

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

PETITION No. 1629 of 2016

In the matter of:

Consequential Order in Petition No. 1629 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. 345 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. 345 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. 1629 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 Dahej license area. Subsequently, the Commission had passed the Tariff Orders on 09.06.2017 in the said Petition.

ii. Aggrieved by the said Orders, the Petitioner filed Appeal No. 345 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 issues:

A. Erroneous treatment of O & M Expenses

- i. Variation in O&M Expenses considered as Controllable
- ii. Reduction / deduction from O & M Expenses contrary to applicable Statutory Regulations.

B. Denial of Carrying costs.

3. The Hon'ble Tribunal in its judgment dated 09.05.2019 has allowed the Appeal and set aside the Commission's Order dated 09.06.2017 in Petition No. 1629 of 2016 to the extent challenged in the Appeal. The Hon'ble Tribunal decided 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. 1627of 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 to allow O & M Expenses as per the Judgment of Hon’ble Tribunal in Appeal No. 256 of 2016 dated 09.05.2019 as the said Judgment entirely covers the issue of O & M Expenses raised in the Appeal No. 345 of 2017 impugning Petition No. 1629 of 2016.

We also 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. 345 of 2017 impugning Petition No. 1629 of 2016.

- 4.1 In view of the above, it is appropriate to reproduce key finding of the aforementioned Judgments passed by the Hon'ble Tribunal.

Appeal No. 256 of 2016 dated 09.05.2019 (Issue of O&M Expenses)

“9. Summary of our Findings: -

Based on above, we decide and conclude as under

- 9.1** *The variation in O&M expense is normally to be treated as controllable. However, in exception cases as in hand, the amount of Network Augmentation charges incurred by the Appellant as required by State Transmission Utility (STU) for connectivity needs to be treated as uncontrollable.*
- 9.2** *The deduction of Rs. 2.48 crores from O & M Expenses is contrary to applicable Statutory Regulations of the State Commission.*
- 9.3** *The Commission should take consistent stand in all matters on the same plea whether related to O&M expenses or the variation in technical and commercial losses.*
- 10** *Accordingly, the appeal deserves to be allowed.”*

Appeal Nos. 246 & 247 of 2017 dated 04.10.2019 (Issue of the Carrying Cost)

“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.”

4.2 As regards the issue of O&M Expenses, we note that the Hon’ble Tribunal vide its Judgment in Appeal No. 256 of 2016 observed the deduction from O&M Expenses is contrary to applicable statutory Regulations of the State Commission. The Commission vide its Order in Petition No. 1629 of 2016 deducted Rs. 0.26 Crore of expenses on account of loss on sale/discarding of fixed assets from O&M Expenses. The Commission has also been advised to take consistent stand in the variations with respect to O&M Expenses and technical and commercial losses. In the light of above observations, the revised calculation of O&M Expenses and the revised Gains / (Losses) now approved in the truing up of FY 2015-16 is shown in the Table below:

Table-A

**O&M Expenses and Gains / (Losses) approved in Truing up for FY 2015-16
(Rs. Crore)**

Particulars	Approved in the MTR Order	Approved in True-up Order dated 31.03.2016	Now Approved	Deviation + / (-)	Gains / (Losses) due to Controllable factor	Gains / (Losses) due to Uncontrollable factor
O&M Expenses	2.82	7.70	7.96	(5.14)	0.00	(5.14)

4.3 Due to the above revisions and corrections, the revised ARR and revised calculation of Gains / (Losses) due to controllable and uncontrollable factors for FY 2015-16 are as given in the Table below:

Table-B**Revised Trued up ARR approved for FY 2015-16 (Rs. Crore)**

Particulars	Approved in the MTR Order	Actual Claimed	Approved in Truing Up	Deviation + / (-)	Gains / (Losses) due to Controllable factor	Gains / (Losses) due to Uncontrollable factor
ARR approved in the Order dtd. 09.06.17	79.10	103.79	103.53	(24.43)	(4.88)	(19.55)
Revised ARR now approved	79.10	103.79	103.79	(24.69)	0.00	(24.69)

4.4 Due to revision in the trued up ARR as well as calculation of Gains / (Losses) due to controllable and uncontrollable factors, there is revision in the trued up Gap / (Surplus) for FY 2015-16 as shown in the Table below:

Table-C**Revised Revenue Gap / (Surplus) for FY 2015-16 (Rs. Crore)**

Particulars	Legend	Approved in True-up Order dated 09.06.2017	Now Approved
ARR approved in the MTR Order	A	79.10	79.10
Gains / (Losses) on account of Controllable Factor	B	(4.88)	0.00
Gains / (Losses) on account of Uncontrollable Factor	C	(19.55)	(24.69)
Pass through as Tariff	$d = -(1/3\text{rd of } b + c)$	21.18	24.69
Trued up ARR	$e = a + d$	100.28	103.79
Revenue from Sale of Energy	F	122.78	122.78

Less: Revenue towards recovery of Earlier Years' approved Gap / (Surplus)	G	(3.06)	(3.06)
Balance Revenue	h= (f-g)	125.84	125.84
Net Revenue Gap / (Surplus)	i=(h-e)	(25.56)	(22.05)
Differential Impact due to revision in Surplus (25.56-22.05)			(3.51)

As shown in the above Table, the Revenue Surplus of Rs. 25.56 Crore approved in the Order dated 09.06.2017 gets reduced to Rs. 22.05 Crore on account of implementation of the directives of the Hon'ble APTEL. Accordingly, there shall be net reduction of Rs. 3.51 Crore in the revenue surplus for FY 2015-16 and decide to consider the same in the next Tariff Order.

5. The Commission had decided to defer the Carrying Cost of surplus amount of Rs. 5.95 Crore in Case No. 1629 of 2016 by observing following things;

Page No. 77 of Case No. 1629 of 2016

“.....

The Commission hereby defers the claim of carrying cost until such time documentary evidence is provided to substantiate incurrence of the cost.”

6. As stated in the above Para 4 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. 1629 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. 345 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. 1470/2014 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 No.1629 of 2016 dated 09.06.2017 in the matter of Truing 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 in Petition No. 1629 of 2016 dated 09.06.2017 which is shown in the below tables;

Table-D

(in Rs. Crore)

Revenue Gap/(Surplus) for TPL-D (Dahej) for FY 2013-14			
Particulars	As per Tariff Order in Case No. 1470/2014 dtd. 31.03.2015	Revised Gap for calculation of Carrying Cost for this Consequential Order	Remarks
Total Trued up ARR for FY 2013-14	48.24	48.24	
Revenue from Sale of Energy	52.00	52.00	
Gap/(Surplus) approved in FY 13-14	-3.76	-3.76	
Add- Adjustment as per APTEL Judgement dtd. 11.12.2015 in Appeal No. 142,143 & 145 of 2015	0.0	0.70	This amount had considered at the time of Truing up of FY 2015-16
Approved/Revised Gap for FY 2013-14	(3.76)	(3.70)	

Table-E

(in Rs. Crore)

Revenue Gap/(Surplus) for TPL-D (Dahej) for FY 2015-16			
Particulars	As per Tariff Order in Case No. 1629/2016 dtd. 09.06.2017	Revised Gap for calculation of Carrying Cost for this Consequential Order	Remarks
Total Revenue	122.78	122.78	
Less-Revenue towards recovery of approved/revised Gap/(Surplus)	-3.06	-3.06	Revised Gap of FY 2013-14, as calculated in the Table-D
Effective Revenue	125.84	125.84	
Trued up ARR for FY 2015-16	100.28	103.79	Revised ARR of FY 2015-16 by this Consequential Order as per Appeal No. 345 of 2017
Approved/Revised Gap/(Surplus) for FY 2015-16	-25.56	-22.05	

Table-F

(in Rs. Crore)

Computation of Carrying Cost for TPL-D (Dahej)		
	FY 2013-14	FY 2015-16
Total Gap/(Surplus)	(3.06)	(22.05)
Weighted Avg. Interest Rates as approved in the Truing up of FY 2013-14 & FY 2015-16	13.20%	13.50%
FY 2014-15*	(0.35)	
FY 2015-16	(0.40)	
FY 2016-17		(2.98)
FY 2017-18		(2.98)
Carrying Cost	(0.76)	(5.95)
Total Carrying Cost		(6.71)

* Note:- TPL-D (Dahej) had filed its Tariff Petition in the matter of Truing up of FY 2011-12 and Determination of Tariff for FY 2013-14 on 16th January, 2013. The due date for the filing was 30th November, 2012, which was as per GERC(MYT)Regulations, 2011. Therefore, there had been delayed by 47 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 surplus of Rs. 6.71 Crore for TPL-D (Dahej) as against Rs. 5.95 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 surplus of Rs. 6.71 Crore in the next tariff order in accordance with the law. Therefore, TPL-D(Dahej) is allowed to consider this amount of carrying cost in their future filings of tariff petition.
9. The directions contained in the judgment of the Hon'ble Tribunal dated 09.06.2020 in Appeal No. 345 of 2017 stand fully implemented by this Order.
10. All other terms contained in the Order dated 09.06.2017 in Petition No. 1629 of 2016 shall remain unaltered.

-Sd-
[P. J. THAKKAR]
Member

-Sd-
[ANAND KUMAR]
Chairman

Place: Gandhinagar
Date: 05/09/2020