Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.117 of 2008

Dated: August 28 , 2009.

Present:- Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member

IN THE MATTER OF:

Reliance Infrastructure Limited
(formerly Reliance Energy Limited)
Reliance Energy Centre
Santazruz (East)
Mumbai .....Appellant(s)

v/s

1. Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No. 1
13th floor, Cuffe Parade
Mumbai-400005
(Through its Secretary)

2. Mumbai Grahak Panchayat
Sant Dnyaneshwar Marg
Vile Parle (W)
Mimbai-400056

3. Prayas
C/o Amrita Clinic, Athawale Corner
Karve Road
Pune-411004

4. Thane Belapur Industries
Post: Ghansoli
Navi Mumbai-400071

5. Vidarbha Industries Association
Civil Lines
Nagpur-400041

6. Maharashtra State Electricity Distribution Co.Ltd.
Prakashgadh, Bandra (East)
Mumbai-400051

7. Tata Power Company Ltd.
Bombay House
24, Homi Modi Street
Fort
Mumbai-400001

8. Brihanmumbai Electricity Supply and
Transport Undertaking
Shahi Bhagat Singh Marg
El4ctric House
Colaba
Mumbai-400001

9. Maharashtra State Electricity Transmission
Company Limited
Prakashganga, Bandra (East)
Mumbai-400051

10. State Load Despatch Centre-Maharashtra
Thane- Belapur Road
P.O. Airoli
Navi Mumbai-400708 .....Respondents

Counsel for appellant(s):	Ms Anjali Chandurkar,Advocate Ms Smieetaa Inna, Advocate Mr. Shiv Kumar Suri
Counsel for respondent (s):	Mr.Jaideep Gupta, Sr. Advocate Mr. Sitesh Mukherjee Mr. Sakya Singha Choudhuri Mr. Vishal Anand and Ms Megha Sen for Resp. No. 7 Mr. Brajesh Pandey for Mr. Ajit S. Bhasme, Resp.No.6 Mr. Mukesh Kumar for BEST, Respondent No. 8 Mr. Sumit Gamlaway for Resp.No. 8 Mr. Mohd Yasir Abbasi Mr. Buddy A Ranganadhan, for MERC

Judgment

Per Hon'ble Mr. H.L. Bajaj, Technical Member

In this appeal, the appellant, Reliance Infrastructure Ltd.(RInfra in short) has challenged certain portions of the order dated June 4, 2008 passed by Maharashtra Electricity Regulatory Commission (MERC or the Commission in short) in case No. 66 of 2007 in the matter of RInfra's distribution business petition for Annual Performance Revenue (APR) for FY 2007-08 and tariff determination for FY 2008-09.

2. The appellant has prayed for the following reliefs:-

a. (i) Declare that interest in respect of Working Capital met through internal accruals ought not to be treated as efficiency gains;

(ii) Direct MERC to consider interest on Working Capital met through internal accruals for FY 2006-07 as normative expense and give effect to the same while carrying out the truing up exercise.

b. (i) Declare that when interest on Working Capital is computed in respect of a generating company also having distribution business by not considering the receivables to the extent of supply of power to its retail supply business; insofar as computation of interest on Working Capital of such distribution business, one month equivalent cost of power purchase ought not to be deducted;

(ii) Direct MERC to reinstate one month's equivalent of cost of power purchase deducted while computing the interest on Working Capital for the period FY 2006-07 to FY 2008-09 insofar as such purchase relates to RInfra-G

c. A&G expenses to the extent of Rs. 62 lakhs for FY 2006-07 be permitted to RInfra-D.

d. A&G expenses for FY 2007-08 and FY 2008-09 be permitted to RInfra-D by including the amount of Rs. 62 lakhs in the base figure for FY 2006-07 and apply the increase of 5.29% on A&G expenses for FY 2007-08.

e. Contingency Reserve of an amount of Rs. 75.45 crore be reinstated.

f. Declare that RInfra-D is entitled to a sum of Rs. 20.65 crore in FY 2007-08 by way of arrears of wage revision and that the revised amount after accounting for the said amount of Rs. 20.65 crore being Rs. 245.35 crore

be considered for escalation at the rate of 6.26% for FY 2007-08.

g. Direct MERC to consider the allocation of capacity of Unit 8 to the extent of 100 MW to RInfra-D and give effect to the same for the purpose of tariff for FY 2008-09.

h. Direct MERC to recalculate the additional revenue earned by RInfra-D for FY 2006-07 on account of reduction in distribution losses from 12.1% to 11.25% and in accordance with the Tariff Regulations work out the efficiency gains.

i. Direct MERC to freeze the distribution loss for FY 2008-09 at 11.25%.

j. Direct MERC to estimate the R&M expenses for FY 2008-09 after taking into consideration the actual expenses of RInfra-D amounting to Rs. 145.98 crores.

k. Direct MERC to consider the actual price paid by RInfra-D for external purchase for FY 2008-09 while truing up.

l. Direct MERC to consider the carrying cost interest at 10.25% being SBI PLR pertaining to FY 2005 to FY 2007 for the purpose of permitting the same for the aforesaid period in respect of deferred recovery and not 6% as purportedly allowed by MERC.

m. Direct MERC to carry out necessary adjustments in transmission charges of RInfra-D for FY 2007-08 and FY 2008-09 in respect of Short Term Open Access Charges payable by RInfra-D.

n. Direct MERC to submit the said information/data/calculation to RInfra-D.

o. Direct MERC to allow or reimburse the carrying costs interest for the period April 01, 2008 to May 31, 2008 while carrying out the truing up exercise for FY 2008-09.

p. Direct MERC that after the appeals filed by TPC and BEST are decided by the Hon'ble Supreme Court and if the quantum of allocation is re-determined then to apply such allocation with effect from April 01, 2008.

3. The Commission, though arrayed as the respondent No. 1, has not appeared and defended the impugned order. The respondent No. 7 filed a reply to the appeal which related to the prayers g and p. The respondents 6 and 8, though appeared in the matter, did not file any reply or written submissions.

4. During the course of hearing, learned counsel Ms Smieetaa Inna, appearing for the appellant stated that the appellant be given liberty to approach MERC on the issues stated at prayer (g) and (p). She also submitted that the appellant is not pressing the prayers at (c), (d), (e), (k) and (m) above. Accordingly, the following order was passed by us on February 12, 2009:-

Appeal No. 117 of 2008

Dated: February 12, 2009

Present: Hon'ble Mrs Justice Manju Goel, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member

Reliance Infrastructure Limited
v/s
Maharashra Electricity Regulatory Commission & Ors.

ORDER

Ms Smieetaa Inna, counsel appearing for the appellant, on instructions, makes the following statements:

"1) The appellant be given liberty to approach MERC on the issue of allocation of capacity of Unit-8, as prayed for in prayer (g) of the appeal, including on grounds raised herein. All rights and contentions of the parties be kept open.

2) In so far as prayer (p) of the appeal is concerned, the appellant be given liberty to approach MERC as addressed at an appropriate stage.

3) The appellants are not pressing prayers (c), (d), (e), (k) and (m)".

In view of the above statement, both parties are allowed to make all contentions that they may have taken in this appeal before the Commission. The appellant is granted liberty to approach MERC in respect of their prayers on (g) and (p) of the relief clause of the appeal. The prayers at (c), (d), (e), (k) and (m) are dismissed as not pressed.

The MERC shall hear the submission of the appellant regarding prayers (g) and (p).

The appellant shall file an affidavit within the course of the day. The previous written submission submitted be returned to the appellant.

It is submitted my Mr. Jaideep Gupta, Sr. Counsel appearing on behalf of Tata Power, respondent No. 7 that apart from prayers (g) and (p) they are not required

to oppose any other prayer. So far as other respondents are concerned, they may file a counter to the affidavit, filed by the appellant today, within two weeks hereof.

List the matter on 24th March, 2009.

5. Nine issues that now remain to be dealt by us are at (a), (b), (f), (h), (i), (j), (l), (n) and (o) of the prayer of the appellant. We now proceed to deal with each issue herein below:

Issue (a) Interest on Working Capital met through Internal Accruals.

6. Learned counsel, Ms Anjali Chandurkar, appearing for the appellant, contended that interest on Working Capital for FY 2006-07, though permitted by the tariff regulations to be considered in the ARR is not granted by MERC at the time of truing up of RInfra's accounts and giving effect to the same in FY 2007-08, on the ground that working capital was met through internal sources. Further such notional interest on working capital has been considered by MERC as efficiency gain and treated accordingly. She averred that the rate of interest for

Working Capital to be allowed to a distribution licensee in its Aggregate Revenue Requirement (ARR) is provided in Regulations 63.6.2 and 76.8.2 of the MERC (Terms and Conditions for Determination of Tariff) Regulations 2005 (Tariff Regulations) relating to wire and retail business respectively. She said the Regulations which are identical read as follows:

> " *Interest shall be allowed at a rate equal to the Short Term Prime Lending Rate of the State Bank of India as at the date on which the application for determination of tariff is made".*

7. She contended that accordingly RInfra-D had proposed in its Annual Performance Review (APR) petition that normative interest has been considered applying Prime Lending Rate (PLR) of State Bank of India (SBI) @ 10.25% for FY 2006-07. The amount claimed in this regard in the APR was Rs. 8.06 crore which is reflected in the petition filed before MERC.

8. In response to MERC email dated March 07, 2008, RInfra-D, vide letter dated March 12, 2008, inter alia stated that the working capital requirement for the distribution business was met through internal accruals.

9. Learned counsel submitted that RIinfra-D has not availed of any loan for the purpose of Working Capital and has funded such Working Capital requirement from its corporate treasury, i.e. internal accruals and that this has been recorded by MERC in the impugned order.

10. In the impugned order, MERC has discussed the interest on Working Capital for FY 2007-08 as follows:

> *"The Commission has estimated the normative Working Capital interest for FY 2006-07 in accordance with the Commission's Tariff Regulations and based on expenses approved in this order after truing up, considering both supply business as well as wires business. However, the Commission has computed the sharing of gains/losses on the difference between normative Working Capital interest and the actual*

Working Capital interest incurred, which in this case is zero, since this is a controllable parameter. Further, the Tariff Regulations stipulates that rate of interest on Working Capital shall be considered on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on the date on which the application for determination of tariff is made. As the short term Prime Lending Rate of State Bank of India at the time when REL filed the petition for tariff determination for FY 2006-07 was 10.75%, the Commission has considered the interest rate of 10.75% for estimating the normative interest on Working Capital which works out to Rs. 11.42 crore".

11. Learned counsel for the appellant submitted that MERC in the impugned order has computed an amount of Rs. 11.42 crore as normative interest on Working Capital and considered this entire amount as efficiency gain on the premise that actual interest on Working Capital is zero since the Working Capital requirements of RInfra-D are met through internal resources.

12. She submitted that admissibility of interest on Working Capital in Regulations 63.6.2 and 76.8.2 on a true and proper interpretation thereof is admittedly normative. This recognizes the fact that Working Capital requirement may be met through internal accruals and not through debt or loans. The said Regulations also contemplate a situation where funds are procured by a distribution licensee to meet its Working Capital requirement and the cost of such funds (i.e. rate of interest) is not subject to arbitrary negotiation between the licensee and the lender. It is submitted that the Regulations contemplating both the aforesaid scenarios have sought to cap the normative interest at SBI-PLR.

13. Learned counsel contended that MERC erred in observing that actual interest on Working Capital is zero as the Working Capital is funded through internal resources of RInfra inasmuch as even the internal funds carry cost and would have accrued interest when invested. Thus, while MERC rightly permitted interest on Working Capital as per the Regulations mentioned

hereinabove, there was no question of MERC considering the same as an efficiency gain on the sole ground that Working Capital requirements of RInfra-D were met through internal sources.

14. She contended that in the circumstances aforesaid the amount of efficiency gain considered due to actual interest as the Working Capital being zero, on truing up ought not to have been treated in accordance with Regulation 19 of the Tariff Regulations and that in the present case there is no question of there being any controllable factor to be treated in the manner set out in the Regulations. She further contended that Working Capital for FY 2006-07, FY 2007-08 and FY 2008-09 aggregating to Rs. 204 crores to be included in the Working Capital computation and consequently additional interest of Rs. 25 crores be allowed.

Analysis and decision

15. In Appeal No.111/08, in the matter of Reliance Infrastructure v/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the normative interest on Working Capital when the Working Capital has been deployed from the internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008.

> " 7) *The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on Working Capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as Working Capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards interest on Working Capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission*

was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on Working Capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on Working Capital as per Regulation 19 has merit.

15. b): The interest on Working Capital, for the year in question, shall not be treated as efficiency gain.

16. In view of our earlier decision on the same issue we allow the appeal in this view of the matter and hold that the entire interest on normative interest rate basis is payable to the appellant.

Issue No. (b): Non-deduction of one month equivalent cost of power purchase in computation of Working Capital for distribution business.

17. Learned counsel drew our attention to the following extract from MERC order dated April 21, 2008 in case No. 65 of 2007 in the matter of Reliance Energy Ltd.'s Generation Business

(RInfra-G) Annual Performance Review for FY 2007-08 and Tariff Petition for FY 2008-09.

> *" Regulation 34.5(d), of the Tariff Regulations stipulates as follows:*
> *In case of own generating stations, no amount shall be allowed towards receivables, to the extent of supply of power by the Generation Business to the Retail Supply Business, in the computation of Working Capital in accordance with these Regulation.*
> *Accordingly, the Commission has not considered the receivables from sale of electricity, while estimating the interest on Working Capital".*

18. Learned counsel contended that insofar as RInfra-G tariff order is concerned for FY 2006-07, FY 2007-08 and FY 2008-09, MERC has not considered receivables from sale of electricity by RInfra-G i.e. the power from Dahanu Plant, to RInfra-D while computing the Working Capital requirement of RInfra-G. This is on an assumption that no issue of credit period arises, distribution being an arm of the same company carrying on generation business. Thus the further assumption is that the

cost of power is received simultaneously from the distribution arm.

19. Learned counsel submitted that the Tariff Regulations provide for computation of interest on Working Capital of a distribution licensee. In this regard Regulation 76.8 is set out below:

> *" 76.8 interest on Working Capital*
> *76.8.1 The Distribution Licensee shall be allowed interest on the estimated level of working capital for the financial year, computed as follows:*
>
> *(a) One-twelfth of the amount of Operation and Maintenance expenses for such financial year plus*
>
> *(b) One-twelfth of the sum of the book value of stores, materials and supplies including fuel on hand at the end of each month of such financial year plus*
>
> *(c) Two months equivalent of the expected revenue from sale of electricity at the prevailing tariffs; minus*

(d) *Amount held as security deposits under clause (a) and clause (b) of sub-Section (1) of Section 47 of the Act from consumers and distribution system users; minus*

(e) *One month equivalent of cost of power purchased, based on the annual procurement plan .*

20. This provision in "(e)" above is on an assumption that the distribution division has availed of 30 days i.e. one month credit period insofar as supply from the generation division of the company is concerned.

21. Learned counsel contended that the Commission has not considered the receivables from sale of power by RInfra-G to RInfra-D while computing the Working Capital requirement of RInfra-G but the working capital amount of RInfra-D, it appears, has been reduced by following Regulations 76.8.1(e) reproduced hereinabove by deducting one month's equivalent cost of power purchase based on the annual power procured by RInfra-D from RInfra-G as well as TPC.

22. She submitted that it appears that MERC was in error in deducting one month's equivalent cost of power purchase based on the annual power procured by RInfra-D from Rnfra-G in view of it having not considered the receivables from sale of electricity by RInfra-G to RInfra-D while estimating the interest on Working Capital in RInfra-G's tariff order for the same year for FY 2006-07, FY 2007-08 and FY 2008-09. She submitted that the figures with regard to the computation of Working Capital are not found in the impugned order but this submission is made by RInfra-G on the basis of its own calculation and that an affidavit has been separately filed in this regard.

Analysis and decision

23. The Commission it its order dated April 21, 2008 in the matter of Reliance Energy Ltd. (Generating Business) has stated that it has not considered the receivables from the sale of electricity while computing the interest on Working Capital. This implies that the distribution licensee will not have any credit facility and it will have to pay the bill for power purchase as soon

as it is raised by the generating company. However, Regulation 76.8.1(e) assumes that the distribution licensee has availed credit facility of one month equivalent to cost of power purchased. It has also been contended by the appellant that the Commission has considered that the generation company will not extend credit facility to the distribution licensee. This has been inferred by the appellant because, in computation of Working Capital requirement for the generator, two months receivables have not been considered. If it be so, it is only logical that the computation of Working Capital requirement for the distribution licensee should not assume one month credit facility from the generating company. In view of this we allow the appeal in respect of issue (b) and direct the Commission to compute the Working Capital by adding cost of one month's power purchase as per our decision if this same approach has not been already followed by it.

Issue No. (h) & (i): Efficiency gains due to lower distribution losses for FY 2007.

24. Learned counsel for the appellant stated that the MERC in order dated October 03, 2006 in Case Nos. 25 and 53 of 2005, in the matter of ARR petition of REL, for distribution loss reduction to be achieved during FY 2006-07, the distribution loss level approved by the Commission for FY 2006-07 was 11.52%. She stated that RInfra-D had appealed before this Tribunal with respect to the distribution loss level approved by MERC for FY 2007 which was allowed by this Tribunal by its judgment and order dated April 04, 2007 as follows:

> *"In view of the aforesaid facts and the discussion, we agree with the contention of the appellant and allow the appeal in this regard".*

25. She stated that as the appeal was allowed, the Tribunal had thus approved the loss level of 12.10% for FY 2006-07 However, in the impugned order, MERC held as follows:

> *" The revised computation for FY 2006-07 indicates a distribution loss of 11.25%, as compared to the loss*

level of 12.1% indicated by REL-D. As regard the distribution losses to be considered for FY 2006-07 and the ATE judgment referred to in REL's petition, the Commission is of the view that the ATE judgment cannot be interpreted to mean that the distribution losses are 11.25%. ATE has only stated that the actual losses should be allowed. The Commission has hence, considered the distribution losses for FY 2006-07, under the truing up exercise, as 11.25% as compared to the 12.10% considered by REL".

26. Learned counsel contended that MERC, misinterpreting the order of this Tribunal while calculating the efficiency gains due to lower distribution losses inter alia stated as follows in the impugned order:

" As discussed earlier, REL-D is entitled to an incentive on account of achieving a distribution loss of 11.52%, which is lower than the level of 11.25% specified by the Commission in the order for FY 2006-07. The additional revenue earned by REL-D on account of the reduction in distribution losses has been estimated as Rs. 9 crore, by multiplying the additional units sold at the average billing rate of REL-D. In accordance with the Commission's Tariff Regulations for sharing of gains and losses due to controllable factors, one-third of this additional revenue, i.e. Rs. 3 crore has been passed on to the consumers through reduction in tariff, one-third has been passed on to the special reserve created for the purpose, and the balance one-third is allowed to be retained by REL-D".

27. She submitted that while calculating the efficiency gains, MERC for FY 2006-07 in the impugned order should have considered the distribution loss level of 12.1% approved by this Tribunal as the base and not 11.52% as originally approved by MERC and overruled by this Tribunal. The target loss level, for FY 2006-07, was, as contended by RInfra and as approved by this Tribunal i.e. 12.10%. Thus RInfra has actually reduced the loss level from the prevailing 12.1% to 11.25% during the year FY 2006-607 through its efforts, inter alia, curbing theft and pilferage and thus plugging commercial losses. This reduction in losses, being commercial in nature, had translated into additional sales for RInfra for FY 2006-07. MERC for FY 2006-07 should have worked out the additional sales on account of reduction in losses from 12.10% to 11.25% and valued the same to arrive at the efficiency gains amount.

28. Learned counsel urged this Tribunal to direct MERC to recalculate the additional revenue earned by RInfra-D in FY

2006-07 on account of the reduction in distribution losses from 12.1% to 11.25% and for sharing of efficiency gains in accordance with the Tariff Regulations.

Analysis and decision

29. In Appeal No. 251/06 the appellant, erstwhile Reliance Energy Ltd. (Now RInfra) had inter alia sought the following relief:

> (ii) Set aside reduction of distribution loss approved by MERC of 0.5% and approve the distribution loss at 12.1% for FY 2006-07.

30. This Tribunal in its judgment dated April 04, 2007 had decided as under in respect of the appellant's prayer regarding distribution loss:

> *" 50. In view of the aforesaid facts and the discussions, we agree with the contention of the appellant and allow the Appeal in this regard. In future, if the Commission expect the licensee to curtail losses to the extent it requires, it ought to agree to the Schemes proposed by*

the licensee to meet the increasing load and reduce losses".

31. As this Tribunal had allowed the appeal with respect to distribution losses, the target level of 11.52% set by the Commission stood revised upward to 12.1%.

32. We find force in the contention of the appellant that the reduction in distribution losses has to be reckoned with respect to the distribution loss level of 12.1% approved by this Tribunal. We are inclined to agree with the contention of the appellant and, therefore, allow the appeal in this regard. The Commission is directed to re-work out the efficiency gains considering the reduction in distribution loss level from 12.10% to 11.25%.

Issue (j) R&M Expense for FY 2008-09.

33. Ms Anjali Chandurkar stated that RInfra-D had, in its APR petition, submitted Rs. 150.28 crore towards R&M expenses for FY 2008 and had mentioned in its petition as below:

" The R&M expenditure for FY 2008 is estimated at Rs. 150 crore as against the actual of Rs. 103 crore for FY 2007. In addition to the normal increase (FY 2008 over FY 2007), there is an additional increase which is attributed to the following:

1. Contract Labour Arrears.

The agreement with the Contract Labour was entered in August, 2007 effective July 2006. This has resulted in proported additional expenditure of Rs. 13 crore.

2. *Increase in RI and introduction of service Tax.*

The RI charges per running meter for asphalt roads (generally our cables are laid on asphalt roads) were increased from Rs. 2263 to Rs. 4210 from August, 2007. Moreover, a service tax @ 12.36% shall also be levied, from FY 2008, on total RI charges. This will result in additional charge of Rs. 20 crore. REL is of the view that no service tax is payable on RI charges and the same has been taken up with the appropriate authorities. In case our view is upheld, there would be a reduction of about Rs. 4 crore from the above.
3. Siera Card:
An additional amount of Rs. 5 crore is being estimated as additional expenses on account of use of Siera cards usage charges for SCADA/DMS".

34. She submitted that there is an increase in R&M expenditure of Rs. 38 crore for FY 2008 including the additional increase by reason of the three issues mentioned above over the

actual expenses of FY 2007. MERC had raised queries about these expenditures to which RInfra-D provided necessary justifications as mentioned herein below:

i) *MERC vide its email dated December 23, 2007 directed RInfra-D to submit a copy of the MCGM circular with regards to reinstatement charges (RI charges). Infra-D vide its reply dated December29, 2007 duly submitted the same to the MERC .*

35. She contended that MERC vide its email dated January 5, 2008, directed RInfra-D to submit a copy of the labour contract agreement. RInfra-D duly submitted the same to the MERC on January 11, 2008. She further submitted that MERC vide its email dated April 10, 2008 enquired about projected expenditure towards vehicles of Rs. 2.19 crore and furniture and fixtures of Rs. 2 crore for FY 2008. RInfra-D vide letter dated April 16, 2008 responded to the same by stating that these expenses have been booked under A&G expenses and the same has been erroneously considered in R&M expenses also. Thus, the total

R&M expenses estimated for FY 2007-08 of Rs. 150 crore gets reduced to Rs. 146 crore.

36. She contended that MERC has, in the impugned order considered an escalation rate of 4.5% for escalating the actual expenses of FY 2007 to arrive at FY 2008 estimates. If the same escalation rate as considered by the MERC is applied, and the additional expenses of Rs. 38 crores during FY 2007-08 are also considered, the total amount for FY 2007-08 works out as given in the table below:

FY 2008	R&M (Rs. Crore)
FY 2007 base (approved)	103.33
Add: 4.5% increase	4.65
Add: Addl. expenses vide (i) above	38.00
Total	145.98

37. She said that however, MERC in the impugned order while provisionally truing up the R&M expenses for FY 2008 inter alia held the following:

> *" For FY 2007-08 for the supply business, the Commission has accepted REL's projections of R&M expenses, except for R&M projected for vehicles and furniture and fixtures…."*
>
> *"For the wires business, the Commission has considered a 4.5% increase over FY 2006-07 trued up levels, on account of change in WPI".*

38. Learned counsel submitted that MERC approved Rs. 137.67 crore for FY 2008 as against RInfra-D actual expenses for the said period amounting to Rs. 145.98 crore. She submitted that the approval of Rs. 137.67 crore for FY 2008 is without applying any rationale and without any basis and that no reasons whatsoever have been given by MERC as to the manner in which the said amount is arrived at and the computation thereof.

39. She on behalf of RInfra prayed that this Tribunal be pleased to direct MERC to true up the R&M expenses for FY 2008 after taking into account the aforesaid points.

Analysis and decision

40. The issue lies in a narrow compass. It is the contention of the appellant that it had to spend additional expenditure on account of increase in the expenditure due to additional increase in the contract labour arrears of Rs. 13 crores and additional charge of Rs. 20 crores due to the increase in per running meter rate of Reinstatement (RI) charges from Rs. 2263 to Rs. 4210 of Asphalt Road and introduction of service tax at the rate of 12.36% on RI charges. Additional amount of Rs. 5 crores on account of use of Siera Cards usage charges for SCADA/DMS.

41. We find force in the contention of the appellant that these additional charges will not be covered by the normal escalation of 4.5% for escalating actual expenditure of FY 2007 to arrive at the estimate for FY 2008. Additional expenditure on account of : arrears of contract labour; increase in reinstatement charges; introduction of service tax and Siera Card usage, not being normal expenses, will have to be factored in to arrive at the estimates for FY 2008. In view of this we direct the Commission

to allow the additional expenditure on re-instatement of asphalt roads, service tax paid thereon, arrears of labour contract payments and Siera Cards payments.

Issue No. 'l' and 'o' Rate of Interest in respect of Deferred Recovery.

42. Ms Chandurkar submitted that RInfra-D in its APR petition had calculated the carrying cost on the deferred recovery from FY 2005 to FY 2007 while truing up considering a carrying cost interest rate of 10.25% per annum on Rs. 138 crore, it being the SBI PLR pertaining to that period. However, the MERC in the impugned order held the following:

> *"However, in the APR Petition, REL-D has sought carrying cost interest on the amount of deferred recovery, at the rate of 10.25% per annum. While there was no specific mention of allowing carrying cost in the MYT order, the Commission appreciates that carrying cost will have to be considered, on account of the deferent in the recovery of the approved revenue. The Commission has hence, computed the carrying cost of interest on deferred recovery of Rs. 138 crore, at the rate of 6%, as is the prevalent practice applicable for deferred recovery of the Fuel Adjustment Cost (FAC) under-recovered amount".*

43. Rate of interest for Working Capital is as provided in Regulation 63.6.2 and Regulation 76.8.2 of the Tariff Regulations. She said that the said Regulations which are identical, read as follows:

> *"Interest shall be allowed at a rate equal to the short Term Prime Lending Rate of the State Bank of India as at the date on which the application for determination of tariff is made"*

44. Ms Chandurkar drew our attention to our judgment dated May 12, 2008 in Appeal No. 3 wherein this Tribunal has, inter alia held as follows:

> *"51. In the circumstances, therefore, we pass the following order:-*
>
> *…The balance which remains unpaid by REL to TPC shall be released by REL within four weeks along with delayed payment charges at the prevailing SBI Prime Lending Rate for short borrowing and not at the rate of 24% per annum as directed by the Commission".*

45. She submitted that there is no basis for allowing the carrying cost on deferred recovery at the rate of 6%. As per the said Regulations the interest is allowed at a rate equal to the

short term prime lending rate of SBI which at the relevant time was 10.25% and the same was proposed by RInfra-D in its Tariff Petition. The said rate was also applied for Working Capital borrowings at the relevant time. She contended that MERC ought to have allowed the carrying cost at the rate of prevailing SBI short-Term Prime Lending Rate instead of just 6% and prayed that this Tribunal be pleased to direct MERC to consider the prevailing SBI PLR.

Analysis and Decision

46. Regulations 63.6.2 and 76.8.2 of MERC (Terms and Conditions of Tariff) Regulations 2005 read as under:

> " 63.6 Interest on Working Capital
> ……..
>
> *63.6.2 Interest shall be allowed at a rate equal to the Short Term Prime Lending Rate of the State Bank of India as at the date on which the application for determination of tariff is made.*
>
> *76.8*
>
> *…….*

76.8.2 Interest shall be allowed at a rate equal to the Short Term Prime Lending Rate of the State Bank of India as at the date on which the application for determination of tariff is made."

47. As the MERC Regulations deploy the Short Term Prime Lending Rate of State Bank of India for working out interest on Working Capital there is no reason why the same yardstick is not used when it comes to applying interest rate on deferred payments. The licensee shall have to arrange the amount of deferred payment in the same way as the Working Capital. We, therefore, direct the Commission to allow Short Term Prime Lending Rate of SBI for deferred payments and incorporate the same while carrying out the truing up exercise for the year 2008-09.

Issue No. 'n' Sales and Revenue for FY 2009.

48. Learned counsel submitted that MERC, in the impugned order while determining the Aggregate Revenue Requirement of

RInfra has not given the computation of consumer category-wise, slab-wise sales and revenue as considered for FY 2009. She averred that such basis has been given in the past by MERC as a part of its tariff orders by way of a separate enclosure disclosing all the computations in this regard. She submitted that MERC ought to have given such calculation in its tariff orders.

49. In our opinion, this is not a prayer to be made before an appellate forum.

50. In conclusion:

(i) The appeal is dismissed as not pressed with respect to prayers at c, d, e, k and m.

(ii) With regard to issues at g and p, the appellant is given liberty to approach MERC.

(iii) The appeal is allowed in respect of the remaining issues except 'n' as per details in the aforesaid paras 16, 23, 32,41 and 47.

51. No order as to costs.

52. Pronounced in the open court on 28th day of August, 2009.

(H.L. Bajaj)
Technical Member

(Mrs. Justice Manju Goel)
Judicial Member