

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
AT GANDHINAGAR**

**PETITION No. 1628 of 2016**

In the matter of:

Consequential Order in Petition No. 1628 of 2016 dated 09.06.2017 in light of the judgment of the Hon'ble Appellate Tribunal for Electricity dated 09.06.2020 in Appeal No. 249 of 2017

**CORAM:**

**Shri Anand Kumar, Chairman  
Shri P.J.Thakkar, Member**

**Date: 05/09/2020**

**ORDER**

1. This Order is being issued in accordance with the directives issued by the Hon'ble Appellate Tribunal for Electricity in its judgment dated 09.06.2020 in Appeal No. 249 of 2017.
2. The background of these cases is as follows:
  - i. Torrent Power Limited (Appellant before the Hon'ble APTEL) filed a Petition being Petition No. 1628 of 2016 for True-up of FY 2015-16, Approval of ARR for MYT Control Period from FY 2016-17 to FY 2020-21 and Determination of Tariff for FY 2017-18 for its Surat license area. Subsequently, the Commission had passed the Tariff Order on 09.06.2017 in the said Petition.
  - ii. Aggrieved by the said Order, the Petitioner filed Appeal No. 249 of 2017 before the Hon'ble Appellate Tribunal for Electricity challenging the

Commission's Order dated 09.06.2017 to the extent of the following issue:

A. Denial of Carrying cost

3. The Hon'ble Tribunal in its judgment dated 09.06.2020 has allowed the Appeal and set aside the Commission's Order dated 09.06.2017 in Petition No. 1628 of 2016 to the extent challenged in the Appeal. The Hon'ble Tribunal decided the matter as under:

**“7. Summary of our Findings:-**

*Based on our analysis and findings in preceding paragraphs, we sum up our findings as under: -*

**A. Appeal No. 248 of 2017 & 249 of 2017**

*7.1 We hold that the Judgment of this Tribunal dated 04.10.2019 in Appeal Nos. 246 & 247 of 2017 entirely covers the issue of Carrying Cost raised in the present Appeals.*

**B. Appeal No. 345 of 2017: -**

*7.2 We hold that the issue of carrying cost in Petition no. 1629 of 2016 has been erroneously considered by the Commission as per MYT Regulations, 2016 instead of MYT Regulations, 2011. The same needs to be corrected and the carrying cost is required to be allowed in accordance with our Judgment and order dated 4.10.2019.*

*7.3 We hold that Judgment of this Tribunal in Appeal No. 256 of 2016 dated 09.5.2019 entirely covers the issue of O & M Expenses raised in the Appeal No.345 of 2017. Hence, O&M expenses in Dahej area is required to be allowed as per the same.*

## **ORDER**

*For the forgoing reasons, we are of the considered opinion that issues raised in the present appeals being Appeal Nos. 248 of 2017, 249 of 2017 and 345 of 2017 have merits. Hence, the Appeals are allowed.*

*The impugned order dated 09.06.2017 in Petition Nos. 1627 of 2016, 1628 of 2016 and 1629 of 2016 passed by Gujarat Electricity Regulatory Commission is hereby set aside to the extent of our findings under Para Nos. 7.1 to 7.3, stated supra.*

*The matter stands remitted back to the State Commission with the direction to pass the consequential order in accordance with law and the directions of this Tribunal, as stated above, as expeditiously as possible at any rate within a period of three months from the date of pronouncement of this judgment/order.....”*

4. In the light of above directives by the Hon’ble Tribunal, following consequential order is passed:

We note that the Commission has been directed by the Hon’ble Tribunal to allow the Carrying Cost in accordance with the Judgment of Hon’ble Tribunal dated 04.10.2019 in Appeal Nos. 246 & 247 of 2017 as the said Judgment entirely covers the issue of Carrying Cost raised in the Appeal No. 249 of 2017 impugning Petition No. 1628 of 2016.

- 4.1 In view of the above, it is appropriate to reproduce key findings of the Hon’ble Tribunal in Appeal Nos. 246 & 247 of 2017 dated 04.10.2019;

### **“10. SUMMARY OF FINDINGS: -**

*Based on our analysis and findings in proceeding paragraphs, we sum up our findings as under: -*

- 10.1 *We hold that the Review Petition which did not disclose any error in respect of carrying cost on the face of the record was not maintainable.*
- 10.2 *We set aside the impugned order to the extent of keeping the recovery of carrying cost in abeyance.*
- 10.3 *The Commission is directed to allow the recovery of carrying cost in expeditious manner as deferment in recovery attracts additional cost to the consumers.”*

5. The Commission had decided to defer the Carrying Cost of amount Rs. 79.77 Crore in Case No. 1628 of 2016 by observing following things;

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“.....

*In absence of the necessary evidence and information, how the gap in cash flow is bridged by TPL whether by arranging the funds from lenders or deployment of internal accruals or through promoters funds cannot be established. Under the circumstances, the Commission decides to defer the carrying cost of Rs 79.77 Crores claimed by TPL till such time the necessary documents are furnished.”*

6. As stated in the above Para 3 of this Order, the Hon’ble Tribunal in this Appeal set aside the impugned Order of the Commission dated 09.06.2017 in Case No. 1628 of 2016 to the extent of deferment of carrying cost and has further directed this commission to allow the carrying cost on the revenue gap for the deferred periods which has been as a result of legitimate expenditure in the true-up to the Distribution Company after verifying all the expenses/revenue as per the audited accounts against the approved one.

- 6.1 We note that Hon’ble Tribunal vide its Judgment in Appeal No. 249 of 2017 read with Appeal Nos. 246 & 247 of 2017 directed the Commission to allow the recovery of Carrying Cost. Thus, honouring the above directives of Judgements of the Hon’ble Tribunal, we decide to calculate the deferred carrying cost by considering the approved ARR, Revenue and earlier years’ gaps in Petition No. 1468/2014 dated 31.03.2015 in the matter of Truing up of FY 2013-14 and

Determination of Tariff for FY 2015-16 and in Petition Nos.1628 of 2016 dated 09.06.2017 and 1661 of 2017 dated 25.07.2018 in the matter of Truing up of FY 2015-16, Approval of ARR for FY 2016-17 to FY 2020-21 and Determination of Tariff for FY 2017-18, which is shown in the below tables;

**Table-A**

(in Rs. Crore)

<b>Revenue Gap for TPL-D (Surat) for FY 2013-14</b>			
<b>Particulars</b>	<b>As per Tariff Order in Case No. 1468/2014 dtd. 31.03.2015</b>	<b>Revised Gap for calculation of Carrying Cost for this Consequential Order</b>	<b>Remarks</b>
Aggregate Revenue Requirement (ARR)	2051.29	2051.29	
Less-Audit Adjustment for FY 2010-11	0.09	0.09	
Less-Audit Adjustment for FY 13-14 towards Non-Tariff Income	0.0	1.56	Rs. 1.56 Crore had been considered at that time of Truing up of FY 2015-16
Total Trued up ARR for FY 2013-14	2051.20	2049.64	
Add- Previous years Gap as per Order dtd. 24.03.2014 on APTEL Judgement dtd. 30.05.2014	3.52	0.0	This amount has been dealt in Case No. 1845/2019 dtd. 31.03.2020 as per directive by Hon'ble APTEL in Appeal No. 247 of 2017 dtd. 04.10.2019
Total Trued up ARR for FY 2013-14 after considering earlier years' Gap	2054.72	2049.64	
Revenue from Sale of Energy	1900.68	1900.68	
<b>Approved /Revised Gap for FY 2013-14</b>	<b>154.04</b>	<b>148.96</b>	

**Table-B**

(in Rs. Crore)

<b>Revenue Gap for TPL-D (Surat) for FY 2015-16</b>			
<b>Particulars</b>	<b>In Petition No. 1661/2017 dtd. 25.07.2018 for Clarification/ Rectification in Case No. 1628/2016 dtd. 09.06.2017</b>	<b>Revised Gap for calculation of Carrying Cost for this Consequential Order</b>	<b>Remarks</b>
Total Revenue	2205.14	2269.43	Revenue as per Commission's Order dtd. 09.06.17 & 25.07.18 plus an amount Rs. 64.29 Crore towards estimated FPPPA recovery in FY 15-16 against under-recovery FPPPA charges of FY 2014-15 ( <i>as proposed by the TPL-D (Surat) in its additional submission</i> )
Less-Revenue towards recovery of earlier approved/revised Gaps	160.35	148.96	Revised Gap of FY 2013-14, as calculated in the Table-A.
Effective Revenue	2044.79	2120.47	
Trued up ARR for FY 2015-16	2211.59	2191.15	Trued up ARR as per the Commission's Order dtd. 25.07.18 (Rs. 2211.59 Crore) minus Income Tax of Rs. 20.44 Crore for FY 14-15 claimed in the Truing up of FY 15-16 ( <i>as proposed by the TPL-D (Surat) in its additional submission</i> )
<b>Approved /Revised Gap for FY 2015-16</b>	<b>166.80</b>	<b>70.68</b>	

**Table-C**

(in Rs. Crore)

<b>Computation of Carrying Cost for TPL-D (Surat)</b>		
	<b>FY 2013-14</b>	<b>FY 2015-16</b>
<b>Total Gap/(Surplus)</b>	<b>148.96</b>	<b>70.68</b>
Weighted Avg. Interest Rates as approved in the Truing up of FY 2013-14 & FY 2015-16	11.63%	11.20%

FY 2014-15*	15.85	
FY 2015-16	17.32	
FY 2016-17		7.92
FY 2017-18		7.92
<b>Carrying Cost</b>	<b>33.18</b>	<b>15.83</b>
<b>Total Carrying Cost</b>		<b>49.01</b>

\* Note:- TPL-D (Surat) had filed its Tariff Petition in the matter of Truing up of FY 2011-12 and Determination of Tariff for FY 2013-14 on 31<sup>st</sup> December, 2012. The due date for the filing was 30<sup>th</sup> November, 2012, which was as per GERC(MYT)Regulations, 2011. Therefore, there had been delayed by 31 days in the filing of the Petition. Accordingly, the Carrying cost for FY 2014-15 is computed on proportionate basis.

7. We have now calculated the deferred Carrying Cost amounting to Rs. 49.01 Crore for TPL-D (Surat) as against Rs. 79.77 Crore claimed in their petition in the matter of Truing up of FY 2015-16, Approval of ARR for FY 2016-17 to FY 2020-21 and Determination of Tariff for FY 2017-18.
8. We decide to allow the deferred Carrying cost amounting to Rs. 49.01 Crore in the next tariff order in accordance with the law. Therefore, TPL-D(Surat) is allowed to claim this amount of carrying cost in their future filings of tariff petitions.
9. The directions contained in the judgment of the Hon'ble Tribunal dated 09.06.2020 in Appeal No. 249 of 2017 stand fully implemented by this Order.
10. All other terms contained in the Order dated 09.06.2017 in Petition No. 1628 of 2016 shall remain unaltered.

-Sd-  
**[P. J. THAKKAR]**  
Member

-Sd-  
**[ANAND KUMAR]**  
Chairman

Place: Gandhinagar  
Date: 05/09/2020