electricity Regulatory Commission,
13th Floor, WTC No.1,
Cuffe Parade, Coloba, Mumbai.

2. Prayas Energy Group, 4,
Om Krishna Kunj Society,
Opp. Kamla Nehru Park,
Ganagote Path, Eradavane,
Pune-411 004.
Prakashgad, Bandra (East), Mumbai

3. Mumbai Grahak Panchyat,
Grahak Bhavan, Sant GyaneshwarMarg,
Behind Cooper Hospital,
Vile Parle (W), Mumbai-400 056.

4. Thane Belapur Indl. Association,
Plot No. P-14, MIDC,
Rabale Village, P.O. Ghasoli,
Navi Mumbai- 400 701.

5. Vidarbha Industries Association,
Ist Floor, Udyog Bhavan,
Civil Lines, Nagpur-440 001. ….Respondents

Counsel for the Appellant :	Mr. Shyam Divan, Sr. Advocate Mr. Deepa Chawan, Ms. Alpana Dhake, Ms. H.S. Jaggi, Ms. Amita and Mr.Agatha Sangma, Ms. Amita Rajoria, Ms. Mamta Chaudhary Mr. Anami Bhattacharya
Counsel for the Respondents :	Mr. Jayant Bhushan, Sr. Advocate Mr. Ajit Maitra, Mr. Buddy. A. Ranganadan Mr. S.R. Karkhanis for MERC. Mr. M. Palaniappan and Mr. Suresh Gehani, Consultant for MERC. Ms. Neelam Singh & Mr. Varun Aggarwal And Mr. Ravi Parakash for MSEDCL.

JUDGMENT

Per Hon'ble Mr. A.A. Khan, Member Technical

M/s Maharashtra State Power Generation Company Ltd., MSPGCL in short, (the Appellant) is a company formed under the Government of Maharashtra General Resolution no. ELA-003/P.K.8588/Bhag-2/Urja-5 dated 24 January 2005, after re-organization of the erstwhile Maharashtra State Electricity Board. The Appellant is in the business of generation of electricity in the State of Maharashtra. The Appellant submitted its application for approval of Annual Revenue Requirement (ARR) and Tariff Petition for the years 2005-06 and 2006-07 in February 2006 before the Maharashtra Electricity Regulatory Commission (MERC or the Commission). MERC through its order dated 7 September 2006 determined the ARR and tariff for the Appellant. The Appellant sought a review of the above order of the MERC on various issues through petition filed on 19

October 2006, which was disposed of by the MERC through its order dated 07 December 2006. The Appellant was aggrieved by the said order of the MERC, hence has filed the present appeal (86 of 2007 on 22 January 2007) challenging the order dated 07 September 2006 read with 07 December 2006, to the extent relating to the following issues:

A. Administrative and General Expenses
B. Transit Loss of Coal
C. Station Heat Rate
D. Tariff for Small Hydro Power Station

2. Also, the Appellant submitted its petition for approval of ARR and determination of Multi Year Tariff for the first control period of FY 2007-08 to 2009-10. The Commission through its order of 25 April 2007 approved ARR and determined tariff for the period 2007-08. Aggrieved with the said order of the commission, the Appellant on 05 June 2007 filed an Appeal before this Tribunal (Appeal No. 87 of 2007) on the following issues:

E. Truing up for fuel expenses for 2005-06
F. Disapproval of A&G expenses
G. Truing up of Depreciation
H. Truing up of other debits
I. Truing up of Interest expenses and Finance Charges
J. Truing up of Revenue Earned
K. Transit Loss of Coal
L. Station Heat Rate
M. Auxiliary Consumption of Various Station
N. Specific Oil Consumption
O. O&M Expenses for Base Year for MYT Period
P. Hydel Tariff
Q. Tariff for Small Hydro Power Station

R. Reactive Energy Charges

S. Normative O&M Expenses for Hydel Plants

T. Employee Incentive Schemes

3. Since most of the grounds raised in these two appeals are common, we intend to dispose of both the appeals through this combined judgment.

4. From the order dated 07 September 2006 (page 11) of the MERC, we observe that the Commission notified the MERC (Terms and Conditions of tariff) Regulation, 2005, referred to as Tariff Regulations, in the State Government Gazette on 23 August 2005. The said Tariff Regulations superseded earlier Regulations issued in 2004 and became effective from the date of their publication in the Official Gazette. At para B.2, the Commission has stated that:

> *'As per the MERC Tariff Regulations, the MYT regime was to be introduced with effect from FY 2006-07. However, the commission vide its Order dated 20 December 2005 granted exemption to utilities for implementation of MYT by one year and directed utilities to file ARR and Tariff Petition for FY 2006-07.'*

5. At para A of Chapter 4 (page 30), it is stated that:

> *'The Commission, in its Order dated April 13, 2006, had indicated that for FY 2005-06, the determination of ARR shall be according to the principles stipulated in the previous Tariff Order for that utility. For MSPGCL, this is the MSEB Tariff Order for FY 2003-04 dated March 10, 2004.'*

6. Further, at para A of Chapter 5 (page 39), it is stated that:

> *'The Commission, in its Order dated April 13, 2006, had indicated that for FY 2006-07, the determination of ARR & Tariff shall be according to the*

MERC Tariff Regulations. Wherever, MERC Tariff Regulations are silent or cannot be directly applied, the Commission has explained in detail its rationale in such cases.'

7. From the above, we observe that applicable principles/regulations are as under:

i) Determination of ARR for FY 2005-06 shall be according to the principles stipulated in the previous Tariff Order for that utility. For MSPGCL, this is the Maharashtra State Electricity Board (MSEB) Tariff Order for FY 2003-04 dated March 10, 2004

ii) Determination of ARR and tariffs for the FY 2006-07 shall be according to the Tariff Regulations issued by the Commission on 23 August 2005 in the Official Gazette.

8. In the above background, we may take up the grounds of appeal preferred by the Appellant one by one:

A. & F. Administrative and General Expenses (A&G Expenses)

9. The Appellant in its petition before the MERC had projected a sum of Rs. 24.60 crore for 2005-06 and Rs. 25.83 crore for 2006-07 assuming a nominal increase of 5% per annum over 2004-05 level.

10. The Commission has approved a sum of Rs. 23 crore as A&G expenses for the year 2005-06 by applying an increase of 4.2% per annum over 2003-04 expenses. The Commission has observed that A&G expenses can and should be controlled by the utility and it cannot allow an increase over the actual expenses. The following table gives A&G expenses adopted by MERC during last 4 years:

(Figures in Rs. Crores)

	2002-03	2003-04	2004-05	2005-06
A&G Expenses	23.12	22.53	24.00	24.46
Less capitalization	1.83	1.83	1.92	2.05
Net A&G Expenses	21.29	20.70	22.08	22.41

11. The Appellant has supported its claim for actual A&G expenses on the following grounds:

i) At the time of filing of the ARR, the actual A&G expenses incurred were not available. Actual A&G expenses during 2005-06 were stated to be Rs. 35.66 crore;

ii) Actual capitalization being lower at Rs. 3.12 crore than projections at Rs. 5.8 crore (though from page 32 of the ARR petition of the Appellant before the MERC, it is observed that capitalization is projected to be Rs. 5.04 crore for 2005-06); *with the above the actual A&G expenses claimed by the Appellant come to Rs. 32.54 crore (Rs. 35.66 crore minus Rs. 3.12 crore capitalized). However as per the Appeal 87 of 2007, the Appellant has submitted the net A&G expenses in FY 2005-06 to be Rs. 29.93 crore after considering capitalization as against approved expenses of Rs. 22.41 crore (para F (ii)) page 24);* The Commission, therefore, has allowed Net A&G expenses of Rs. 22.41 crores against the actual amount of Rs. 29.93 crores for FY 2005-06.

iii) Increase in the expenditure was on account of expenditure on security, electricity charges, consultancy charges, rates and taxes, insurance of fixed assets and lease rent for Khaperkheda AHP;

iv) The Appellant has taken up additional programmes such as project and planning work, engaging consultancy services for technical reports, design checks, tendering process for orders, etc. in respect of existing as well as future projects;

v) Outsourcing security personnel during construction of Paras and Parli projects and also staff traveling at the site of these projects;

vi) The Appellant has a larger and huge network compared to other generators in the state namely, Tata Power Co. and Reliance Energy Ltd.

vii) The Commission overlooked the necessity of truing up the Accounts.

12. The Commission in its order of 07 December 2006 has observed (page 5) that '*as regards A&G expenses, the Commission in all its Tariff Orders has maintained that the A&G expenses can and should be controlled and has approved the expenses based on the principle of reasonable year-on-year increase.* ***The A&G expenses are normative*** *(emphasis supplied) and cannot be passed on to consumers at actuals*'.

13. In its response to the Appellant's submission, the Commission has stated that no norms are fixed even by CERC for A&G expenses because A&G expenses are considered part of O&M expenses… (page 19 of written submission booklet).

14. From the above we find that for the FY 2005-06, the commission has not specified any norms relating to admissibility of A&G expenses and *has approved the expenses based on the principle of reasonable year-on-year increase*. The impugned order does not explain the reasonableness of selecting escalation rate of 4.2 which is not even sufficient to mitigate the inflation rate.

15. After considering the submissions made by the Appellant and the Respondents, we are of the opinion that the main issue is whether, to determine the quantum of A&G expenses eligible for recovery through tariff in the absence of any laid down norms, the Commission:

i) Should carry out the prudence check on the expenses projected for the year under consideration; or

ii) Should adopt the expenditure allowed in the Tariff Order for dated 10 March 2004 as base and increase by an escalation factor and if yes, then what should be the applicable escalation factor? The Commission has adopted the escalation factor to be 4.2% every year but does not explain the basis for arriving at it.

16. We feel that subjecting the admissibility of various heads under the A&G expenses to prudence check every year would require more efforts on the part of the Commission as well as the utility and would be time consuming but would be closer to the reality and the element of adhocism would be greatly reduced. In this process, extra-ordinary items of expenditure, which are incurred for the first time or are relevant only for a particular period, would get due consideration while firming up the quantum of admissible A&G expenses. This approach is somewhat more flexible in nature. On the other hand, the approach of adopting the base expenditure for a particular year and then applying an escalation factor works on the assumption that nature of expenditure is fairly identifiable and comparable on year-to-year basis. This approach enables the utility to reasonably forecast its cash flows over a period of time but the challenge remains in allowing time-specific expenditure or new items of expenditure and determining the escalation factor which provides adequate safeguard against inflationary factors. Time specific or new items of expenditure expenses could be, for example, in the nature of expenses incurred on study carried out to suggest efficiency improvement in the existing operations of the utility.

17. We feel that considering:

i) that the Appellant is an entity newly created as part of the re-organization of the state power sector;

ii) that the utility has incurred expenditure which is higher partly due to change in business conditions;

iii) the absence of any pre-determined applicable norms in this regard for 2005-06; and

iv) that the escalation factor has not been determined in advance,

The admissibility of A&G expenditure should be determined after carrying out prudence analysis and check instead of adopting the A&G expenses as per the Tariff Order dated 10 March 2004 and then escalating the same by applying 4.2% increase every year without considering the impact of inflation factor.

As regards A&G expenses incurred in respect of projects under construction, we agree with the Commission that A&G expenses incurred towards such projects, cannot form part of the expenditure to be recovered through tariff before these projects are commissioned. Such expenditure need to be capitalized.

18. The Appellant has submitted that the Commission has allowed higher A&G expenses per mega watt of capacity to other generating companies in the state, as under:

Particulars	As approved by Commission for FY 2005-06			Actual FY 2005-06
	MSPGCL	TPC	REL	MSPGCL
A&G Expenses relating to generation business Rs. in crores	24.46	53.39	13.277	33.05
Total Generation capacity - MW	9510	1774	500	9510
A&G Expenses Rs. in lakhs/MW	0.2572	3.0096	2.6554	0.347

19. We feel that on the face of it the claim of the Appellant carries some force as we could not get any reasonable explanation either from the Tariff Order of the Commission or from their submissions during the course of hearing. The Appellant is a Public Sector Power Generating entity which came into existence in 2005-06 as a result of the reform and restructuring of the erstwhile MSEB, to facilitate efficient operation of power generation and promoting competition to protect interest of consumers in the state as mandated in the preambles of the Indian Electricity Act, 2003. We observe that the

Appellant has much larger installed generation capacity of 9510 MW which is geographically dispersed through out the state compared to installed generation capacities of 1774 MW and 500 MW of TPC and REL respectively. REL's entire capacity is installed at single location in Dahanu, Maharashtra. We feel that due to multi-location generation infrastructure the overhead expenses on account of logistics, manpower requirement for general administration, security etc. beside facilities for housing, schooling, health and other welfare activities for employees' families which largely constitute A&G Expenses will inevitably be higher than the generation infrastructure in single or few locations. Yet, we find that A&G expenses allowed by the Commission in FY 2005-06, to MSPGCL is Rs. 0.2572 lakhs/MW as against Rs. 2.6554 lakhs/MW to REL and Rs. 3.0096 lakhs/MW to TPC. Even with the capitalization of Rs. 3.12 crores, the net A&G expenses of Rs. 29.93 crores claimed by the Appellant gives the gross A&G expense of Rs. 33.05 crores. The gross A&G expenses averaged over the capacity in MW gives A&G expenses per MW to be 0.347 which is still less than what is allowed in the case of TPC and REL. The aforesaid besides being not reasonable also indicates that the same criteria are not being applied for different utilities in the state negating the requirement of providing level playing field conducive for competition. Hence, we allow the appeal in respect of A&G expenses and direct the Commission to take it for truing up.

20. The Commission in its order of 07 December 2006 has stated that '*the A&G expenses are normative and cannot be passed to consumers at actuals. Therefore, the details of actual A&G expenses submitted by MSPGCL cannot be qualified as 'new and important matter of evidence' and A&G expenses will not be considered for truing up.'* We feel that since the Commission has clarified that for the FY 2005-06, no 'norms' were specified for recovery of A&G expenses, it is difficult to agree with the Commission's views that A&G expenses will not be considered for truing up. This Tribunal in a judgment in the case of REL Vs MERC and others (Energy Law Report 2007 APTEL 164) dated 04 Apr 2007 has allowed A&G expenses for FY 2004-05 and FY 2005-06 stating that *"concedingly, under the Sixth Schedule, clause XVII of the Electricity (Supply) Act,*

1948 'any expenditure properly incurred' on the distribution and sale of energy by the licensee is to be permitted. In the absence of any norms specified by the Commission merely allowing 3.3 per cent (being the (AGR) is not correct as this does not factor inflation which has to be necessarily taken into account and can not be ignored". In the instant case bereft of specified norms for A&G expenses any expenditure incurred on generation and purchase of energy is to be permitted for pass-through in tariff as per Sixth Schedule of Electricity Supply Act, 1948.

21. In view of the above, we allow the contention of the Appellant in sofar as the actual A&G expenses for FY 2005-06 is concerned and direct the Commission to true up the said expenses subject to prudence check.

B& K. <u>Transit Loss of Coal</u>

22. The following table gives the state-wise transit loss approved by the Commission for 2003-04, actual transit loss during 2003-04, 2004-05 as submitted and projected by the Appellant for 2005-06, 2006-07 in respect of various generating stations of the Appellant:

Station	2003-04	2003-04	2004-05	2005-06	2006-07
	MERC	Actual	Actual	Projected by MSPGCL	
Khaperkheda	1.45%	1.37%	1.55%	1.50%	1.50%
Paras	2.58%	2.94%	3.31%	2.11%	2.11%
Bhusawal	0.98%	0.98%	0.34%	1.77%	2.00%
Nasik	0.96%	0.45%	0.88%	1.00%	1.00%
Parli	2.40%	0.65%	2.13%	3.91%	3.24%
Koradi	1.47%	0.36%	1.23%	0.80%	0.80%
Chandrapur	1.72%	0.74%	1.06%	1.00%	1.00%

23. The Commission in its order of 07 September 2006 has stated that '*the Commission had specified trajectory of reduction in transit losses for the generation stations in the previous Order. If MSPGCL had reduced the transit losses in accordance with the trajectory specified in the Commission's Order, the value of transit losses for most of the stations works out close to the normative level of 0.80%. Hence, the Commission has approved a transit loss of 0.80% for all the stations*'. The Commission in its response to the Appellants' contention has submitted that station-wise losses works out to be as under, considering the trajectory approved by the Commission:

Station	2003-04	Reduction p.a.	2004-05	2005-06	2006-07
	Approved MERC		As per the Trajectory approv MERC		
Khaperkheda	1.45%	0.30%	1.15%	0.85%	0.55%
Paras	2.58%	0.50%	2.08%	1.58%	1.08%
Bhusawal	0.98%	0.00%	0.98%	0.98%	0.98%
Nasik	0.96%	0.00%	0.96%	0.96%	0.96%
Parli	2.40%	0.40%	2.00%	1.60%	1.20%
Koradi	1.47%	0.30%	1.17%	0.87%	0.57%
Chandrapur	1.72%	0.40%	1.32%	0.92%	0.52%

24. The Appellant has brought out factors attributing to transit loss of coal, which as given below, are very general in nature:

i) evaporation of surface moisture in transit.

ii) error/deviations in weighbridges.

iii) coal theft in transit.

iv) long distances involved in coal transportation.

v) frequent disturbance in the loading and weigh bridge requiring continuous maintenance/checking/calibration of weigh-bridge.

vi) consideration of actual weight of empty wagon to arrive at net weight.

25. The above factors are applicable to all the power generators using coal as the primary fuel. In the absence of any specific reason to be attributed for higher level of coal transit loss, we find no basis to support the Appellant's contention to claim higher level of losses than those permitted in terms of the loss reduction trajectory approved by the Commission. At the same time, there are no reasons for the Commission to adopt a uniform 0.80% transit loss level once a loss reduction trajectory has been approved by it. Therefore, for the year 2005-06, we allow transit loss level in terms of the loss reduction approved by the Commission station-wise, as given in the table above.

26. The Appellant has submitted that Reliance Energy Limited (REL) has been permitted transit loss at 1.79%, which is higher than the 0.80% normative level set for 2006-07. From the relevant order of the Commission on REL's ARR and Tariff Petition for FY 2005-06 and 2006-07 we observe that the Commission has found REL's transit loss level of 2.04% on the higher side and gave reduction target of 0.25% per annum. Further, the Commission has responded that this has to be seen in the context that the Commission had not specified a trajectory of reduction of transit losses for REL earlier, which was done thereafter. In view of the response of the Commission, it is clear that the Appellant and other generators in the state are subject to similar principles.

C& L. Station Heat Rate

27. The main argument of the Appellant is that station heat rate (SHR) targets given by the Commission are not achievable keeping in view the age of the machines, machine characteristics, quality of primary fuel, and operating conditions. From the impugned order of the Commission and further responses received we observe that these issues have not escaped the attention of the Commission while determining the applicable SHR. However, the question that whether the SHR targets set by the Commission are achievable under the circumstances or not, is a question of fact. We observe that the utility has been making claims that '*it is ready to subject itself to any scrutiny which the Honourable Commission feels appropriate and is ready to appoint any outside agency*

suggested by the Honourable Commission to run one unit on experimental basis, in order to gauge whether the normative SHR levels suggested by Honourable Commission are really achievable'

28. From the order of the Commission, we observe that the Commission had directed (page 71 of the order dated 07 September 2006) the Appellant, as part of measurement of SHR, to install weightometers at all units for accurate measurement of the amount of coal being fed to boilers and also that a systematic measurement of GCV of coal by taking periodic samples of coal being fired be institutionalized at all the stations. Further, in the order dated 07 December 2006 (pages 12 & 13), the Commission has noted that '*the SHR estimates of MSPGCL are not accurate to be considered for any review. The SHRs as estimated by MSPGCL are derived figures and their accuracy is influenced by the accuracy of measurement of the quantum and quality of coal used. The Commission has already issued clear directives for ensuring reliable and scientific measurement in this regard and has given sufficient time to MSPGCL. However, MSPGCL has failed to respond so far and the measurement of coal weight and calorific value continue to be simplistic and far from scientific. The Commission therefore does not see any sufficient reason to consider a review of the approved SHRs'*.

29. The above leads us to a conclusion that if specific steps are taken to demonstrate before the Commission that data for SHR is not derived backward but rather the SHR is worked out scientifically, the Commission would be in a position to take a considered view on the subject. While quantum of fuel consumed in a station is dependent upon its SHR but the SHR is not dependent upon the fuel consumed in the station. In other words, fuel consumption depends upon the SHR and not the vice-versa. It is a different matter that the practice of deriving SHR by considering the fuel consumption and GCV thereof is being adopted in many stations in the country.

30. The Commission, during the course of the hearing, submitted that the Appellant had not provided details of design heat rate and heat rate degradation curve as per the

original equipment manufacturer's recommendation. The Commission has explained that it had compared SHR of similarly sized and vintage units across the country on the basis of the report of the Central Electricity Authority (CEA). The Commission has further explained that a selective comparison of SHRs approved by various other electricity regulatory commissions cannot be made, with which we fully agree. We have observed that different commissions adopt different practices and considerations while determining the allowable SHR level. Hence, a comparison without considering all the factors leading to determination of allowable SHR for a particular station is neither meaningful nor advisable.

31. We are of the opinion that if the SHR allowed by the Commission is not achievable, then the same would not be in anybody's interest; entity would suffer by not recovering its reasonable cost of supply of the electricity and the consumers would not get the right signal about the pricing of the product they would be using. It is as much essential for the consumers to know the right price of the product they are using, as much as it is for the entity to recover its cost of operations. Unless the consumer knows the true price of the product, he will not be able to take an informed decision about the quantum of his consumption, particularly the industrial and commercial consumers who recover such costs from their consumers. Determining right price is also essential to send signals to the prospective developers/investors in the sector enabling them to take decision about the investment potential in the sector.

32. Under the circumstance, we feel that the Commission either on its own or through the Appellant engage appropriate independent agency(ies), who can carry out a study in a time bound (preferably within three months) manner to reasonably assess the achievable SHR of the plants owned by the Appellant. Such agency may also be asked to suggest measures to improve the SHRs over a period of time.

33. Based on the above, the Commission is directed to determine the SHRs in respect of plants owned by the Appellant. Till such time, the Appellant may continue with the pre-existing tariff subject to truing up with the revised SHRs when available.

D & Q. Tariff for Small Hydro Power Station

34. The Appellant in its tariff petition before the Commission had projected for annual fixed charges of Rs. 453.02 crores for hydro generating stations for 2006-07 whereas the Commission approved a sum of Rs. 132.84 crore as per the break-up given below:-

Rupees in crores

Items	Claimed by MSPGCL	Approved by MERC	Difference
O&M expenses	69.33	43.00	26.33
Depreciation	2.23	2.23	-
Lease Charges payab State Government	373.20	85.00	288.20
Interest on working cap	8.26	2.61	5.65
Total	453.02	132.84	320.18

35. As regards admissibility of O&M expenses, the Commission in the order dated 07 September 2006 (page 50) has stated that it has applied the Tariff Regulations and based on the methodology given in the Tariff Regulations, sum of Rs. 43 crore has been worked out. As the Commission has adopted the methodology given in the Tariff Regulations, we would not like to question the O&M expenses approved.

36. There is no difference in the amount claimed by the Appellant and approved by the Commission on account of depreciation.

37. Regarding lease rent for hydel plants, the Commission in the absence of Government Resolution supporting the projections of Rs. 373.20 crore as sought by the Appellant, has restricted the amount to the actual level of Rs. 85 crore. Therefore, we do

not find any wrong with the approach adopted by the Commission. However if the Appellant has subsequently received Government Orders for determining lease rentals different from those approved by the Commission, it may approach the Commission with the relevant Government orders for truing up of the sum approved.

38. As regards the sum approved towards interest on working capital, the difference we think is due to the corresponding impact of reduced quantum of O&M expenses and lease rentals. When the Commission takes up truing up of lease charges payable to State Government, the interest on working capital would be required to be calculated again based on the norms adopted by the Commission while approving Rs. 2.61 crores.

39. Therefore, as far as quantum of annual fixed charges in respect of hydel stations is concerned, we do not find any merit in the claims of the Appellant, *except relating to 'lease charges payable to State Government' and 'interest on working capital', which we dealt with above.*

40. The Appellant has submitted that the Commission in its order dated 09 November 2005 has approved a tariff of Rs. 2.84 per unit for first year and a levelised tariff of Rs. 2 per unit for small hydro projects. This order was applicable in respect of supply of electricity from small hydro projects up to 25 MW to the distribution licensee in the State of Maharashtra. The appellant has sought that such tariff should be made applicable to electricity supplied from small hydro projects of the Appellant also. The Commission in the impugned order has clarified that order dated 09 November 2005 is primarily for new projects with the intention to promote setting up of additional small hydro projects (SHPs) and was based on the cost details of 42 SHPs yet to be set up or being in the process of set up in the State and does not include the already existing SHPs of the Appellant. The Appellant has also submitted that keeping in view the provisions of Section 61 (h) of the Electricity Act, 2003, the Appellant should have been given the benefit of tariff applicable in terms of order of 9th November of the Commission. Section 61 of the Electricity Act, 2003 is reproduced below:-

> *`"61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*
>
> *……*
>
> *(h) the promotion of co-generation and generation of electricity from renewable sources of energy".*

41. The above provision gives broad policy directions to the Commission, which the Commission should take into consideration while determining the terms and conditions of the tariff. In doing so the Commission would also be guided by the policy direction of the State Government as mandated under Section 108 (1) of the Act, which is reproduced below:

> *"108.(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing".*

42. We notice that the Commission has submitted that the Appellant did not approach the Commission for review of its order dated 09 Nov 2005. The order of the Commission has to be seen in the context of Government of Maharashtra policy to encourage private sector participation in development of small hydro projects, as per State Government's Resolution dated 28 Nov 2002, which was revised by the State Government on 15 Sep 2005. The Commission has clarified that the revised policy is applicable to IPPs and CPPs developing hydropower projects up to 25 MW capacity. In view of the rationale given by the Commission, we feel that the Appellant is not entitled to a higher tariff of Rs. 2.84/kWh as the order dated 09 Nov 2005 is applicable only in the case of new projects. We do not agree with the Appellant's contention that the Commission has disregarded the provisions of Section 61 (h) of the Electricity Act, 2003 while considering tariff fixation of small hydro project.

Billing of incentive on monthly basis.

43. The Appellant has submitted that billing for incentive should be allowed to be made on monthly basis. We find that the Tariff Regulations have not specified any periodicity in this regard. However, as the bill for recovery of fixed and energy charges is to be raised on monthly basis, we find no basis to deny the same treatment in respect of incentive claims. Any under or over recovery on account of such claims may be adjusted on monthly basis.

E. Truing up for fuel expenses for FY 2005-06

44. The Appellant had claimed fuel expenses amounting to Rs. 4989 crore for 2005-06. The Commission in its order of 7 September 2006 approved an amount of Rs. 4880 crore towards fuel expenses. After truing up, the Commission approved sum of Rs. 5001.43 crore against Rs. 5083.35 crore sought by the Appellant. The Appellant has submitted that difference was mainly on account of:

- While adopting the fuel adjustment cost mechanism, other costs have been excluded; and
- Variation on account of actual performance parameters mainly in respect of station heat rate.

45. The Commission in its order of 25 April 2007 has observed that *'the Commission has accepted the variation on account of other charges such as lubricants, chemicals, water charges, etc. to the extent not allowed during the year due to change from FOCA (Fuel and Other Costs Adjustment) mechanism to FAC (Fuel Adjustment Costs) mechanism, amounting to Rs. 121.43 crore (i.e. Rs. 169.31 crore less Rs. 47.88 crore). However, for truing up, the Commission has not considered the fuel cost variations on account of deviation of actual performance parameters from the normative performance parameters'*.

46. From the above, we observe that disallowance has been only on account of variations arising due to actual performance parameters being different from that approved by the Commission. In our opinion, once the Commission has approved certain performance targets to be achieved by the Appellant, determination of tariff would be based on these performance targets unless it is demonstrated there had been circumstances/facts different from those assumed at the time of stipulating the performance parameters or there is change in business conditions that were envisaged earlier. We find nothing of these sorts happening to the Appellant. Hence, the claim of the Appellant for seeking additional fuel cost consequent upon the actual performance parameters turning out to be inferior to those stipulated by the Commission.

47. However, as we have brought out earlier for the purpose of determining the parameters, actual operating conditions and plant characteristics should be given due consideration. In this reference we have given direction (at para 32) that the Commission may either directly or through the Appellant engage an independent agency to make a reasonable assessment of the performance parameters achievable by the generating stations owned by the Appellant and then decide about the improvement trajectory. SHR being a dominant factor in deciding the fuel expenses and is one of the performance parameters to be determined through the aforesaid process, we are inclined to allow the appeal in this regard till such time the re-assessed improvement trajectory of parameters is available.

G. Truing up of Depreciation

48. The Appellant has submitted that for the year 2005-06, the Commission allowed a depreciation of Rs. 488 crore considering an average rate of depreciation of 5.17% on gross fixed assets (GFA) of Rs. 9437 crore. However, as per the audited accounts, the actual GFA as on 06 June 2005 was Rs. 9558 crore; hence the Appellant in the review petition before the Commission sought recovery of Rs. 494.14 crore on account of

depreciation being 5.17% of Rs. 9558 crore. The Commission restricted the depreciation to Rs. 399.87 crore being the actual depreciation as per the accounts.

49. The Commission in its response has justified its approach by stating that depreciation has to be allowed on actual basis and not normative basis and that truing up has to be done on the basis of actuals subject to prudence check. The Commission has further submitted that depreciation is basically a non-cash expenditure, utilized primarily for repayment of loans in the power sector rather than for replacement of asset.

50. Depreciation for the purpose of finalization of ARR and/or determination of tariff is based on the premise that the full value of the asset, save to the extent of any residual value, is allocated over the useful life of the asset. Such sum of depreciation on year to year basis may differ from the sum of depreciation shown in the annual accounts prepared by an entity. In a particular year, depreciation allowed for the purpose of tariff may be higher or lower than the depreciation admissible for the purpose of preparation of accounts. This is so because the rates of depreciation adopted for tariff purposes and for accounts purposes are different. However, over the entire useful life of the asset, the aggregate depreciation would match the full value or capital cost of the asset. If one approach is adopted consistently, the generator would be assured of the recovery of depreciable amount of the asset over a period of time. In case there is juxtaposition of above-said two approaches, there is every likelihood that the generator would be denied full recovery of depreciable amount of the asset over a period of time. The Hon'ble Supreme Court in its judgment dated 15 Feb. 07 in Civil Appeal No. 2733 of 2006 in the Case of "*Delhi Electricity Regulatory Commission Vs. BSES Yamuna Power Limited & Ors.*" states thus:

> "*Before concluding we may state that basic object of providing depreciation is to allocate the amount of depreciation of an asset over its useful life and not actual life so as to exhibit a true and fair view of the financial statements of an enterprise. Useful life is a period over which a*

depreciable asset is expected to be used. Useful life of an asset in a capital intensive industry is generally shorter than its physical life. Useful life is pre-determined by contractual limits or by amount of extraction or consumption dependent on the extent of use and physical deterioration on account of wear and tear which depends on operational factors such as the number of shifts, repair and maintenance policy of the utility ad reduced by obsolescence arising fro technological changes, improvement in production methods. ……..…."

51. The Commission has explained that earlier the depreciation was allowed as per depreciation rates notified by the Ministry of Power, Government of India (circular issued in 1994). The approach should not be deviated from it simply because while truing up as per the accounts, the actual depreciation is coming to be lower. If the Commission has data available before it to show that the depreciation claims allowed in the past is adding up to more than the cumulative depreciation allowable as per the MOP notification, then it would be justified in restricting the allowable depreciation. Similarly, if the Commission believes that the depreciation pertain to an earlier period before the regulatory mechanism was put into effect, then again the recovery of expenditure could be restricted.

52. In the case before us we find no such reason to restrict the amount of deprecation amount. Therefore, we allow the depreciation claimed by the Appellant. However, if the Commission has allowed any extra recovery in the past under the head of depreciation, the same may be adjusted.

H. Truing up of other debits

53. *The Appellant has sought truing up of expenditure relating to the following heads for the year 2005-06:*

Particulars	Actuals as per MERC order	Actuals as submitted in the Appeal
Material cost variance O&M	0.36	0.76
Coal cost variance accounts	16.32	16.32
Bad & Doubtful Debts written off provided for	25.11	25.11
Miscellaneous losses & write off	0.79	1.20
Sundry expenses	0.25	0.25
Intangible Assets written off	0.11	0.34
Intangible Assets interest charges for HVDC	0.81	0.97
Total	43.75	44.95

54. The Commission in its order of 25 April 2007 has allowed only coal cost variance of Rs. 16.32 crore. The major disallowance is in respect of provision made for bad and doubtful debts to the extent of Rs. 25.11 crore as the Commission was of the view that the '*Appellant is supplying power only to MSEDCL and there should not be any bad debts'*.

55. The Appellant has submitted that its *statutory auditors observed old outstanding issues and advised to make provisions for bad and doubtful debts. Accordingly the entries for bad debts were passed in the books of the Appellant for the FY 2005-06.* The Appellant has further submitted that '*disallowance of bad and doubtful debts by Respondent No. 1 without allowing the Appellant to explain the reasons for the same in any of the data validation sessions not only denies the principles of natural justice to the Appellant but also reflects the casual, callous and careless nature of the Respondent No. 1 to deal with the issue.*

56. The appellant has further submitted that the above provision for bad debts was in respect of transactions *prior to unbundling of the erstwhile MSEB* (Maharashtra State Electricity Board) and that *the bad debts mainly consisted of advances paid to coal*

companies, advances to other suppliers etc. dating back to up to 15 years and is not because of any pending payments from MSEDCL. It has also submitted that *since the Appellant came into existence only from 6 June 2005 from the erstwhile MSEB, it is practically not possible to individually trace the allocation of such expenses for individual stations.*

57. As regards truing up expenditure on account of provision made for bad and doubtful debts, we opine that the Appellant should have refrained from using uncalled for and unreasonable comments about the Commission. The Appellant must be careful about the language it is using.

58. Coming back to the issue at hand, it is true that provision for bad debts is part of business operations in a routine course. If such provision were to be made in the course of operations for transactions relating to the period after the Appellant came into existence, the Commission would have taken a view about their admissibility after a prudence check and ensuring that the Tariff Regulations did not contain anything contrary.

59. However, the case of the Appellant is different. We observe that the provision for bad and doubtful debts pertains mainly to a period prior to the existence of the Appellant. The Appellant came into existence on unbundling of the erstwhile MSEB when the Appellant was allocated certain capital assets equivalent to liabilities. It is an established fact that an opening balance sheet was prepared when the Appellant came into existence wherein various liabilities in aggregate were shown to be equal to assets in aggregate. Subsequently the statutory auditors of the Appellant and not the Appellant itself, observed old outstanding issues and advised for making provisions for such issues. This means that there were liabilities without corresponding assets, though not necessarily matching on one to one basis. Going by the contention of the Appellant that such sums are not recoverable from the persons to whom such sums were advanced, the logical

conclusion would be that the Appellant was handed over assets which were less in value than what they were stated to be.

60. It can reasonably be inferred that had MSEB continued in its earlier form, the Commission would have taken a decision on the basis of actual facts of the matter but at the same time delay in claiming such irrecoverable sums and then passing on the same to paying consumers results into greater uncertainties for the consumers. Disallowing any pass through in the form of tariff would have an adverse impact of the financial position of the Appellant on the one hand and passing on entire non-recovered amount after such a long period to the consumers would not be fair from the consumers' point of view on the other. Hence, under the circumstances we feel it to be reasonable that both, the Appellant and the consumers may bear the burden on this account. The sum to be recovered from the consumers may be spread over a period of three years, without any interest, to lessen the burden on the consumers. However, we would like to stress that the above cannot be taken as a precedent for making similar claims in the future.

61. As regards materials cost variance of Rs. 0.36 crore, we would not like to examine it further as the Commission has stated that the material cost variation is an accounting adjustment and not a real expense. The Appellant has not made any further submission/justification in this regard. Hence, we find no reason to deviate from the observations of the Commission.

62. Besides the above, Appellant had also submitted for truing on account of Miscellaneous losses & write off, Sundry expenses, intangible Assets written off and Intangible Assets interest charges for HVDC aggregating to Rs. 1.96 crore (in the Appeals the aggregate amount submitted is Rs. 2.76 crore). We do not find any reason in the order of the Commission while disallowing such expenses. The Commission is directed to examine the claim of the Appellant and decide the admissibility after a prudence check.

I. Truing up of Interest expenses and Finance Charges

63. The Appellant in their petition before the Commission had sought truing up only on the interest on long term loans. The Commission while truing up interest on term loans also trued up interest on working capital on actual basis. The Appellant has submitted that for the financial year 2005-06, the Commission should have allowed interest on working capital on normative basis and not actual basis as has been done by the Commission.

64. The Appellant has submitted that in the tariff order dated 07 September 2006, the Commission has considered interest on working capital on normative basis. However, the Commission in its subsequent order dated 25 April 2007 while determining the ARR for 2007-08 to 2009-10, stated that *'the Commission has not considered the interest on working capital for FY 2005-06 separately as the Commission has considered the actual interest expenses including interest on short term loans'*.

65. We think that such sudden change in the approach to determine the ARR of the Appellant creates uncalled for uncertainties for the Appellant to plan its revenue and resource mobilization programme. This Tribunal in its judgment dated 14 Nov. 06 in case of National Thermal Power Corporation Ltd. Vs. Central Electricity Regulatory Commission and Ors. (2007 APTEL 828) has decided that the loan repayment should be computed based on normative debt to ensure that whatever normative debt has been considered Tariff should ensure recovery of same normative debt and interest thereon. In the instant case there appears to be no reasonable ground to apply the logic of 'normative or actual' whichever is lower. It may be pointed out that normative values are not ceiling norms and the same has been clarified in this Tribunal judgment dated 31 May 07 in the case of "*U.P. Power Corporation Ltd. Vs. Vs. N.T.P.C. Ltd. & Ors.* (2007 APTEL 77), para 22:

> *"…….. In view of the aforesaid, we are of the opinion that the contention made by the Appellant that the norms applied should be ceiling and actual values of the operational parameters should be considered subject to the ceiling norms, is inconsistent with the provisions of the Act, which mandates encouraging efficiency, competition, good performance etc."*

Therefore, we are of the opinion that the interest on working capital should be determined on normative basis, which may sometimes be more or less than the actuals. However, if the Appellant had been allowed interest on short-term loans, which are in the nature of working capital, the same should be disallowed.

J. Truing up of Revenue Earned

66. The Appellant is aggrieved by the order of the Commission truing up of revenue earned by the Appellant. The Appellant has submitted that truing up of revenue is a marked deviation in approach by the Commission which is neither provided in Tariff Regulations of 2004 nor in Tariff Regulations of 2005. The Appellant's view is that non-tariff income earned by it can be considered as extra profits and can not be adjusted to determine its ARR.

67. The Commission has submitted that '*while non-tariff income earned by Generation Companies has not been mentioned specifically in the Tariff Regulations, the issue has to be seen in the context of the coverage of the Tariff Regulations, which cannot be expected to cover all eventualities and situations, and the commission has to take a decision on the basis of philosophy and principle involved in the matter'*. The Commission has further submitted that Regulation 17 of Tariff Regulations 2005 under the heading 'Annual review of performance' provides for truing up of revenue.

68. We have gone through Regulation 17 of the Tariff Regulations. Regulation 17.1 which contains the basic theme of the Regulation, reads as under:

> *'where the aggregate revenue requirement and expected revenue from tariff and charges of a Generating Company or Licensee is covered under a multi-year tariff framework, then such Generating Company or Licensee, as the case may be, shall be subject to an annual performance review during the control period in accordance with this regulation.'*

69. Other clauses of the Regulation lay emphasis on a comparison of the performance of the generating company with the approved forecast of aggregate revenue requirement and expected revenue from tariff and charges.

70. On a combined reading of Regulation 17, we observe that comparison would be on two counts, firstly on the aggregate revenue requirement and secondly on the revenue mobilized through the tariff and charges. Aggregate revenue requirement consists of expenses allowed by the Commission, either normatively or after prudent check, as the case may be, and permissible surplus being return on capital employed by the generating company. Revenue mobilized would depend upon the sale mix of the generating company (in the present case it is not of much relevance as the case before us is of single buyer model) and the tariff and other charges permitted by the Commission.

71. In our view, the other incomes of the Appellant do not fall under 'revenue mobilized through tariff and charges', as:

a) such incomes have not come from the buyer; and
b) such incomes are no way linked to the quantum of electricity sold by the Appellant.

72. Part of such other income may have a link with the aggregate revenue approved by the Commission, for example:

a) where the Commission had approved expenditure for certain items, and the Appellant had realized some income by way of residual sale; or

b) Where the Commission had approved interest on certain loans and such loans are partly used to be invested in FDs, other interest bearing securities, given to employees as advances,

c) Where the Commission allows expenditure on maintenance of staff quarters and other buildings, rental incomes from such quarters or buildings;

d) Income by way of sale of tender forms relating to expenditures allowed for execution certain contracts, studies, etc,

73. We feel that in cases where the Commission allows a cost to be recovered after prudent check, any deviation in the amount of such expenditure or recovery of income relating to such expenditure would be eligible to be taken up for truing up. In our view the objective of the Tariff Regulations is broadly to ensure a pre-determined return on the investments made by the utility on the one hand and to ensure availability of electricity with reasonable operational efficiency to the consumer. If in the process the utility is subjected to losses beyond its control or earns extra profits, the Commission has inherent powers to take necessary steps after prudence check. However, if the income can not be reasonably linked to any cost item allowed by the Commission as part of the ARR, the same should not be adjusted against the ARR of the Appellant, in the absence of specific Regulations. In the original order the Commission did not adjust any such other income.

74. In the case before us, the Appellant has claimed that other revenue of Rs. 112 crore arising under various heads other than from sale of electricity should not be considered while determining its ARR. These heads are broadly as under:

Particulars	Rs. in crores
Sale of scrap	14.77
sale of fly ash	13.69
Interest on staff loans	0.25
Rental from staff quarters	0.34
Rental from other buildings	0.45
Sundry credit balances written back	0.22
Sale of tender forms	0.58
Rebate discount on prompt payment to bulk power supplier	0.43
Miscellaneous and other Receipts	76.20
Total	106.93

75. The appellant has not submitted any break-up of miscellaneous receipts of around Rs. 75 crore.

76. From the order dated 25 April 2007 (page 37-38, para 3.10) of the Commission, it is observed that the Commission adjusted 'other income' of Rs. 112.93 crore while determining the ARR for 2005-06, though in the earlier order the Commission did not adjust 'other income' while determining the ARR of the Appellant.

77. Keeping in view of our observations given above, we direct the Commission to look into the details of other incomes and decide the claim for truing up of other income in accordance with our views given above.

K. Transit Loss of Coal;

L. Station Heat Rate;

M. Auxiliary Consumption of Various Stations; and

N. Specific Oil Consumption

78. We have dealt the issues relating to transit loss of coal and station heat rate earlier in this judgment. This Tribunal has through its judgments in the past, consistently maintained that deciding about the correctness of the Regulations framed by different electricity regulatory commissions in the country is beyond the jurisdiction of the Tribunal. In Neyveli Lignite Corporation Vs Tamil Nadu Electricity Board & Ors. (Appeal No. 14 and 115 of 2005), *'we have taken a view that this Tribunal has no jurisdiction to determine the validity of the Regulations in appeal as the Regulations are in the nature of sub-ordinate legislation. While holding so, we relied upon the decision of the Supreme Court in West Bengal Electricity Regulatory Commission Vs CESC Ltd. (2002) 8 SCC 715 at page 739, wherein it was held to the effect that the Regulations framed by the Regulatory Commission are under the authority of sub-ordinate legislative functions conferred on it by Section 58 of the Electricity Regulatory Commission Act, 1998. It was further held that the High Court sitting as an appellate court under the Act of 1998 could not have gone into the validity of the Regulations in exercise of its appellate power'*.

79. Again this Tribunal in Appeal No. 117 of 2006 (judgment delivered on 30 Mar 2007) in the case of NTPC Ltd Vs Transmission Corporation of A.P. & Ors quoting its judgment in Appeal No. 51, 52, 53 etc. of 2006 delivered on 06 Dec 2006, has held *that this Tribunal cannot go into the validity of the Regulations in exercise of its appellate power*.

80. However, we find that there is a substantial difference between the norms prescribed by the Commission through the Tariff Regulations and those achieved by the Appellant. We find that the Tariff Regulations give powers to the Commission to amend any provisions of the Tariff Regulations (Regulation 84) and to remove difficulties in implementation of the Tariff Regulations (Regulation 85), which we feel can be used by the Commission to take corrective measures so that the norms set are achievable under the operating environment. Hence, we direct the Commission to take into consideration the independent study which we have directed to be undertaken, and re-set the above

operating parameters. This will also help the Commission to align its Regulations with the Tariff Policy issued by the Government of India advising for prescribing achievable norms and not merely ideal norms. At the same time, the Commission has to be cautious to ensure that deliberate inefficiency on the part of the utility is not passed on to the consumers.

O. O&M Expenses for Base Year for MYT Period

81. The Appellant in its petition before the Commission sought approval of Rs. 1137 crore operation and maintenance (O&M) expenses for the year 2006-07. The Commission while determining the allowable O&M expenses for years 2007-08 to 2009-10 (MYT period) considered the estimates of O&M expenses submitted by the Appellant. Subsequently, the Appellant submitted before the Commission to consider revised estimates for the purpose of determining the allowable O&M expenses for the MYT period, which was not accepted by the Commission. The other contention of the Appellant is to consider the escalation rate of 6%.

82. Regulation 34.6.1 of the Tariff Regulations 2005 contains provisions relating to determination of allowable O&M expenses, in respect of old generating stations, as under:

a) *'The operation and maintenance expenses including insurance shall be derived on the basis of the average of the actual operation and ,maintenance expense for the five years ending March 31, 2004 based on the audited financial statements, excluding abnormal operation and maintenance expenses, if any, subject to prudence check by the Commission.*

b) *The average of such operation and maintenance expenses shall be considered as operation and maintenance expense for the financial year*

ended March 31, 2002 and shall be escalated at the rate of 4% per annum to arrive at operation and maintenance expenses for the base year commencing April 1, 2005.

c) The base operation and maintenance expenses for each subsequent year shall be escalated further at the rate of 4% per annum to arrive at permissible operation and maintenance expenses for such financial year'.

83. The Commission has considered the estimates of the Appellant for the year 2006-07 and has also allowed escalation at the rate of 5.38%. We observe that the above dispensation results into deviation from the norms by the Commission in favour of the Appellant. The Commission in its submissions has also stated that *'since the actual audited O&M expenditure in FY 2006-07 was not available with the Commission at the time of the MYT order, and has not been submitted to the Commission till date for the Commission's prudence check, there was no question of considering the revised estimates of the O&M expenditure for the projection of O& M expenses over the Control Period, as these are only estimates and past experience has shown that there is significant variation between the estimated expenditure and the actual expenditure……the Commission is quite concerned about the Appellant's practice of booking expenditure of capital nature under Repair and Maintenance expenditure, and has sought a clear segregation of capital related expenditure and revenue expenditure……. Once the desired audited figures are submitted to the Commission under the truing up process, and the Commission has assessed the prudence of the same, the Commission will consider the same for projection of the O&M expenditure over the Control Period'.*

84. In view of the submission of the Commission, we advise the Appellant to take up its claim in the matter before the Commission.

P. Hydel Tariff

85. The Appellant has submitted that non-peak tariff of Rs. 1.65 per kWh is a fictional accrual in respect of amount of Rs. 0.34 per unit as 'excess recovery' is to be adjusted in accordance with para 4 on page 67 of the tariff order. Extracts from the Commission's order are given below:

> *"….the Commission directs adjustment of excess recovery of Rs. 617 crore from hydro generating stations in the bills for sale of power between MSPGCL and MSEDCL as a fixed reduction of Rs. 51.38 crore per month.*
> *Any variations in the recovery of charges on account of differential peaking tariff from the Commission's approved values shall not be trued up".*

86. The Appellant's grievance is also about the direction given by the Commission to abide by the peak-off-peak generation proportion target of 89:11 prescribed by the Commission. The Appellant's case is that dispatch from its Koyna hydro station is governed by the MSEDCL and SLDC subject to the availability of water and the generating station. The Appellant has requested for truing up variations on account of differences in generation during peak hours. If truing up is not allowed in this, the revenue recovery of the appellant would be adversely affected. The Commission in its submission has clarified that this ratio has been arrived at on the basis of the Appellant's submissions in the previous tariff processes and have not been estimated by the Commission. The Commission has clarified in the impugned order (page 17) that variations on account of hydro generation prior to the date of the tariff order shall qualify to be on account of uncontrollable factors and shall be considered for truing up and further that factors beyond the control of MSPGCL would qualify for truing up.

87. The Commission's order that *'any variations in the recovery of charges on account of differential peaking tariff from the Commissions approved values shall not be trued up'* has resulted into a regulatory uncertainty as far as recovery of revenue is

concerned. While we may agree with the Commission's point that the ratio of 89:11 for peak-off-peak power generation has been worked out on the basis of the data submitted by the Appellant, what is more relevant is the regulatory and administrative environment in which the Appellant is operating. If dispatches from the Appellant's generating stations are subject to instructions of MSEDCL and SLDC (distribution company and the state load dispatch centre, respectively) it is not fair to subject the Appellant to adverse consequences if it is not able to meet the ratio of 89:11 due to instructions received from MSEDCL and SLDC. Alternatively, if the Appellant abides by the directions of the Commission to maintain ratio of 89:11, it should not be subjected to adverse treatment from MSEDCL and SLDC. Therefore, it is essential that the ratio of peak-off-peak is determined after taking into consideration the operational capacity of the Appellant as well as the system pattern and in our view reasonable flexibility is allowed, which should be respected by the Appellant, MSEDCL and SLDC. The Commission is, therefore, directed to devise a mechanism which addresses the concern of the Appellant, and also meets the objective of the Commission to send economic signal about pricing of the electricity.

R. Reactive Energy Charges

88. The Appellant has submitted that it had sought for incentives in respect of recovery of reactive energy charges on the ground that when the stations of the Appellant are called upon by the SLDC at various points of time exclusively for Reactive Energy generation/absorption for grid stabilization, no active power is generated but the Appellant incurs expenditure in the form of increased auxiliary consumption, increased operation and maintenance expenses by way equipment, wear/tear, etc.

89. It has been submitted before us that the Commission through its order dated 27 June 2006 (Case no. 58 of 2005) has stipulated incentive/penalty for reactive energy injection/drawal at Rs. 0.25 per kV/h depending upon the voltage at inter-change points,

which is applicable to the Transmission Licensees, Distribution Licensees and the open Access users.

90. The Commission in its submission has stated that the Central Electricity Regulatory Commission also in its background note has clarified that SERCs will have to devise mechanism for reactive power management compensation thereof upon careful deliberation and taking into account state specific factors.

91. In our opinion, if the Appellant is required to extend support for Reactive Energy generation/absorption for grid stabilization, there would be additional burden on the Appellant, which requires compensation. The Commission has already worked out a mechanism for incentive/penalty for reactive energy injection/drawal depending upon the voltage at inter-change points, which is applicable to the Transmission Licensees, Distribution Licensees and the open Access users. We feel that since the Appellant is incurring additional expenditure without being compensated, the Commission should extend the above dispensation to the Appellant or may work out a scheme specifically for state power generators within three months

S. <u>Normative O&M Expenses for Hydel Plants</u>

92. The Appellant has challenged the norms set by the Commission for allowability of O&M expenses in respect of hydel plants. As per Regulation 34.6.1 quoted earlier, the O&M expenses for old generating stations is to be decided based on the past expenditure. It is the Appellant's case that the O&M expenses allowed by the Commission is working out to be lower than the O&M expenses allowable as per the Regulations in respect of the new hydel stations. Since the existing hydro electric power plants are not covered by the policy of the Government it will be inappropriate to compare the O&M expenses of the existing plant with that of new hydel stations covered under the Regulations.

T. Employee Incentive Schemes

93. The Appellant, in its petition before the Commission, has pleaded that it be allowed for employee incentive schemes to promote operational efficiencies in its stations. The Appellant has stated that the employee incentive scheme in the MYT petition was filed before the Commission in consonance with the directions issued by the Commission in its tariff order dated 10th January, 2002 for the FY 2001-02 wherein the Commission has stated that *"the payment of bonus by the MSEB should be linked to incentive schemes designed to improve the operations of the MSEB. The incentive schemes should be implemented for all aspects of MSEB's operations viz Generation, Transmission and Distribution."* The Appellant has complained that the impugned order remained silent on this issue.

94. The Commission before us has admitted that expenditure on employee incentive schemes will be more than off-set by the savings achieved in the operations due to efficiency improvements. We direct the Commission to consider the issue of employee incentive schemes in accordance with law.

95. In view of our above findings/observations the impugned tariff orders are set aside and the Appeals are partially allowed in terms of our findings/directions in para nos. 14, 19, 21, 25, 29, 31, 33, 37, 39, 42, 43, 46, 47, 52, 60, 61, 62, 65, 71, 77, 80, 84, 93 & 94 and the matter is remitted back to the Commission for re-determination of the tariff of the Appellant.

96. The Appeal Nos. 86 and 87 of 2007 are accordingly disposed off with no costs.

Pronounced in the open court on 10th April, 2008.

(A.A. Khan)
Technical Member

(Manju Goel)
Judicial Member

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